BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.326 of 2019
and
C.M.P(MD) No.4062 of 2019

The Branch Manager,
The Oriental Insurance Company Ltd.,
Theni Taluk,
Theni District. .....Appellant/2nd Respondent

-vs-

1. Ilavarasi .... 1st Respondent/ 1st Petitioner

2. Minor Dharma Ananth .... 2nd Respondent/ 2nd Petitioner

3. Minor Dharma Prakash ... 3rd Respondent/ 3rd Petitioner

4. Ananthalakshmi .... 4th Respondent/ 1st Respondent

5. Seeniammal .... 5th Respondent/ 3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the decree and judgment, dated 27.07.2018 made in M.C.O.P.No.102 of 2015 on the file of the Additional District Judge, (FTC), Theni.

For Appellant : Mr.A.Ilango

For Respondents : Mrs. K.R.S.Shivasankari
for Mr.M.Ramesh – for R1 and R5
: No appearance – for R4

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Additional District Judge, (FTC), Theni, made in M.C.O.P.No.102 of 2015 primarily on the ground of liability and the manner of accident.

2. According to the claimants, the deceased was a centring worker and he had travelled in a Tempo Lorry along with iron rods and mould plates for the purpose of construction of a bridge. While travelling, the iron rod had fallen down and the loadman had got down from the lorry in order to take the iron rod. Before the other co-workers can climb upon the lorry, the lorry driver had rashly started the vehicle and thereby, the iron rods dashed against the deceased and he passed away. The claimants had prayed for a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) towards compensation.

3. The owner of the Tempo Lorry had remained ex-parte and the Insurance Company had filed a counter contending that only the deceased was negligent in causing the accident. They have further contended that the Accident Register would disclose that the deceased has fallen out of the vehicle on the road and he had sustained injuries and he died. However, the claim petition has been filed to the effect that the deceased was hit by the iron rod and he had died inside the lorry. The contradictory version of the claimants would clearly indicate that the manner of accident is doubtful. The Insurance Company has also disputed the quantum of compensation that was prayed for.

4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that only due to the rash and negligent driving of the driver of the Tempo Lorry, the accident has taken place. The Tribunal had relied upon the evidence of P.W.1 and P.W.2 to arrive at such a finding.

5. The Tribunal further found that the monthly income of the deceased could be a sum of Rs.6,825/- (Rupees Six Thousand Eight Hundred and Twenty Five only). With a sum of Rs.6,500/- (Rupees Six Thousand and Five

Hundred only) after adding future prospectus at the rate of 40%, the total income of the deceased was arrived at Rs.9,100/- (Rupees Nine Thousand and One Hundred only). Since there are four family members, 1/4th were deducted and the monthly income was arrived at Rs.6,825/- (Rupees Six Thousand Eight Hundred and Twenty Five only). Applying the multiplier of "16", the Tribunal, arrived at a total compensation for Loss of Dependency for a sum of Rs.13,10,400/- (Rupees Thirteen Lakhs Ten Thousand and Four Hundred only) and thereafter, proceeded to award a sum of Rs.5,000/- (Rupees Five Thousand only) towards transportation charges, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) towards funeral expenses, a sum of Rs.40,000/- (Rupees Forty Thousand only) towards loss of consortium and a sum of Rs.15,000/- (Rupees Fifteen Thousand only) towards loss of estate. This award is under challenge in the present appeal.

6. According to the learned counsel appearing for the appellant/ Insurance Company, as per the Accident Register, which is marked as Ex.R.2, the deceased is said to have fallen from the Tempo lorry into the road and he passed away. However, as per the version of the claimants in the claim petition, the deceased is said to have been hit against the iron rod and had fallen down inside the Tempo Lorry and he had passed away. Therefore, there

is a contradiction in the manner of the accident and they are not liable to pay any compensation.

