IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.03.2022

Pronounced on : 30.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.1533 of 2014
and M.P.No.1 of 2014

The National Insurance Company Ltd.,
No.238, Jambubala Complex, 1st Floor,
Arcot Road, Vellore-4. ..Appellant/2nd respondent

Vs.

1.Lavanya
2.Minor Anushka
3.Minor.Anusuya
4.Saroja ..Respondents/Petitioners
5.L.Mayakannan ..Respondent/1st respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 21.11.2013 made in M.A.C.T.O.P.No.1383 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge) Tirupattur.

For Appellants : Mr.D.Bhaskaran

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the quantum of compensation and the liability fixed on the appellant/Insurance Company vide award dated 21.11.2013 made in M.A.C.T.O.P.No.1383 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge) Tirupattur.

2. The claimants/respondents No.2 to 4 filed a claim petition in M.A.C.T.O.P.No.1383 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge) Tirupattur, claiming a sum of Rs.10,00,000/- towards compensation for the death of one Elayaraja who died in the road accident which took place on 18.07.2010.

3. The factual matrix of the case is as follows:

The deceased Elayaraja was aged about 27 years old and was earning a sum of Rs.10,000/- as auto driver at the time of accident. The 1st respondent herein is the wife, the 2nd and 3rd respondents are the minor children and the 4th respondent is the mother of the deceased Elayaraja. On 18.07.2010 at about 10:30 a.m., when the said Elayaraja was proceeding towards Vaniyambadi to Ambur National highway near Periyanguppam junction in his Auto bearing Reg.No.TN23-AB-7317, a Hero Honda motorcycle bearing Reg.No. TN 29-X 1086 which was driven by the fifth respondent in a rash and negligent manner, dashed against the auto driven by the deceased. Due to the said impact, the deceased Elayaraja sustained grievous injuries and he was taken to Government Hospital, Ambur, for treatment, but he died due to fatal injuries. The dependants of the deceased viz., wife, children and mother had filed a claim petition in M.A.C.T.O.P.No.1383 of 2013, seeking compensation for a sum of Rs.10,00,000/- before the learned Special Subordinate Judge, Motor Accident Claims Tribunal, Tirupattur.

4. The appellant-Insurance Company, filed counter statement and denied all the averments made by the claimants in the claim petition. According to the appellant/Insurance Company, the accident had occurred only due to negligence of the 5th respondent. He did not possess valid driving licence and there was no Insurance cover for the motorcycle on the date of accident. Hence, the appellant-Insurance Company need not indemnify the 5th

respondent. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

5. Before the Tribunal, the first respondent examined herself as P.W.1 and ten (10) documents were marked as Exs.P1 to P10 on the side of the claimants. On the side of the appellant/Insurance Company, one Mr.Gopal, an officer attached to the Insurance Company was examined as R.W.1 and four documents were marked as Exs.R1 to R4 on the side of the appellant/Insurance Company.

6.The Tribunal, after considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving of the rider of the motorcycle belonging to the fifth respondent insured with the appellant/Insurance Company. The Tribunal has held that the Insurance Policy of the offending vehicle was valid from 18.07.2009 till midnight of 17.07.2010, whereas, the accident had happened on 18.07.2010 at 10.30 A.M. i.e., after almost 10 hours from the time of expiry of the Insurance Policy and has come to the conclusion that there was no valid Insurance cover for the offending vehicle at the time of the accident. Considering the pathetic situation of the Dependants of the deceased who lost their sole earning member of the family, the learned Judge has applied the doctrine of pay and recovery and granted a sum of Rs.7,48,500/- as total compensation and directed the appellant/Insurer of the motorcycle to pay the compensation to the claimants and recover the said amount from the fifth respondent.

7. Challenging the liability fastened on them by the award dated 21.11.2013 made in M.A.C.T.O.P.No.1383 of 2013, the appellant/Insurance Company have come out with the present appeal.

8. Learned counsel for the appellant-Insurance Company contended that the Tribunal erred in coming to the conclusion that the Insurance Company is liable to pay the compensation to the claimants, because the accident had occurred only due to the negligence on the part of the rider of the motorcycle, and the vehicle was not covered by a policy issued by the appellant at the time of accident, which is in violation of the terms and

conditions of the Insurance Policy. In the absence of any valid Insurance Policy, the Tribunal had erroneously fastened the liability on the appellant-Insurance Company to pay the compensation to the claimants and recover the same from the fifth respondent. The Tribunal erred in fastening the liability on the Insurance Company and prayed for setting aside the award of the Tribunal by allowing the appeal.

9. Heard the learned counsel for the appellant-Insurance Company and there is no representation on behalf of respondents No.1 to 4/claimants and perused all the materials available on record. The fifth respondent herein was set *ex parte* before the Tribunal.

10. Based on evidence, the Tribunal found that the rider of the motorcycle drove the vehicle in a rash and negligent manner and caused the accident. Due to the said accident, the victim sustained grievous injuries and died. The 5th respondent is the owner of the motorcycle and insured with appellant from 18.07.2009 to midnight of 17.07.2010, whereas, the accident had happened on 18.07.2010 at 10.30 A.M. i.e., after almost 10 hours from

the time of expiry of the Insurance Policy. Considering the fact that the deceased was a Auto driver and considering the pathetic situation of the claimants, the Tribunal had directed the appellant-Insurance Company to pay the compensation to the claimants and recover the same from the 5^{th} respondent.

11. The above findings given by the Tribunal would hold good in all aspects. Further, the compensation amount arrived at Rs.7,48,500/- is also just and reasonable compensation. The Motor Vehicle Act is a welfare legislation and it has to be applied in favour of claimants and considering the peculiar circumstance of the case, the Tribunal had directed the Insurer to pay and recover the compensation from the owner of the vehicle. Therefore, there is no error in the said finding warranting interference by this Court.

12 . In the result, the appeal is dismissed and the compensation awarded by the Tribunal at Rs.7,48,500/- (Rupees seven lakh forty eight thousand and five hundred only) along with interest and costs is confirmed. Insofar as direction of the Tribunal directing the appellant-Insurance company

to pay and recover the compensation from the owner of the vehicle is also confirmed. The appellant-Insurance Company is liable to deposit the award amount along with interests and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.A.C.T.O.P.No.1383 of 2013 and recover the same from the 5th respondent. On such deposit being made, the respondents No.1 to 4/claimants are permitted to withdraw their respective share of the award, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn, by making necessary applications before the Tribunal. No costs. Consequently connected miscellaneous petition is closed.

30.06.2022

Index : Yes / No
Speaking Order : Yes/No
msv

To
1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Tirupattur.

2.The Record Keeper,
V.R.Section, High Court,
Chennai.

J.NISHA BANU,J.

msv

Judgment in
C.M.A.No.1533 of 2014

30.06.2022