BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.07.2024

Pronounced on : 29.08.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

C.M.A(MD)No.795 of 2021
and
C.M.P(MD)No.7471 of 2021

The Oriental Insurance Company Ltd.,
Through its Branch Manager,
Having its Office at 1st Floor,
DDJ Centre, Opposite to
Vedachery Bus Stand,
Nagercoil - 629 001. ... Appellant

Vs.

1.Jeba Jansi

2.Minor. Jeiinsan Shalom

3.Minor.Jebarsan Shalom

4.Minor.Jebasin Michael Shalom

5.Minor.Jenisha Devanesam

6.Minor.Jersan Shalom

7.Minor.Jacksan Shalom

(Minors 2 to 7 are represented through
their guardian mother and next friend /
1st respondent)

8.Deva Irakkam ... Respondents 1 to 8 / Petitioners 1 to 8

9.Benny Mathew ... 9th Respondent / 1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to set aside the judgment and decree dated 20.04.2021 passed in M.C.O.P.No.940 of 2015 on the file of Motor Accident Claims Tribunal, Authority cum Special Sub Judge, Tirunelveli.

For Appellants : Mr.E.Chandrasekaran

For R1 to R7 : Mr.M.S.Jawaharlal

For R8 and R9 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the judgment and decree dated 20.04.2021 passed in M.C.O.P.No.940 of 2015 on the file of Motor Accident Claims Tribunal, Authority cum Special Sub Judge, Tirunelveli.

2. The case of the prosecution is that on 28.06.2014 at about 8.30 p.m., the deceased Ponraj borrowed the vehicle belongs to the first respondent bearing registration number KL 57 D 0357 and rode the two wheeler in a careful manner along with one Sunder Raj. When they were nearing Sathankulam B.Ed College, at about 8.30 p.m., a cow herd suddenly crossed the road and Ponraj in an attempt to avoid the accident, turned the vehicle. Inspite of that it went out of control and the said Ponraj died on the spot. A case in Crime No.122 of 2013 was registered against the deceased. Claiming compensation amount of Rs.20 Lakhs, the claim application was filed before the Tribunal. That was resisted by the first respondent namely Benny Mathew stating that the deceased was working as an acting driver under him. It was insured with the second respondent. So the second respondent insurance company is liable to pay the compensation amount.

3. That was resisted by the second respondent that the accident happened because of the rash and negligent driving on the part of the deceased himself. So, the claim application is not maintainable against the insurance company.

4. The Tribunal straight away went into the question of liability. Since the premium was paid up a sum of Rs.100/- towards personal accident coverage for the owner cum driver, the insurance company is liable to pay the compensation amount. By holding so, the Tribunal went on to assess the compensation and awarded Rs.2 Lakhs with 7.5% interest on the basis of the coverage. Against which, this appeal is preferred by the appellant insurance company.

5. Learned counsel for the appellant would submit that it is not an issue of employer-employee relationship. It is admitted in the claim application itself that the deceased borrowed the vehicle from the first respondent and at that time, the occurrence took place. So the deceased was not an employee under the first respondent. Further submitted that even if it is considered that the owner cum driver is entitled for compensation amount of Rs.2 Lakhs, the interest ought not to have been awarded by the Tribunal.

6. Only a short point is involved for consideration. We will straightaway go to the aspect that eventhough the vehicle was borrowed from the first respondent by the deceased, since the vehicle was borrowed from the

owner the benefit that was conferred upon the owner cum driver of the vehicle, can be extended to the person who borrowed the vehicle also. There is no specific exclusion for such person. So the deceased can be treated as stepping into the shoes of the owner of the vehicle and the claimants can claim the compensation under the Personal Accident coverage.

7. So I find that the order of the Tribunal on that aspect requires no interference and so far as the interest is concerned, the occurrence took place in the year 2014, the claim was filed in the year 2015 and the order was passed in the year 2021. Had the insurance company admitted its liability and deposited the award, then only it could have avoided the payment of interest. But it contested the matter up to this Court. So the contention on the part of the appellant that the interest can be avoided, is not acceptable.

8. The Civil Miscellaneous Appeal is dismissed. The appellant / insurance company is directed to deposit the award amount of Rs.2,00,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost to the credit of M.C.O.P.No.940 of 2015 on the file of Motor Accident Claims Tribunal, Authority cum Special Sub

Judge, Tirunelveli, within a period of two months from the date of receipt of a copy of this judgment, if not already deposited. Consequently, connected miscellaneous petition stands closed. No costs.

29 .08.2024

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

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To

1.The Motor Accident Claims Tribunal, Authority cum Special Sub Judge, Tirunelveli.

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

G.ILANGOVAN, J.

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Pre-Delivery Judgment made in

C.M.A(MD)No.795 of 2021
and
C.M.P(MD)No.7471 of 2021

29.08.2024