BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 21.06.2021
CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

C.M.A(MD)No.533 of 2021
and
C.M.P(MD)No.4917 of 2021

M/s Shri Ram General Insurance Company Limited,
rep. through its Divisional Manager,
Ground Floor No.30A, H.A.K.Road,
Near by ICICI Bank Ltd.,
Chinna Chokkikulam,
Madurai - 625 002. ... Appellant/2nd Respondent

vs.

1.Malliga ...1st Respondent/Petitioner
2.S.Sentamilselvi
3.Murugan ...Respondents 2&3/Respondents 1& 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the Judgment and Decree dated 18.11.2019 passed in MCOP No.533 of 2014 on the file of the Motor Accident Claims Tribunal/Special District Judge (MACT) of Madurai.

For Appellant : Mr.V.Sakthivel

J U D G M E N T

This appeal is preferred by the Insurance Company questioning the award passed by the Motor Accident Claims Tribunal, Special District Judge, Madurai in MCOP No.533 of 2014 dated 18.11.2019.

2.The first respondent herein, namely, Malliga is the wife of the deceased Sankarasubbu, who died in a road accident on 21.09.2013. It is her case that the deceased travelled in a car bearing Reg.No.TN-59-AY-2802 and the vehicle was parked to enable him to purchase parotta. When the deceased was crossing the road along with the driver of the car, by name, Ramalingam, it is alleged that an ape auto owned by the second respondent herein came in a high speed and hit against the pedestrian. In which, the deceased was dragged for about 10 feet and he sustained multiple injuries. Immediately, he was given first aid at Aristo Hospital, Madurai and when he was shifted to Madurai Government Hospital, he died on the away.

3.The claimant sought compensation of Rs.50,00,000/- on the ground that the deceased died at the age of 49 years and he was earning Rs.30,000/- by doing real estate business.

4.In the counter filed by the appellant, the averments made in the claim petition were disputed and it is their specific case that the vehicle was driven by one Murugan, but the name of the driver was wrongly given as Navaneethakrishnan. Even the said Murugan was not holding effective driving licence and batch. It is further contended that the claim is excessive and the appellant is not liable to indemnify the insured.

5.Before the Tribunal, to substantiate the case, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.19 were produced. On the side of the appellant/insurance company, R.W.1 to R.W.3 were examined and Exs.R.1 was produced. Besides, Court documents Exs.X1 to X3 were marked.

6.The Tribunal, after considering the oral and documentary evidence, held that the driver of the auto was responsible for the accident and awarded compensation of Rs.27,02,500/- along with interest at the rate of 7.5% per annum. Challenging the award, the appellant/Insurance Company filed the present appeal.

7.The learned counsel appearing for the appellant would urge that in the First Information Report, it has been specifically stated that the offending vehicle was driven by one Navaneethakrishnan, but the final report has been filed against Murugan and two other persons on the ground that a false information was given with regard to the driver of the offending vehicle at the relevant point of time. It is further contended that it is a case of fraud and the driver of the offending vehicle has been changed in collusion with the claimant.

8.In the present case, it is relevant to note that the First Information Report was registered based on the complaint of the claimant, the first respondent herein. According to her, she along with the deceased were returning in an indica car on 21.09.2013 at 09.45 p.m after worshiping Narasingaperumal. The car was parked on the left side of the road and the deceased along with the driver went to the shop to purchase food. At that time, an ape auto came in a high speed and dashed against the deceased. It is not the case of the appellant that the claimant knew the name of the driver of the auto. It is further seen that she did not mention the name of the driver in the complaint, but in the printed First Information Report, it is stated that the vehicle was driven by Navaneethakrishnan.

9.It is to be noted that no material was placed on record to establish that the claimant colluding with the officials has named the driver in the First Information Report. During the investigation, it was found that the vehicle was driven by one Murugan S/o Perumal and the said Navaneethakrishnan and Jaiprakash were implicated as accused Nos.2 and 3 for giving false information, which shows that the claimant did not have any hand in giving in changing name of the driver of the offending vehicle.

10.From the perusal of the records, it is seen that the said Murugan also did not have an effective valid driving licence to drive auto hence, the Tribunal having found that the claimant is the third party, directed the Insurance Company to satisfy the award and thereafter, recover the amount from the owner of the vehicle.

11.The deceased was said to be engaged in real estate business and was earning not less than Rs.30,000/- per month. Income tax returns for the years 2011-12, 2012-13 and 2013-14 have been marked as Ex.P.17 (Series), for which, income of the deceased was fixed as Rs.30,000/-. Ex.P.5-Postmortem Certificate shows that the deceased was 49 years old. Following the decision of the Hon'ble Apex Court, the Tribunal has added 25% of the salary towards future prospects and arrived at Rs.37,500/- as average income, after deducting 50% for the personal expenses of the deceased, 10% for income tax, and by applying multiplier '13', the Tribunal has awarded Rs.26,32,500/- as loss of income. Further, the Tribunal has awarded Rs.40,000/- towards loss of consortium; Rs.15,000/- towards funeral expenses; Rs.15,000/- for transport charges. In total, the Tribunal has awarded Rs.27,02,500/- along with interest at the rate of 7.5% per annum.

12.This Court is of the opinion that the Tribunal, after carefully considering the evidence on record, awarded compensation. It appears to be fair and reasonable and no ground is made out to interfere with the decision of the Tribunal. Hence, the award is to be confirmed and the appeal is liable to be dismissed.

13.In fine, the Civil Miscellaneous Appeal is dismissed as devoid of merits. 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 and thereafter, recover the same from the owner of the offending vehicle. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Motor Accident Claims Tribunal/
Special District Judge (MACT) of Madurai.

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

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-19837[F] dated 22/06/2021)

JUDGMENT MADE IN
C.M.A(MD)No.533 of 2021
and
C.M.P(MD)No.4917 of 2021

21.06.2021

CN(14.07.2021) 4P 5C