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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.M.A.No.1868 of 2017

The New India Assurance Company Ltd.,
Big Street,
Tiruvannamalai.

... Appellant /2nd Respondent

Vs.

1.Selvi
2.Minor Karthiga
3.Minor Mohandoss
[Minor appellants 2 & 3 are represented by their next
friend/mother Selvi, who is the 1st respondent herein]

4.R.Govindan
5.Govindaammal
6.Kumarsamy

...RR1 to 5/Petitioners
...R6/1st Respondent/R1

The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 08.11.2016 made in M.C.O.P.No.975 of 2013, on the file of the Special Motor Accidents Claims Tribunal, Thiruvannamalai.

For Appellant :Mr.R.Neethi Perumal

For R1 to R5 :Mr.R.Malaichamy

For R6 : Not Ready Notice.

JUDGMENT

The second respondent in M.C.O.P.No.975 of 2013 on the file of the Special Motor Accidents Claims Tribunal, Thiruvannamalai is the appellant herein.

2. They are aggrieved by the award of compensation granted to the claimants thereon by Judgment dated 08.11.2016.



3. The claimants before the Motor Accidents Claims Tribunal, are the widow, the children and the parents of Sampath, who was working as a driver under the first respondent therein.

4. On 23.05.2012, when he was working as a driver of the bore-well lorry bearing Registration No.TDQ 9335, he tried to give electrical connection to the engine of the lorry in order to start the engine, thereby start the bore engine to dig the bore. He suffered an electric shock and died.

5. Claiming compensation for such death, the claim petition had been preferred by his legal heirs / dependants.

6. It is stated that, at the time of his death, Sampath was aged about 36 years and that he was earning a sum of Rs.22,500/- per month. In connection with his death, FIR in Crime No.207/2012 had also been registered by the Sathanur Dam Police Station. The accident took place in a private land, as aforesaid, while connecting an electric wire to the engine of the bore-well lorry to facilitate starting the motor pump to dig a bore.

7. During the course of hearing before the Tribunal, on the side of the claimants, two witnesses were examined and three documents were marked namely the First Information Report as Ex.P1, the Post mortem Certificate as Ex.P2 and the driving licence as Ex.P3. On the side of the second respondent/Insurance Company, one witness was examined and the copy of the Insurance Policy was marked as Ex.R1.

8. The Tribunal on consideration of the evidence produced, had held that the claimants are entitled for compensation and also had held that the Insurer/second respondent before the Tribunal, was liable to indemnify the Insured/first respondent for the compensation to be determined and directed that such compensation should be paid to the claimants thereon.

9. After ruling as aforesaid, the Tribunal also proceeded to determine the quantum of compensation. Finally, a Judgment was passed on 08.11.2016, holding that a total compensation of Rs.13,83,000/- has to be paid by the second respondent/Insurance Company to the claimants.

10. Questioning their liability and also the quantum, the second respondent before the Tribunal i.e., the Insurance Company has filed this present Appeal.



11. The learned counsel for the appellant/Insurance Company had pointed out Ex.R1, the Insurance Policy and stated that it was a third party policy and would not cover any injuries or accident which occurred owing to which, the lorry driver had suffered bodily. The learned counsel stated that a better approach would have been to seek a claim under the Employees Compensation Act, 1923, rather under the Motor Vehicles Act, 1988. It was also stated that it is admitted that Sampath was employed as a driver of the first respondent before the Tribunal and therefore, he would not be a third party as he would not be coming under the definition of third party.

12. The learned counsel therefore stated that though compensation had been directed to be paid, it was purely owing to the negligence of Sampath and therefore, the appellant herein/Insurance Company was not under any obligation to indemnify the first respondent for payment of the compensation determined by the Tribunal. It was also stated that the Tribunal had not entered into any discussion on the decision to direct the appellant/Insurance Company to pay the compensation amount, in the first instance, and with a further direction to recover the same from the first respondent/owner of the lorry.

13. To a little extent, the quantum of compensation had also been questioned by the learned counsel for the appellant/Insurance Company.

14. The learned counsel for the respondents/claimants, on the other hand, justified the award passed by the Tribunal and also stated that the deceased/Sampath was actually a driver under the employment of the first respondent before the Tribunal.

15. I have carefully considered the arguments put forth and perused the documents available on record.

16. There is no dispute about the fact that the deceased/Sampath was an employee under the sixth respondent herein, who was the owner of a bore-well lorry. The lorry was parked in a private place where the bore had to be dug. The motor of the bore is normally started, by giving connection to the engine of the lorry. If the lorry is to start, then the motor of the bore would also to start and thereby, the borewell can be dug. While giving that particular connection, Sampath suffered an electric shock and died.



