IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1549 of 2020
and
C.M.P.No.11472 of 2020

United India Insurance Company Ltd.,
represented by its Divisional Manager,
Durga Bhavani Square, Opposite to Railway Station,
Denkanikotta Road, Hosur,
Krishnagiri District. ... Appellant

Vs.

1.Arundathi
2.Venkatalakshmamma @ Lakshmamma
3.Muniappa
4.Rudhrappa ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 23.01.2020 made in M.C.O.P.No.1345 of 2018 on the file of the Motor Accidents Claims Tribunal (Sessions Judge (FTMC)), Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.M.Sivakumar [R1 to R3]
M/s.V.Jaya Krithika [R4]

*****

JUDGEMENT

Challenging the award and decree passed by the Motor Accidents Claims Tribunal (Sessions Judge (FTMC)), Krishnagiri in M.C.O.P.No.1345 of 2018, dated 23.01.2020, the insurance company has filed the present appeal.

2. It is the case of the claimants that, on 15.01.2016 during the morning hours, when the deceased and one Krishnappa, after loading the sand in the tractor bearing Regn.No.TN-29-AH-3180 belonging to the first respondent had accompanied the tractor and had off-loaded the sand at the premise of the first respondent and at that time, when the deceased and Krishnappa were standing behind the tractor, without noticing them, the driver of the tractor reversed the tractor in a rash and negligent manner and hit against the deceased, thereby the deceased sustained grievous injuries and he was rushed to the hospital for first aid and thereafter, treatment to Government Dharmapuri Medical College Hospital and admitted as inpatient. Inspite of the treatment given, the deceased succumbed to the injuries leading to the registration of Crime No.32 of

2016. For the loss of the sustained due to the death of the deceased, the legal heirs of the deceased filed claim petition claiming a sum of Rs.30,00,000/- before the Tribunal.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked 10 documents viz., Ex.P.1 to Ex.P.10. On the side of the second respondent/insurance company, they have examined one witness viz., R.W.1 and marked 2 documents viz., Ex.R.1 and Ex.R.2. After adjudication, the Tribunal by its award dated 23.01.2020 awarded compensation in a sum of Rs.15,82,000/- with an interest of 7.5% p.a., directing the second respondent/insurance company to pay the said compensation to the claimants. Aggrieved by the same, the insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant/insurance company submitted that, the vehicle is covered under liability only policy and there was no cover for the deceased and therefore, the appellant is not liable to compensate the claimants. It is the further submission of the learned counsel that the deceased would not fall within the ambit of third

party for the purpose of the claimants claiming compensation as he was employed under fourth respondent and therefore, would not be entitled to compensation. Further, he submitted that the vehicle did not have requisite seating capacity as it is evidenced by Ex.R.2, which has not been properly considered by the Tribunal while awarding compensation in favour of the claimants and the award passed by the Tribunal is liable to be interfered with.

5. Per contra, the learned counsel appearing for the respondents 1 to 3/claimants submitted that, when the deceased was standing behind the tractor, the tractor was moved in a negligent fashion in a rash manner, which hit the deceased leading to the death of the deceased. The same not being in the course of the discharge of his duty, the deceased would fall within the ambit of third party for the purpose of the claimants claiming compensation and rightly appreciating the same, the Tribunal awarded the compensation, which does not require any interference.

6. Heard the learned counsel appearing for the appellant/insurance company, the learned counsel appearing on behalf of the respondents 1 to

3/claimants and the learned counsel appearing on behalf of the fourth respondent and also perused the materials available on record.

7. The death of the deceased had been the result of the tractor dashing against the deceased, which is not in dispute. It is also not disputed that the deceased was standing when the tractor hit. The above materials is evidenced from Ex.P.1/FIR. P.W.1 in her cross-examination while deposing on the similar lines as recorded in Ex.P.1 has deposed that the accident had happened due to the rash and negligent driving by the driver of the tractor. R.W.1, the Assistant Manager of the appellant has deposed that the tractor was insured under Miscellaneous and Special type of vehicle and had carried only liability policy. During cross-examination, R.W.1 has categorically deposed that, at the time of accident, the deceased was standing and was not discharging any work. Though the appellant claims that the deceased was employed under the fourth respondent and therefore, the vehicle carrying a special type of policy would not cover the deceased, however, it is to be pointed out that the accident had not happened when the deceased was discharging any work. At the particular time, the deceased was merely standing without doing any work, at which

time, the tractor had hit him. That being the case, the vehicle insured with the appellant having hit against the person, who was stationary and who was not employed by the owner of the vehicle, would definitely come within the ambit of third party, so as to enable the claimants to claim compensation for the death of the deceased. The above said facts have been appreciated in the light of the materials by the Tribunal and also based on the ratio laid down by this Court as well as the Apex Court in a catena of decisions and while rash and negligent act have been fixed on the driver of the fourth respondent's vehicle, the appellant as insurer of the fourth respondent's vehicle was made liable to pay the compensation to the claimants, which cannot be said to be erroneous or perverse and the findings recorded by the Tribunal deserves to be sustained. Insofar as the compensation under all the heads are concerned, the compensation is just and reasonable and no interference is warranted.

8. For the reasons aforesaid, the civil miscellaneous appeal stands dismissed, confirming the award and decree passed by the Motor Accidents Claims Tribunal (Sessions Judge (FTMC)), Krishnagiri in M.C.O.P.No.1345 of 2018 dated 23.01.2020, fixing the liability on the

appellant to pay the compensation to the claimants. The appellant/insurance company is directed to deposit the award amount as awarded by the Tribunal to the credit of M.C.O.P.No.1345 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the respondents 1 to 3/claimants, as per the apportionment of the Tribunal, through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

12.12.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

1.The Motor Accidents Claims Tribunal (Sessions Judge (FTMC)), Krishnagiri.

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

M.DHANDAPANI, J.,

sp

C.M.A.No.1549 of 2020

12.12.2023