BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 21.01.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.193 of 2010
and
M.P(MD)No.1 of 2010

National Insurance Co., Ltd.,
81-D, Chetty Street,
Thiruchengodu. .. Appellant/2nd Respondent

vs.

1.Vadivukkarasi
2.Minor Sriram
3.Minor Srikanth ... Respondents 1 to 3/Petitioners
(Minors 2 & 3 are rep by their Mother /next friend guardian 1st Petitioner, Vadivukkarasi)

4.C.Rajavelu,
Proprietor of Reena Drillers,
46-A, Main Road, Thiruvathigai,
Panrutti,
Villupuram District – 605 603. ...4th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 17.12.2008 made in MCOP No.444/2005 on the file of the Motor Accident Claims Tribunal (III Additional Subordinate Judge), at Thiruchirappalli.

For Appellant : Mr.N.Murugesan

For Respondents 1 to 3 : Mr.R.Sundar

J U D G M E N T

This appeal has been preferred by the Insurance Company questioning the award passed by the Motor Accident Claims Tribunal (III Additional Subordinate Judge), Thiruchirapalli in MCOP No.444 of 2005 dated 17.12.2008.

2.The facts which are necessary for the disposal of the case, would run thus:-

The respondents 1 to 3 as legal-heirs of the deceased Raja, filed a claim petition seeking compensation of Rs.8,00,000/-.

According to them, the deceased Raja was a Rig Operator and he was travelling in a bore-well driller lorry bearing registration No.TN-28-U-9588 from Madathara to Addaikkal and when the lorry was proceeding near Irakkuzhi, the driver of the driller lorry drove the vehicle in a rash and negligent manner and hence, the deceased was thrown away and sustained injuries. Immediately, he was taken to Kadaikkal Government Hospital and where from, he was referred to Thiruvananthapuram Medical College Hospital, however, he succumbed to injuries. He further stated that the deceased was 30 years old at the time of accident and he was earning Rs.5,000/- per month and the claimants are the wife and minor children aged about 23, 2 and 1 years respectively.

3.In the counter filed by the appellant, the age, income and the manner of accident stated in the claim petition, were disputed. It is specifically stated that the vehicle, in which, the deceased travelled, is a goods vehicle and the deceased was a gratuitous passenger and hence, the Insurance Company cannot be made to liable to pay compensation.

4.Before the Tribunal, both the parties adduced oral and documentary evidence. On appreciation of evidence, the Tribunal came to the conclusion that the driver of the lorry caused the accident and awarded compensation of Rs.4,53,000/- along with interest at the rate of 7.5% per annum. Aggrieved over the same, the present appeal has been filed.

5.Mr.N.Murugesan, learned counsel for the appellant would submit that the Tribunal has erred in interpreting Ex.R1, Policy Copy and held that the deceased is a Rig Operator, who is also covered under the policy. It is also contended that the oral evidence of R.W.1 and Ex.R1 were not properly appreciated by the Tribunal.

6.Per contra, Mr.R.Sundar, learned counsel for the respondents 1 to 3/claimants justified the decision of the Tribunal and prayed for dismissal of the appeal.

7.In the case on hand, the first claimant examined herself as P.W.1. P.W.2 Senthilkumar, who is said to have accompanied the deceased at the time of accident, in his evidence, has categorically stated that the driver of the bore-well lorry was negligently and rashly drove the vehicle, which resulted, the accident. In support of the oral evidence, Ex.P1-First Information Report was also filed. The owner of the vehicle remained ex-parte and the driver of the vehicle was not examined in support of the case of the appellant. So, the Tribunal, in my considered view, rightly held that the accident had occurred only due to the rash and negligent driving of the driver of the rig unit lorry. It is to be noted that the claimants filed Ex.P.8-copy of the insurance policy and the same document was also marked on the side of the appellant as Ex.R1. The Tribunal found that the insured had taken policy covering lorry as well as rig unit and three employees were permitted to travel in the vehicle, for which, extra premium was also paid.

8.The deceased was found to be Rig Operator and hence, the Tribunal has rightly rejected the contention of the appellant that they are not liable to pay compensation. So, I find no substance in the arguments advanced on behalf of the appellant. Though the claimants have stated that the deceased was earning Rs.5,000/- per month and also produced Ex.P.6-Salary Certificate, however, the Tribunal has taken the monthly income at Rs.3,000/- per month and after deducting Rs.1000/- for his personal and living expenses, held that the deceased has contributed Rs.2,000/- to his family. The Tribunal by applying multiplier '17' awarded Rs.4,08,000/- for loss of income. In addition, Rs.5,000/- was awarded for transportation; Rs.5000/- was awarded towards funeral expenses; Rs.15,000/- was awarded towards love and affection and Rs.20,000/- was awarded towards loss of consortium to the first claimant. In total, the Tribunal has awarded Rs.4,53,000/- along with interest at the rate of 7.5% per annum. In my considered view that the award amount cannot be said to be excessive or exorbitant as alleged by the appellant/Insurance Company. I find no merits in the appeal. Hence, the Civil Miscellaneous Appeal is liable to be dismissed.

9.In that view, the Civil Miscellaneous Appeal is dismissed, as devoid of merits. Since 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 claimants are entitled to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs as apportioned by the Tribunal. The first claimant is permitted to withdraw her share after filing a memo, along with a copy of this order. Further, the Tribunal is directed to deposit the share of the minor claimants in any one of the nationalised banks, as fixed deposit under the Cumulative Deposit Scheme, till the minors attain the age of major and hand over the fixed deposit certificate to the mother of the minor claimants. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

To

1.The III Additional Subordinate Judge
(III Additional Subordinate Court)
Motor Accident Claims Tribunal,
Thiruchirappalli.

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

+1 CC to Mr.N.MURUGESAN, Advocate (SR-1742[F] dated 22/01/2021)

JUDGMENT MADE IN

C.M.A(MD)No.193 of 2010
and
M.P(MD)No.1 of 2010
21.01.2021

VB (18.03.2021) 4P 5C