17. The issue now is whether the deceased would be a third party. If he was an employee of the sixth respondent herein, then he cannot be categorized as a third party. If he is categorized as a third party, then the Insurance Company can reasonably urge that they should be permitted to recover the compensation paid from the sixth respondent.

18. In the Grounds of Appeal, in ground No.9 and in ground No.10, it has been stated that though, the claim petition was not maintainable before the Tribunal, still, if liability is fixed, then the appellant/Insurance Company should be given an option to exercise the defence under Section 178 of the Motor Vehicles Act, 1988. It is also pointed out by the learned counsel for the appellant, that pursuant to the investigation in the First Information Report, the case had been closed as "mistake of fact". The Tribunal, under Sections 168 and 169 of the Motor Vehicles Act, can make its own enquiry and record evidence.

19. The Xerox copy of the Policy had been marked as Ex.P1 and it clearly states that it is only third party policy. I would therefore hold that the appellant herein can take that particular defence under Section 178 of the Motor Vehicles Act, 1988 and pay the compensation granted and later recover it from the sixth respondent herein viz., Kumarasamy who was the first respondent before the Tribunal. To that particular extent, the contention of the learned counsel for the appellant is accepted.

20. With respect to the compensation granted, the Tribunal had determined the age of the deceased at 35 years and the Tribunal had taken the multiplier '16'. The Tribunal had also taken the notional income at Rs.7,000/- per month. Thereafter, the Tribunal deducted 1/4th towards personal expenses and retained a sum of Rs.5,250/- as contribution to the family. This would indicate that the annual income which had been calculated towards the loss of dependency would be (5250X12X16) Rs.10,08,000/-. I would not interfere with that particular finding of the Tribunal.

21. The Tribunal had also granted a sum of Rs.1,00,000/- towards loss of consortium to the first claimant but that has to be reduced to Rs.40,000/-. The Tribunal had similarly granted a sum of Rs.1,00,000/- each to the second and third claimants towards loss of love and affection and that has to be reduced to Rs.40,000/- each. The Tribunal also granted a sum of Rs.25,000/- each to the appellants towards loss of love and affection, which has to be reduced to Rs.15,000/- each. Therefore the total compensation is calculated as under:



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Sl. No	Description	Amount awarded by this Court (Rs)
1	Loss of dependency	Rs.10,08,000/-
2	Loss of Consortium to the first appellant	Rs.40,000/-
3	Loss of Love and affection to the second and third respondents (each Rs.40,000/-)	Rs.80,000/-
4	Loss of Love and affection to the fourth and fifth respondents (each Rs.15,000/-)	Rs.30,000/-
5	Funeral Expenses	Rs.15,000/-
	Total	Rs.11,73,000/-

22. In the result, this Civil Miscellaneous Appeal is allowed. The Award and decree dated 08.11.2016 made in M.C.O.P.No.975 of 2013, on the file of the Special Motor Accidents Claims Tribunal, Krishnagiri is modified. No costs. The compensation awarded by the Tribunal at Rs.13,83,000/- is hereby reduced to Rs.11,73,000/- [Rupees Eleven Lakhs and Seventy Three Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court, along with interest, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.975 of 2013 at the first instance and recover the same from the sixth respondent herein. On such deposit, the first respondent is entitled to Rs.3,33,000/- and the second and third respondents who are the minors are entitled to Rs.3,25,000/- each and the fourth and fifth respondents who are the parents of the deceased are entitled to Rs.95,000/- each.

23. The share of the minor respondents is directed to be deposited in any one of the Nationalized Banks, in any interest bearing Fixed Deposit Scheme, till the minor respondents attain majority. On such deposit, the mother of the minor respondents viz., Selvi, the first respondent herein, is permitted to withdraw the accrued interest once in three months



for the welfare of the minor respondents. The appellant/Insurance Company is permitted to withdraw the excess amount if any lying to the credit of M.C.O.P.No.975 of 2013, if the award amount has already been deposited by them.

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Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

dua/ssi

To:

1.The Special Motor Accidents Claims Tribunal,
The Special Judge,
Thiruvannamalai.

Copy to:

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

+1cc to Mr.R.Neethi Perumal, Advocate SR.No.17339

+1cc to Mr.R.Malaichamy, Advocate SR.No.17471

C.M.A.No.1868 of 2017

EV(CO)

CB(18/04/2022)