7. The learned counsel appearing for the appellant further contended that according to the claimants, the deceased was a loadman in the said vehicle and loadman is not covered under Ex.R3 – Insurance Policy. Only the employee of the insured person is to be entitled to receive the compensation. In the present case, even as per the case of the claimants the deceased was nor an employee or representative of the owner of the Tempo Lorry. Therefore, such a person is not covered under the Insurance Policy. Hence, he prayed for allowing the appeal and to set aside the award passed by the Tribunal.

8. Per contra, the learned counsel appearing for the respondent had contended that the manner of accident is not going to change the liability of the Insurance Company. Whether the deceased had died inside the Tempo Lorry or fallen out of the Tempo Lorry and died, would not change the liability of the Insurance Company as long as the deceased person has travelled in the vehicle as a loadman.

9. The learned counsel appearing for the respondent had further contended that the Insurance Company had collected additional premium towards load man under IMT 37-A and therefore, the liability of compensation is to be paid by the Insurance Company. Hence, she prayed for sustaining the award passed by the Tribunal.

10. I have carefully considered the submissions made by the learned counsel on either side and perused the documents.

11. Admittedly, the deceased was travelling in a goods vehicle as a load man along with the iron rod. The case of the claimants is that the deceased got injured by way of falling of iron rod and died inside the lorry. However, the Insurance Company claimed that he had fallen out of the said lorry into the road and he died. Therefore, it is clear that there is some dispute with regard to the manner of accident, in which, the deceased had passed away. Considering the fact that the deceased is a loadman in such a vehicle, the discrepancy with regard to the manner of accident is not going to alter the liability of the Insurance Company. Therefore, I find that this discrepancy is immaterial for the present case.

12. A perusal of Ex.R3- Insurance Policy would clearly indicate that the Insurance Company has collected a sum of Rs.50/- (Rupees Fifty only) as premium for the employees. The policy further reveals that it has been collected under IMT 37- A. A perusal of IMT 37-A indicates that it covers any non-fare paying passenger who is the charterer or representative of the charterer of the Truck, and any other person directly connected with the journey in one form or the other being carried in or upon or entering or mounting or alighting from the insured vehicle. Therefore, it is clear that the load man who is a representative of the charterer of the vehicle is covered under IMT-37A. The contention of the learned counsel appearing for the appellant Insurance Company that load man is not covered in the policy, is not legally sustainable.

13. The learned counsel appearing for the appellant had relied upon the judgment of the Hon'ble Supreme Court reported in ***2013 (1) TANMAC 15 (SC) (Sanjeev Kumar Samrat Vs. National Insurance Company Ltd., and others)*** to contend that only employees of insured vehicle insurance are covered under the policy. However the employees of the charterer would not be covered. However, in view of the IMT-37-A, the employees are

representative of the charterer are also covered, in view of the additional premium paid by the insured person. Therefore, the issue relating to the liability of the Insurance Company is answered against the appellant/ Insurance Company.

14. As far as the quantum of compensation is concerned, the claim petitioners have claimed that the deceased was doing centring work and earning a sum of Rs.10,000/- (Rupees Ten Thousand) per month. However, the Tribunal has taken a sum of Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month, as the monthly income and added 40% towards future prospectus and after deducting 1/4th for living expenses, has arrived at monthly income at Rs.6,825/- (Rupees Six Thousand Eight Hundred and Twenty Five only). Considering the fact that the accident has taken place in the year 2012, this Court does not find that the monthly income of the deceased is exorbitant or unreasonable. This Court does not find any infirmity in the award of the amount under the various conventional heads.

15. In view of the above said deliberations, there is no merit in the appeal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. It could be seen from the records that the appellant/ Insurance Company

deposited 50% of the award amount along with the accrued interest. Therefore, the appellant is directed to deposit the balance amount along with accrued interest within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

05.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To
1. The Additional District Judge,
   (FTC), Theni.

2. The Section Officer,
   Vernacular Records,
   Madurai Bench of Madras High Court,
   Madurai.

R.VIJAYAKUMAR,J.

ebsi

C.M.A.(MD)No.326 of 2019

05.04.2023