IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.04.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.822 of 2017

The Divisional Manager,
Royal Sundaram Alliance Insurance Co., Ltd.,
Corp. Off. Sundaram Towers,
No.45 & 46, Whites Road,
Chennai – 600 014. ...Appellant

Vs

1.Minor Murugan
Rep by his Grandma Pappathi
(Now declared as major as per the memo)

2.Mannu ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, set aside the judgment and decree dated 22.01.2016 made in M.A.C.T.O.P.No.786 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub-Judge) Thiruvannamalai.

For Appellant : Mr.G.Vasudevan

For Respondents : Mr.Jawahar for R1

Died - R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the judgment and decree dated 22.01.2016 made in M.A.C.T.O.P.No.786 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub-Judge) Thiruvannamalai.

2. The case of the appellant, in brief, is as follows:

On 22.05.2011 at 5.00 p.m., the deceased was travelling in the Tractor bearing Regn.No.TN-25-P-7421 as loadman to load and unload the goods and that the driver of the said Tractor drove the same in a rash and negligent manner and hence she fell down from the tractor and the left side back wheel run over her, due to which, she sustained motile fractures of ribs, crush injuries on chest and stomach and died on the spot itself. Claiming compensation of Rs.10,00,000/-, the claimant filed a claim petition in M.A.C.T.O.P.No.786 of 2013 before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.9,31,936/- with interest at the rate of 7.5% per annum from the date of the petition till the date of deposit and thereafter the

Insurance Company is permitted to recover the same from the owner of the vehicle/2nd respondent herein. Questioning the liability fixed on the appellant/Insurance Company, the present appeal came to be filed.

3. The learned counsel for the appellant/Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that the Tribunal has held that the appellant is liable to pay compensation which is incorrect since there is a breach of policy condition. It has failed to consider the evidence of RTO witness to the effect that the driver of the offending vehicle does not possess the driving license to drive the Tractor which has been duly established by the appellant. It has erred in holding that the deceased Savithri was Tractor load woman and hence she is entitled to claim compensation are unsustainable on facts of law. It has failed to note that the vehicle involved in the accident was not insured with the appellant and hence the appellant is not liable to pay any compensation of the first respondent. It failed to note that even assuming that the deceased was travelling in the Tractor and the same would amount only to unauthorized passenger . It failed to follow the decisions reported in2008(2) TNMAC 355, 2004 (2) TNMAC 123 & 387 and 2003 (2) SCC P.233

wherein the liability of the Insurance Company was exonerated for breach of policy condition. If at all any compensation is liable to be paid, it should be by the owner of the vehicle. The award of the Tribunal suffers due to factual and legal errors. Hence, the Insurance Company is not liable to pay compensation to the claimant and he prays to allow this appeal.

4. The learned counsel for the first respondent has submitted that the Tribunal has rightly considered the materials and evidences and has awarded the just and fair compensation and also rightly fixed the liability on the Insurance Company and hence, the same does not require any interference in the hands of this Court. Hence, he prays for dismissal of the Appeal.

5. Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record carefully and meticulously.

6. Now the question to be decided is only with regard to the liability fixed on the part of the appellant / Insurance Company by the Tribunal.

7. A perusal of deposition of PW3 would reveal that the accident occurred due to the rash and negligent driving of the driver of the Tractor. FIR has also been registered against the driver of the Tractor. Hence perusal of Ex.P1 and Ex.P3 clearly revealed that the accident has caused due to the rash and negligence driving of the driver of the Tractor. Moreover he is the owner and the driver of the offending vehicle at the time of accident. Placing reliance on those materials and evidence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent act on the part of the driver of the vehicle belonging to the second respondent herein. Stating so, the Tribunal fixed the liability on the part of the Appellant/Insurance Company to pay the compensation of Rs.9,31,936/- to the claimant and thereafter recover the same from the 2nd respondent herein/ owner of the vehicle.

8. The learned counsel for the appellant/Insurance Company has submitted that the entire amount has been deposited before the Tribunal and they may be permitted to withdraw the same.

9. On perusal of records, it reveals that there is a breach of policy

condition because the driver of the offending vehicle do not possess proper driving license at the time of accident. Moreover, the deceased travelled in the Tractor as an unauthorised passenger. Therefore, this Court opines that it would be appropriate to exonerate the Insurance Company from the liability and fix the liability on the 2nd respondent herein / owner of the vehicle to pay the compensation to the claimant. Therefore, this Court is inclined to modify the finding of the Tribunal in respect of pay and recovery alone. Except the same, there is no modification with regard to the quantum of compensation awarded by the Tribunal.

10. In the result,

(i) This Appeal is allowed. No costs.

(ii) The appellant/Insurance Company is directed to withdraw the entire amount deposited by them before the Tribunal.

(iii) The 2nd respondent herein / owner of the vehicle is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of M.A.C.T.O.P.No.786 of 2013, within a period of six weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the claimant through RTGS within a period of two weeks thereafter.

(v) Since the 1st respondent/claimant is declared as major, his guardian / representative is discharged from the guardianship and the claimant is permitted to withdraw the entire amount.

24.04.2023

Index : Yes/No
Internet : Yes/No
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A.A.NAKKIRAN., J.

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To

1.The Motor Accident Claims Tribunal
(Special Sub-Judge) Thiruvannamalai.

2.The Section Officer,
VR Section,
High Court, Madras.

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