IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2583 of 2015 and 1344 of 2016
and M.P.No.1 of 2015

C.M.A.No.2583 of 2015

The Branch Manager
Oriental Insurance Company
Limited
No.75, Krishnan street
Tiruvannamalai Town. .. Appellant/2nd Respondent

Vs.

1.Chinnapaiyan
2.Murugan
3.Rangan
4.Dharani
5.Ramesh
6.Panchatcharam .. Respondents/Petitioners and 1st Respondent

C.M.A.No.1344 of 2016

1.Chinnapaiyan
2.Murugan
3.Rangan
4.Dharani
5.Ramesh .. Appellants/Petitioner

vs.

1.Panchatcharam

2.The Branch Manager
Oriental Insurance Company
Limited
No.75, Krishnan street
Tiruvannamalai Town. .. Respondents/Respondents

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 09.01.2015 made in M.C.O.P.No.130 of 2013 on the file of Motor Accidents Claims Tribunal, Special Sub Court (In-charge), Tiruvannamalai.

In C.M.A.No.2583 of 2015

For Appellants : Ms.Elveera Ravindran for Mr.S.Manohar

For R1 to R5 : Ms.A.Subadra for M/s.M.Malar

In C.M.A.No.1344 of 2016

For Appellants : Ms.A.Subadra for M/s.M.Malar

For R2 : Ms.Elveera Ravindran

COMMON JUDGMENT

C.M.A.No.2583 of 2015 is filed by the Insurance Company challenging the award dated 09.01.2015 made in M.C.O.P.No.130 of 2013 on the file of Motor Accidents Claims Tribunal, Special Sub Court (In-charge), Tiruvannamalai.

C.M.A.No.1344 of 2016 is filed by the claimants for enhancement of compensation granted by the Tribunal in the award dated 09.01.2015 made in M.C.O.P.No.130 of 2013 on the file of Motor Accidents Claims Tribunal, Special Sub Court (In-charge), Tiruvannamalai.

2.Both the appeals are arising out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimants filed the claim petition in M.C.O.P.No.130 of 2013 on the file of Motor Accidents Claims Tribunal, Special Sub Court (In-charge), Tiruvannamalai, claiming a sum of Rs.10,00,000/- as compensation for the death of one Valliammal, who died in the accident that took place on 24.10.2009.

4.According to the claimants, on the date of accident, i.e., on 24.10.2009 at 8.30 hours, while the deceased Valliammal was travelling as loadwoman in the Tractor belonging to the 1st respondent, the driver of the tractor drove the same in a rash and negligent manner and due to the same, the deceased fell down from the tractor and succumbed to her injuries on 25.10.2009. Therefore, the claimants filed the above claim petition claiming compensation.

5.The 1st respondent, owner of the tractor filed counter statement and admitted that the accident has occurred. He contended that the deceased herself fell down from the tractor and succumbed to her injuries. The 1st respondent has possessed insurance policy and permit. The deceased was third party to the insurance policy and the 2nd respondent/Insurance Company alone is liable to pay compensation.

6.The appellant/Insurance Company filed counter statement denying the averments made by the claimants and contended that the offending vehicle was not insured with the 2nd respondent and the driver of the tractor did not possess valid driving license at the time of accident. The deceased along with two other persons sat on the top side of the tractor, which has permitted capacity of only one person. The said tractor is to be used only for the purpose of harvesting. There was delay in lodging complaint and the tractor has been sent to inspection only after fifteen days from the date of accident. There is contradiction in the manner of accident as per F.I.R. and charge sheet. Therefore, the 1st respondent has violated the permit and policy conditions and hence, the 2nd respondent/Insurance Company is not liable to pay any compensation.

7.Before the Tribunal, the 5th claimant, son of the deceased examined himself as P.W.1 and one Krishnan, eye-witness was examined as P.W.2 and marked five documents as Exs.P1 to P5. On the side of the respondents, one N.R.Sundaramurthy was examined as R.W.1, one C.Kumar, investigating officer, was examined as R.W.2 and one Venkatasubramanian, Assistant Manager of the 2nd respondent/Insurance Company was examined as R.W.3 and marked four documents as Exs.R1 to R4.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the tractor belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said tractor to pay a sum of Rs.4,38,000/- as compensation to the claimants at the first instance and recover the same from the 1st respondent, owner of the tractor.

9.Against the said award dated 09.01.2015 made in M.C.O.P.No.130 of 2013, the 2nd respondent/Insurance Company has come out with C.M.A.No.2583 of 2015. Not being satisfied with the amounts awarded by the Tribunal, the claimants have come out with C.M.A.No.1344 of 2016 seeking enhancement of compensation.

10.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal having held that the deceased travelled in the mud guard of the tractor, erred in directing the 2nd respondent to pay the compensation at the first instance and recover the same from the 1st respondent, owner of the tractor. When the 2nd respondent is not liable to pay any compensation, the Tribunal erred in ordering pay and recovery. In the policy by mistake, the seating capacity of the tractor is mentioned as 4 + 1, whereas the policy was issued for miscellaneous type of vehicles intended for tractors or trailers wherein only one person can travel. Mud guard is not intended to carry passenger. The policy issued by the 2nd respondent/Insurance Company did not cover the risk of the deceased. The policy issued is only Act policy. The learned counsel further contended that in any event, the compensation awarded by the Tribunal is excessive. The claimants are not entitled for any enhancement and prayed for allowing C.M.A.No.2583 of 2015 filed by the 2nd respondent/Insurance Company and dismissal of C.M.A.No.1344 of 2016 filed by the claimants.

