BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.(MD).No.309 of 2007

The United India Insurance Co Ltd,
East Car Street,
Tenkasi. .. Appellant/2nd Respondent

Vs.

1.Muthiah Naickker

2.Ramakkal .. Respondents 1 & 2/Petitioners

3.Marimuthu ..3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to allow this Appeal, set aside the judgment and decree passed as against the appellant in M.C.O.P.No.74 of 2003 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankarankovil.

For Appellant	:	Mr.A.Joseph Jawahar
For R-1 & R-2	:	Mr.S.Kumar
R-3	:	Dismissed vide order dated 02.09.2022.

JUDGMENT

The Civil Miscellaneous Appeal is preferred by the Insurance Company aggrieved by the order of the Motor Accident Claims Tribunal to pay compensation of Rs.2,74,800/- with 9% interest from the date of filing of the claim petition till realisation.

2. It is a fatal case in which a bachelor, by name, Kadal Murugan died while travelling in a goods vehicle accompanying his cattle. According to the FIR, the deceased fell down from the lorry and ran over by the said lorry and died. At the time of the accident, he was 24 years old and the claimants are his parents.

3. The appellant/Insurance Company contested the claim on the ground that the deceased was a gratuitous passenger in a goods vehicle and therefore, not entitled for getting compensation from the Insurance Company.

4. The Tribunal, on considering the oral evidence and the documents, though agreed to the contention of the Insurance Company that the deceased fell down from a goods vehicle while carrying the cattle, therefore, the

Insurance Company is not liable to indemnify the vehicle owner, held that the accident has occurred due to the negligence of the lorry driver, ordered the Insurance Company to pay the claimant first and then recover from the insurer. Taking into consideration the age of the victim and the other material placed by the claimants, the Tribunal fixed the daily wage of the deceased as Rs.60/- and has awarded a sum of Rs.2,44,800/- towards the loss of income, Rs.10,000/- towards funeral expenses and Rs.20,000/- towards the loss of love and affection.

5. Being aggrieved, the present Civil Miscellaneous Appeal is filed by the Insurance Company on the ground that the Tribunal ought not to have ordered pay and recovery after concluding that the deceased was a gratuitous passenger not covered under the insurance and that for violation of the policy condition, the Insurance Company ought to have been exonerated from its liability to indemnify the insurer. It is further contended that applying the multiplier of 17 for the death of a bachelor taking into consideration of his age instead of taking into consideration the age of the claimants, i.e., their parents, is not logical. The percentage of interest at the rate of 9% per annum is also questioned by the appellant.

6. The learned counsel for the respondents 1 and 2/claimants submitted that the legality of applying the principle of pay and recovery is no more *res integra*, since the Hon'ble Supreme Court has given a seal of approval to this principle. Relying upon the judgment of the Hon'ble Supreme Court in ***Sarla Verma***'s case, the learned counsel submitted that the Tribunal has rightly applied the multiple of 17, taking into account the age of the deceased. Regarding the interest, the learned counsel for the respondents 1 and 2 submitted that the accident occurred on 10.03.2003 and at that time, the Bank interest was 9%. Therefore, the Tribunal has rightly awarded 9% of interest for the compensation and there need not be any interference in the rate of interest.

7. Given anxious consideration to the rival submissions and the facts of the case. It is an admitted fact that the deceased was travelling in the lorry along with his cattle. After halting the vehicle to have tea, the lorry driver had started the vehicle not ensuring that the deceased had boarded the vehicle. In the said course, the deceased fell down from the vehicle and was ran over by the same vehicle.

8. The Tribunal, after appreciating the evidence, has found that the death was caused due to the negligence of the lorry driver. Since the deceased has accompanied the goods, namely, the cattle, he cannot be termed as a gratuitous passenger as held by the Hon'ble Supreme Court and therefore, the plea of the appellant/Insurance Company cannot be countenanced. Further, the principle of pay and recovery has been rightly applied by the Tribunal, since it has noticed policy violations. Therefore, this Court is not inclined to interfere with the findings of the Tribunal on this score. Regarding the interest, no doubt, after 2004, the interest is uniformly followed at the rate of 7.5% interest per annum. In this case, the accident took place before 2004 and hence, the rate of 9% interest awarded by the Tribunal is left undisturbed.

9. For the reasons stated above, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

16.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

1.The Motor Accident Claims Tribunal,
Sub Court,
Sankarankovil.

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

DR.G.JAYACHANDRAN,J.

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