IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.04.2022

PRONOUNCED ON : 07.06.2022

C O R A M **:**

The Hon'ble Mrs. Justice **J.NISHA BANU**

CMA.No.527 of 2013
and M.P.No.1 of 2013

Divisional Manager

M/s.National Insurance Co.Ltd.,D.O.

No.19, Officers Line, Opp.Lakshmi Theatre, Vellore 632 001

..Appellant

Vs

Ramalingam (died)

1.Devagi

2.Varalakshmi

3.Prasad

4.S.Thirunavakkarasu ..Respondents

PRAYER : CMA filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.01.2012 passed in MCOP.No.126/2004 on the file of MACT/Spl Judge, Krishnagiri.

For Appellant : Mr.G.Udaya Sankar
For Respondents : R1 to R3 – No appearance

R4 – Exparte before the Tribunal.

JUDGMENT

This appeal is filed by the appellant-Insurance company against the award passed by the Tribunal on the main ground that the claimants failed to prove that the death is occurred due to the accidental injury.

2. The facts necessary for the disposal of this appeal is as follows:-

The wife, daughter and son of Ramalingam are the claimants in MCOP.NO.126 of 2004. On 07.09.2003, at about 11.30 a.m., when Ramalingam (deceased) was proceeding in TVS Super XL Moped bearing Reg.No.TN-29-R-4140 along with pillion rider towards Kaveripattinam, a TATA Sumo vehicle bearing Reg.No.TN 09 X 1854 belonging to the 4th respondent herein/1st respondent before Tribunal and insured with the appellant/2nd respondent before the Tribunal, was driven by its driver in a rash and negligent manner, hit against the deceased. The deceased was thrown out at a distance and sustained grievous injuries. A case was registered against the driver of the TATA sumo vehicle in Crime No.906/2003 under section 279 and 337 of IPC. For the injuries sustained, originally the injured victim filed claim petition, however, after 1 year and 7 months, victim died due to the accidental injuries caused to him.

3. Appellant/Insurance company filed additional counter contending that death of the original petitioner was not due to the injury sustained in the accident.

4. The tribunal, framed two points for consideration of the claim petition (I) Whether the accident occurred due to rash and negligent driving of the 1st respondent's driver? (ii) Whether the petitioner is entitled for compensation, if so what is the quantum ?

5. The tribunal while answering the first issue, given a finding that as per Ex.P.5 Motor Vehicle Inspectors report, the two wheeler in which deceased was riding had been completely damaged and so road testing was not possible. Similarly, Ex.P.4 M.V.I report of the Tata Sumo Car also reveal that left frame bottom end area of the front wind screen was damaged. The accident did not happen due to any mechanical defect of the vehicles, and so the negligence on the part of the driver of the TATA Sumo car cannot be ruled out.The validity covered by the Insurance policy is also admitted by the Insurance company. Medical Records – Ex.P.2 and Ex.P.8 referred to all the injuries sustained by

the deceased as grievous in nature. Further Ex.P.9 Death certificate referred that the age of the deceased is 52 and the injuries sufficient to cause the death of the person depending upon his own conditions of health. It is not the case of the petitioner that he had some other ailment. The accident occurred on 07.09.2003 and he died on 07.05.2005. In between the date of the accident and the date of his death, the deceased had not been shown to be suffering from any other ailment or disease which could have caused his death. Therefore, there is a probability that the original petitioner Ramalingam died only due to the injuries suffered by him in the accident.

6. For the 2nd point, the tribunal answered that the claimants are entitled to compensation and by fixing Rs.4,500/- as monthly income, adopted multiplier 11, deducted 1/3rd towards personal expenses and arrived at Rs.3,96,000/- as compensation towards loss of dependency. The break up of compensation towards pecuniary loss by the Tribunal is as under:-

1.Loss of dependency	: 3,96,000/-
2.Transport bills	: 18,700/-
3.Medical bills	: 22,403/-
4.Funeral expenses	: 8,000/-
5.Attendant charges	: 1,000/-
6.Nutritious food	: 3,000/-
Total: 4,49,103/-	

Towards non-pecuniary loss, the Tribunal awarded Rs.20,000/- under the head "loss of consortium" to wife of the deceased, Rs.10,000/- each to daughter and son of the deceased under the head loss of love and affection. Totally, the compensation of Rs.4,89,100/- with interest at the rate of 9% per annum from the date of petition till realization excluding default period, if any, was directed to be paid by the appellant/insurance company to the claimants.

7. In the case on hand, the deceased suffered injuries, who later on succumbed to injuries. The accident did not involve motor vehicle other than the one which the deceased was driving. The Tribunal gone through the evidence in detail, fixed the negligence on the driver of the 2nd respondent vehicle and directed the insurance company to pay the compensation. The coverage of insurance policy was not disputed by the appellant. In such circumstances, this court does not find any infirmity in the findings regarding negligence and liability aspects in the award passed by the Tribunal. As far as interest portion is concerned, the same is modified from 9% to 7.5% per annum.

8. In the result,

(i) Compensation awarded by the Tribunal is confirmed except for the modification of interest as 7.5% per annum.

(ii) The appeal fails and the same is dismissed.

(iii) No costs. Consequently, connected MP is closed vacating the stay order.

07.06.2022

Index :Yes/No

Internet :Yes/No

nvsri

To

1. The Motor Accidents claims Tribunal,
   MACT/Spl Judge, Krishnagiri.

2.The Section Officer, V.R.Section, High Court, Madras.

J.NISHA BANU, J.

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