11.The learned counsel appearing for the claimants contended that the deceased travelled as a coolie for loading and unloading the materials belonging to the 1st respondent. The policy issued by the 2nd respondent permits 4 + 1 persons to travel in the tractor. The deceased did not travel as unauthorised passenger and therefore, the Tribunal rightly ordered pay and recovery. The learned counsel further contended that the deceased was working as coolie and was earning a sum of Rs.5,000/- per month. The Tribunal fixed only a meagre sum of Rs.3,000/- per month as notional income of the deceased. The deceased was aged 45 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of consortium and loss of love and affection are meagre. The Tribunal has not awarded any compensation towards loss of estate and prayed for enhancement of compensation and dismissal of C.M.A.No.2583 of 2015 filed by the 2nd respondent/Insurance Company.

12.Heard the learned counsel appearing for the claimants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

13.It is the contention of the claimants that the deceased was coolie under the 1st respondent and on the date of accident, she travelled in the tractor for loading and unloading the materials belonging to the 1st respondent. The contention of the claimants that the deceased was coolie under the 1st respondent was not denied by the 1st respondent. The policy issued by the 2nd respondent/Insurance Company covers 4 + 1 persons travelling in the tractor. The contention of the 2nd respondent/Insurance Company is that number of persons permitted to travel is wrongly mentioned in the policy while only one person can travel in the tractor. It is to be noted that the 2nd respondent/Insurance Company has not rectified the alleged mistake in the policy and has not issued any fresh policy. The Tribunal taking into consideration the above facts and also the fact that the deceased travelled in the mud guard of the tractor, directed the 2nd respondent/Insurance Company to pay the compensation at the first instance and recover the same from the 1st respondent. The Motor Vehicles Act is beneficiary legislation and the claimants are third parties and they should should not suffer. This Court and the Hon'ble Apex Court considering the provisions of Motor Vehicles Act elaborately, held that the victim or legal heirs of the deceased in an accident should not suffer on technical ground, but they must enjoy the fruits of the award passed by the Tribunal and the Court is in their favour. Considering the entire materials available on record, I hold that there is no error in ordering pay and recovery by the Tribunal and the same is hereby confirmed.

14.As far as quantum of compensation is concerned, the claimants have claimed that the deceased was working as coolie and was earning a sum of Rs.5,000/- per month. The claimants failed to prove the said contention. In the absence of any material evidence with regard to income of the deceased, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the deceased. The accident is of the year 2009 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.4,500/- per month is fixed as notional income of the deceased. The deceased was aged 45 years at the time of accident as per Ex.P4/Post-mortem report. The Tribunal has not granted any enhancement towards future prospects. The claimants are entitled to 25% enhancement towards future prospects. By applying multiplier 14 and deducting 1/4th towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.7,08,750/- (Rs.4,500/- + 1125 [Rs.4,500/- X 25%] X 12 X 14 X 3/4). A sum of Rs.25,000/- awarded by the Tribunal towards loss of consortium is meagre and the same is hereby enhanced to Rs.40,000/-. A sum of Rs.5,000/- awarded by the Tribunal towards loss of love & affection to the 1st claimant is liable to be set aside and the same is hereby set aside. A sum of Rs.5,000/- awarded by the Tribunal towards funeral expenses is meagre and the same is hereby enhanced to Rs.15,000/-. A sum of Rs.5,000/- each awarded by the Tribunal towards loss of love and affection to the claimants 2 to 5 is meagre and the same is hereby enhanced to Rs.10,000/- each. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. A sum of Rs.5,000/- awarded by the Tribunal towards transportation is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	3,78,000	7,08,750	Enhanced
2.	Loss of love and affection to the 1st claimant	5,000	-	Set aside
3.	Loss of love and affection to the claimants 2 to 5 (Rs.5,000/- each)	20,000	40,000	Enhanced
4.	Loss of consortium	25,000	40,000	Enhanced
5.	Funeral expenses	5,000	15,000	Enhanced
6.	Transportation	5,000	5,000	Confirmed
7.	Loss of estate	-	15,000	Granted
	Total	4,38,000	8,23,750	Enhanced by Rs.3,85,750/-

15.In the result, C.M.A.No.2583 of 2015 filed by the 2nd respondent/Insurance Company is dismissed. C.M.A.No.1344 of 2016 filed by the claimants is partly allowed and the compensation of Rs.4,38,000/- awarded by the Tribunal is hereby enhanced to Rs.8,23,750/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 1st respondent. On such deposit, the claimants are permitted to withdraw their respective share of the award amount as per the apportionment made by the Tribunal along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(ADI MDU)

//True copy//

Sub Assistant Registrar

kj

To

1.The Special Subordinate Judge (In-charge)
The Motor Accidents Claims Tribunal
Tiruvannamalai.

2.The Section Officer
V.R.Section, High Court, Chennai.

+1cc to M/s.M.Malar, Advocate SR.No.2377

+2ccs to Mrs.Elveera Ravindran, Advocate SR.No.1862, 1863

C.M.A.Nos.2583 of 2015 and
1344 of 2016

VNA(CO)
GMY(20/08/2020)