BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.11.2020
CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD) No.968 of 2008

M/s.United India Insurance Co. Ltd.,
Rep.through the Branch Manager
Madurai : Appellant/2nd Respondent

-vs-

1.Rajamani Thevar

2.Subbammal : Respondents 1 & 2/Petitioners 1 & 2

3.Dharmar

4. The Director
M/s.Anand Steels
No.159, Main Road
Cambum, Theni District : Respondents 3 & 4/Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 08.08.2007 in M.C.O.P.No.237 of 2001, on the file of the Motor Accident Claims Tribunal/Sub Court, Periyakulam, Theni District.

For Appellant : Mr.S.Muthalraj

For Respondents : Mr.P.George Raja
for M/s.Ajmal Associates for R1 & R2
Ms.P.Malini for R3
Mr.G.Rajan for R4

J U D G M E N T

This civil miscellaneous appeal arises out of the Award dated 08.08.2007 in M.C.O.P.No.237 of 2001, on the file of the Motor Accident Claims Tribunal / Sub Court, Periyakulam, Theni District.

2. The facts in brief are that the respondents 1 and 2 herein as claimants filed the claim petition seeking compensation of Rs.10,00,000/-. According to the claimants, their son Muthupandi was doing civil contract works and on 27.05.2001 at 10.30 a.m., the deceased travelled in an Auto bearing registration No.TN60 Z0012, belonged to the fourth respondent and insured with the appellant – Insurance Company and at that time, the driver of the Auto drove it in a high speed and caused accident. In the said accident, the deceased fell down and sustained injuries. Though the deceased was immediately taken to the Government Hospital, Theni, the Doctor declared him brought dead.

3. The claim of the respondents 1 and 2 was opposed by the appellant-Insurance Company on various grounds. In the counter affidavit, they have disputed the age, income and the avocation of the deceased and also repudiated their liability on the ground of violation of policy conditions.

4. During trial, the claimants as well as the Insurance Company have adduced oral and documentary evidence. On appreciation of the evidence adduced by the parties, the Tribunal held that the accident occurred due to the negligence of the driver of the Auto and awarded a compensation of Rs.2,15,000/- along with interest at the rate of 7.5% per annum.

5. Mr.S.Muthalraj, learned counsel appearing for the appellant - Insurance Company, would mainly contend that though the Insurance Company has examined two witnesses and marked Ex.R1, the Tribunal has not properly appreciated those evidence and made the Insurance Company liable to pay the compensation amount.

6. Per contra, Mr.P.George Raja, learned counsel appearing for the respondents 1 and 2 / claimants that the Tribunal, on proper appreciation of the oral and documentary evidence, held that the alleged violation of policy conditions has not been proved and the findings of the Tribunal are based on the evidence and hence, the factual findings need not be interfered.

7. Heard Mr.S.Muthalraj, learned counsel appearing for the appellant, Mr.P.George Raja, learned counsel appearing for the respondents 1 and 2, Ms.P.Malini, learned counsel appearing for the third respondent and Mr.G.Rajan, learned counsel appearing for the fourth respondent and carefully perused the materials available on record.

8. In the instant case, admittedly, there is no dispute with regard to the quantum of compensation, but, the challenge in this appeal is in respect of liability of the Insurance Company to pay the award amount. The Tribunal, while considering the issue with regard to liability, has analyzed the evidence of R.W.1 and Ex.R1 and held that the appellant - Insurance Company has not proved the violation of policy conditions. As rightly pointed out by the learned counsel appearing for the respondents 1 and 2 / claimants, the findings have been reached based on proper appreciation of evidence and no additional materials have been produced to substantiate the case of the appellant - Insurance Company. So, this Court does not find merit in the contention of the learned counsel for the appellant. Admittedly, on the date of accident, the offending vehicle had insurance coverage with the appellant – Insurance Company.

9. For the reasons stated above, the appeal fails and the same is dismissed. Inasmuch as the appeal is dismissed, the appellant – Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 and 2 / claimants are permitted to withdraw their share in the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs, as per the ratio of apportionment made by the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:
The Sub Judge,
The Motor Accident Claims Tribunal,
Periyakulam, Theni District.

Copy to: The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate SR-22838.
+1 CC to Mr.G.RAJAN, Advocate SR-22843.

C.M.A.(MD) No.968 of 2008
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