BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 24.02.2021
CORAM
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
C.M.A(MD)No.433 of 2010
and
M.P(MD)No.1 of 2010

The Oriental Insurance Company Limited,
Through its Branch Manager,
Office at Shobha TSM Complex,
Railway Station Road,
Palakkad- 678 001. .. Appellant/2nd Respondent

vs.

1.Michaelammal
2.Minor Muthu Jedis
3.Minor Atchaya
4.Pitchaiammal ..Respondents 1 to 4/Claimants 1 to 4
(Minor Respondents 2 and 3 are rep.
through their mother and next guardian
the 1st respondent herein)

5.Vannithangam ..5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree dated 24.06.2009 in MCOP No.1196 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Tirunelveli.

For Appellant : Mr.K.Bhaskaran
For Respondents : Mr.T.Selvakumaran (for R1 to R4)
No appearance (for R5)

J U D G M E N T

This appeal has been preferred by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal (Principal District Judge), Tirunelveli in MCOP No.1196 of 2007 dated 24.06.2009.

2.The claim petition was filed by the wife, minor children and the mother of the deceased namely, Thiraviaraj. According to them, on 04.08.2007 at 02.00 a.m, the deceased was travelling in a Mini Lorry bearing registration No.TN-72-Q-1530, which was owned by the first respondent and insured with the second respondent in the claim petition, as a load-man. When the vehicle was proceeding on Tirunelvei - Tisayanvillai main road, the driver drove it very rashly and negligently and as a result, it entered into ditch dug for the purpose of laying road and capsized on the left side. In the accident, the deceased was trapped inside the load and died on the spot. The claimants sought compensation of Rs.10,00,000/-, but the Tribunal has awarded Rs.6,46,500/- with interest at the rate of 9% per annum. Questioning the award, the present appeal has been filed.

3.The defence of the appellant before the Tribunal was that the deceased travelled as a gratuitous passenger, in violation of the policy condition, hence, no liability can be fastened on the insurance company. To prove the defence, on the side of the appellant, two witnesses were examined and Ex.R.1 and R2 were marked

4.In the matter on hand, it is not in dispute that the offending vehicle at the relevant point of time, was owned by the first respondent in the claim petition and it was insured with the appellant herein. It is equally not disputed that the vehicle had comprehensive policy. R.W.1 marked insurance policy as Ex.R2 and admitted in the evidence that it was comprehensive policy and they collected overall premium of Rs.75/- for non-fare passenger. The Tribunal, taking note of the evidence produced by the appellant, held that they are liable to pay compensation. I find no illegality or irregularity in the finding of the Tribunal.

5.Insofar as the quantum is concerned, the deceased died at the age of 27 years and his wife was 22 years old and the claimants 2 and 3 were three years and one year respectively. According to the claimants, the deceased was earning Rs.6,000/- per month, but no record was produced to prove the same. Thereafter, the Tribunal has fixed notional income at Rs.4500/- and after deducting 1/3rd for his personal expenses, held that the contribution is Rs.3,000/- to the family and by applying multiplier '17' has awarded Rs.6,12,000/-. In addition, Rs.5,000/ was awarded towards transportation; Rs.2,000/- towards funeral expenses; Rs.5000/- towards loss of consortium; Rs.2,500/- towards loss of estate; Rs.20,000/- towards loss of love and affection. In total, the Tribunal has awarded Rs.6,46,500/- along with interest at the rate of 9% per annum. This Court is of the opinion that the amount is reasonable. Hence, the award of the Tribunal is liable to be confirmed.

6.The learned counsel for the appellant Insurance Company Mr.K.Bhaskaran would argue that the interest is to be reduced from 9% to 7.5%. Though it was opposed by the learned counsel for the claimants Mr.T.Selvakumaran, considering the fact that the incident took place in the year 2007, the interest is reduced from 9% to 7.5%.

7.In that view, the Civil Miscellaneous Appeal is partly allowed. 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 major claimants are permitted to withdraw the award amount as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs. 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 (CSIII)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The Principal District Judge,
The Motor Accident Claims Tribunal,
Principal District Court, Tirunelveli.

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

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-7160[F] dated 25/02/2021)

+1 CC to M/s.K.BHASKARAN, Advocate (SR-7565[F] dated 26/02/2021)

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and
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24.02.2021

DKS(CO)
KB(24.05.2021) 3P 6C