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CMA.No.2265 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2023

PRONOUNCED ON : 05.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2265 of 2018

1. Vanitha
2. Minor Meiyarasu
3. Minor Praveen
4. Pongiyammal

Appellants

Vs

United India Insurance Company Limited
by its Branch Manager
Gobichettipalayam

Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement
and decree, dated, 11.08.2017, made in MCOP.No.25 of 2012, by the III
Additional District Court (MACT) Gobichettipalayam.

For Appellants : Mr.S.Ranjith Kumar

For Respondents : Mr.M.J.Vijaya Raaghavan

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimants, against the judgement and decree, dated, 11.08.2017, made in MCOP.No.25 of 2012, by the III Additional District Court (MACT) Gobichettipalayam.
2. The claimants, who are the wife, sons and mother of the deceased, namely, Mayilsamy, has filed the claim petition before the Tribunal, seeking a compensation of Rs.12,27,500/- on various heads, for the death of the



CMA.No.2265 of 2018

WEB COPY

deceased, who died in a motor road accident, which took place on 03.06.2007. The claim petition was resisted, on various grounds, by the Respondent Insurance Company, by filing a counter. On the side of the claimants, PW.1 to PW.4 were examined and Ex.P1 to Ex.P12 were marked. On the side of the Insurance Company, RW.1 and RW.2 were examined and Ex.R1 and R2 were marked. Finding that the alleged motor road accident occurred due to the rash and negligent driving of the deceased and he violated the policy conditions, namely, there was no premium was paid towards owner cum driver, the Tribunal has dismissed the claim petition. Hence, this appeal has been filed by the claimants.

3. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
4. According to the claimants, on 03.06.2007, when the deceased Mayilsamy, was driving the Tractor, bearing Reg.No.TN 36 K 4682, on the Karalayam to Sikkur Kombai Thotti Road, while turning, suddenly the Tractor fell down in the pit near the road and the deceased got struck under the Tractor and he died on the road itself.
5. It is the case of the Respondent Insurance Company that the deceased is the owner and driver of the offending vehicle and that no separate insurance premium was paid for the owner cum driver and that there is no proof to show the income of the deceased and that he travelled, as a driver, in the offending vehicle along with four other persons in violation of the provisions of the Motor Vehicles Act and that the accident had occurred only due to his



CMA.No.2265 of 2018

WEB COPY

own negligence and hence, the claimants are not entitled to get any compensation.

6. It is not in dispute that the deceased died on 03.06.2007 in the alleged road motor accident. PW.1 and PW.2, who are not direct eye witnesses to the accident, gave oral evidence to the effect that when the deceased Mayilsamy, was driving the Tractor, on the Karalayam to Sikkur Kombai Thotti Road, while turning, suddenly the Tractor fell down in the pit near the road and the deceased got struck under the Tractor and he died on the road itself. However, no direct eye witness was examined to prove the manner, in which the accident had occurred. Ex.P1 First Information Report is not disputed by the claimants before the Tribunal.
7. On considering the oral and documentary evidence let in by both the parties, particularly relying on the Ex.P1 First Information Report, the Tribunal found that there was no other vehicle involved in the accident and in the accident, one Prakash and Marappan sustained injuries and the deceased and one Kumar died and that though it is denied by the claimants that four other persons were travelled, since PW.1 and PW.2 are not the direct eye witnesses to the occurrence, it is for the claimants to prove the manner in which the accident had occurred and Tribunal ultimately held that the accident had occurred only due to the rash and negligent driving of the deceased. Considering the entire evidence, the Tribunal ultimately held by the impugned judgement that the claimants are not entitled to any

A.A.NAKKIRAN, J.



CMA.No.2265 of 2018

Srcm

WEB COPY

compensation and this Court finds no reason to interfere with the impugned judgement of the Tribunal.

8. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

05.06.2023

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To

1. The III Additional District Court (MACT) Gobichettipalayam
2. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CMA.No.2265 of 2018