IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.756 of 2012

The Divisional Manager,
New India Assurance Co. Ltd.,
No.106, Big Street,
Tiruvannamalai. ... Appellant/2nd Respondent

..Vs..

1.Dhanam
2.Kannan
3.Suseela
4.Babu
5.Velusamy
6.The Divisional Manager,
Bajaj Alliance General Insurance Company Ltd.,
No12/G, Ram Nagar,
Byepass Road,
Madurai-625 010.

...Respondents/Petitioners and RR1,3,4

(The 2nd and 3rd respondents are given up as no award was passed in their favour. Notice dispensed with for 5th respondent)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment made in MCOP. No.436 of 2006 on the file of the Motor Accident Claims Tribunal (District Judge) Tiruvannamalai, dated 26.09.2011.

For Appellant : Mr.M,Krishnamoorthy

For Respondents : R2 & R3 - given up
R5 - notice served - No appearance
Mr.M.B.Raghavan - R6
Not ready in notice - R1 and R4

J U D G M E N T

(This Appeal has been taken up for hearing through Video conferencing)

This Civil Miscellaneous Appeal has been filed by the Insurance company challenging the award dated 26.09.2011 passed by the Motor Accident Claims Tribunal (District Judge) Tiruvannamalai in MCOP No.436 of 2006.

Brief facts leading to the filing of this Appeal are as follows:

2. On 27.04.2004, at about 3.30 P.M., while the deceased Marimuthu was travelling as a cleaner in the lorry bearing registration No.TN 21 X 4869 owned by the 4th respondent, from Madhravoyal to Tambaram, near Selvaganapathy Nagar, at the time, the driver of the lorry, dashed against the car bearing Registration No.TN 27 M 5456, which came in the opposite direction. Due to the accident, Marimuthu died on the spot. According to the claimants, the accident had happened only due to the rash and negligent driving of the 4th respondent / driver of the lorry.

3. The legal representatives of the deceased Marimuthu, namely, respondents 1 to 3 preferred a claim before the Motor Accident Claims Tribunal, seeking compensation for the death of Marimuthu, against the driver, owner of the lorry and the insurance companies of both the lorry and the car.

4. The Tribunal, under the impugned award, directed the 1st respondent, who is the driver of the lorry, and the second respondent/New India Assurance Company Limited, to pay compensation to the 1st petitioner/claimant, a sum of Rs.2,45,000/- together with interest and costs as follows:

Sl.No.	Heads	Award passed by the Tribunal (Rs.)
1	Consolidated sum	2,25,000/-
2	Loss of love and affection	10,000/-
3	Funeral expenses and transportation charges	10,000/-
	Total	2,45,000/-

5. Aggrieved by the award dated 26.09.2011, in MCOP No.436 of 2006, this appeal has been preferred by the insurance company, who is the insurer of the lorry.

6. The grounds raised by the Appellant in this appeal are as follows:

a. The appellant/Insurance Company is not liable to compensate the claim of the respondents 1 to 3, since they were unauthorised passengers in the insured lorry, which caused accident.

b. the appellant has also challenged the findings on the ground that that the accident had happened only due to the negligence of the driver of the car, over looking the evidence of P.W.3, the only eyewitness to the accident.

c. they have also challenged the quantum of compensation awarded by the Tribunal as according to them the same is excessive.

7. Heard Mr.M.Krishnamoorthy, learned counsel for the Appellant and Mr.M.B.Raghavan, learned counsel for the 6^{th} respondent. Respondents 2 and 3 have already given up in this appeal. Since this Court is going to confirm the award, notice to respondent 1 to 4 is dispensed with.

8. This Court has perused and examined the impugned award. Before the Tribunal, on the side of the appellants, eight documents were filed by the claimants, which were marked as Ex.P1 to Ex.P8 and two witnesses were examined viz., P.W.1 - grandmother of the deceased, P.W.2 - Durai, eyewitness to the accident. On the side of the respondent/Insurance company, four documents were filed, which were marked as Ex.R1 to Ex.R4 and two witnesses were examined viz., R.W.1 and R.W.2.

9. Insofar as the first contention raised by the appellant is concerned that the deceased was a gratuitous passenger, the same has been duly considered by the Tribunal. Even as per the claim petition filed by the respondents, it was their stand that the deceased was a cleaner in the insured lorry. As seen from the oral evidence adduced by the respondents/claimants before the Tribunal, they have taken a consistent stand that the deceased was a cleaner in the insured lorry. The appellant has also not established before the Tribunal that the deceased was not a cleaner, as claimed by the respondents. While that be so, they cannot escape their liability, in view of the fact that the insurance policy which has been marked as Ex.R1, gives coverage for six employees of the owner of the insured lorry to travel in the same lorry. Being a cleaner, he is certainly an employee of the insured lorry. The Tribunal has rightly held that the appellant is liable to compensate the respondents.

10. Insofar as the second contention raised by the appellant viz., that the accident happened solely due to the negligence of the driver of the car insured with the 6^{th} respondent is

concerned, the same is also duly considered by the Tribunal under the impugned award. FIR has been registered only against the driver of the insured lorry and the charge sheet has also been marked as Ex.P1 and Ex.P5, respectively. The Tribunal has duly considered the same as well as the oral evidence available on record and only thereafter, has come to the conclusion that the vehicle insured with the appellant alone was responsible for the cause of the accident.

11. Insofar as the third contention raised by the appellant is concerned, regarding the quantum of compensation awarded by the Tribunal, this Court is of the considered view that the same is a just compensation.

12. The accident had happened in the year 2004. The age and avocation of the deceased, as claimed in the claim petition, has not been disputed by the appellant/insurance company as seen from the evidence available on record. Before the Tribunal, the respondents had claimed compensation of Rs.10,00,000/-. Whereas the Tribunal, under the impugned award has amended a compensation of Rs.2,45,000/-. Considering the quantum of compensation awarded by the Tribunal under various heads, as observed earlier, the same cannot be set to be an excessive compensation. Therefore, there is no scope for interference with regard to the said contention also.

Conclusion:

13. For the foregoing reasons, there is no merit in the appeal. Accordingly, this appeal shall stand dismissed.

14. The learned counsel for the appellant/Insurance Company has submitted that the entire award amount of Rs.2,45,000/- has been deposited, pursuant to the order of this Court dated 26.04.2012 in M.P.No.1 of 2012 in CMA. No.756 of 2012.

15. In view of the said submission made by the appellant, the first respondent/claimant is entitled to withdraw the award amount lying to the credit of MCOP.No.436 of 2006 along with accrued interest by filing an appropriate application.

16. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
   (District Judge) Tiruvannamalai.

2.The Section Officer,
   V.R.Section,
   High Court of Madras.

C.M.A.No.756 of 2012

mr[co]
srg 22/01/2021