BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 04.02.2021
CORAM
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
C.M.A(MD)No.21 of 2010
and
M.P(MD)No.1 of 2010

The Branch Manager,
The New India Assurance Co., Ltd.,
Door No.182/22L, S.N. High Road,
Thirunelveli. .. Appellant/2nd Respondent

vs.

1.Pappa
2.Murugan ..1st and 2nd Respondents/Claimants
3.Pandiya Subramanian ...3rd Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the decree and Judgment dated 03.09.2009 made in MCOP No.99/2006 on the file of the Motor Accident Claims Tribunal, (Principal Sub-Judge), Thenkasi.

For Appellant : Mr.B.Vijay Karthikeyan
For Respondent : Mr.R.J.Karthick (for R1 and R2)
Mr.T.S.Mohammed Mohideen (for R3)

J U D G M E N T

This appeal is directed against the Judgment and Order of the Motor Accident Claims Tribunal, Principal Sub-Court, Tenkasi in MCOP No.99 of 2006, dated 03.09.2009.

2.The respondents 1 and 2 herein filed a claim petition seeking compensation of Rs.10,00,000/-. The claimants are the wife and son of the deceased Narayanan. According to them, on 31.03.2006 at about 09.00 a.m., the deceased was riding his motorcycle bearing registration No.TCT 4420 on Kadayanallur main road. At that time, a tractor owned by the third respondent herein and insured with the appellant was driven in a rash and negligent manner and hit against the motorcycle. In the impact, the deceased was thrown away and sustained head injury and injuries on the other parts also. He was immediately taken to Kadayanallur Government Hospital. Despite treatment, he died on the same day.

3.The claim petition was opposed by the appellant contending that the owner had taken policy on 31.03.2006 and it commenced from 13.25 hours, since the accident had occurred at 09.00 a.m on

31.03.2006, the Insurance Company has no liability to pay compensation. It was also contended that the claim is excessive.

4.The Tribunal after analyzing the evidence adduced by the parties came to the conclusion that the driver of the tractor was negligent and awarded compensation of Rs.1,78,000/-. Aggrieved over the same, the present appeal has been filed.

5.Heard Mr.Vijay Karthikeyan, learned counsel for the appellant, Mr.R.J.Karthick, learned counsel for the respondents 1 and 2 and Mr.T.S.Mohammed Mohideen, learned counsel for the third respondent and perused the materials available on records.

6.A perusal of the records show that the owner who was examined as R.W.1, has stated before the Tribunal that he had taken delivery of the new tractor on 23.03.2006 and on the same day, he paid premium amount of Rs.8,799/- by way of demand draft. Ex.R1 is the Xerox copy of the demand draft. He further stated that though the Insurance Company collected premium on 23.03.2006, but they issued policy only after the accident i.e., on 31.03.2006. R.W.3, an employee of the Insurance Company in his cross examination, categorically admitted that the owner paid the premium amount on 23.03.2006 by way of demand draft, but they issued policy after the accident.

7.The Tribunal on the basis of the evidence of R.W.1 and R.W.2 and Ex.R1, came to the conclusion that it was only the mistake of the Insurance Company to issue policy after lapse of 7 days and held that the Insurance Company is liable to satisfy the award amount.

8.Considering the above said facts and circumstances, I find no reason to interfere with the findings of the Tribunal. Insofar as the quantum is concerned, the Tribunal found that the deceased was 65 years old, based on the postmortem certificate. The Tribunal fixed the notional income at Rs.3,000/- and after deducting 1/3rd for personal expenses and by applying multiplier '7', awarded Rs.1,68,000/- for loss of income. In addition, Rs.5,000/- was awarded for love and affection and another Rs.5,000/- was awarded for funeral expenses. In total, the Tribunal has awarded Rs.1,78,000/- 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 permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs as apportioned by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

skn

To

1.The Motor Accident Claims Tribunal,
Principal Sub Court, Tenkasi.

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

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-3560[F] dated 05/02/2021)

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-3453[F] dated 05/02/2021)

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