BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1252 of 2014
and
M.P(MD)No.2 of 2014

Bajaj Allianz General Insurance Co. Ltd.,
Rep. by its Manager,
K.M.A Complex, No.12-G, Ram Nagar,
Bye Pass Road, Madurai Town,
Madurai District. .....Appellant

-vs-

1.R.Mari
2.Minor R.Muthusolai
3.Minor R.Ragunathan
(Minor Rep. by their guardian/mother,
1st respondent)

4.Murugesan .... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the fair and decretal order dated 04.01.2013 made in M.C.O.P.No.295 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.A.R.Jeyaruthran
for R2 to R3
No appearance for R1 and R4

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order passed in M.C.O.P.No.295 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai, wherein, the respondents 1 to 3 have filed the claim petition for the death of one Ramalingam, who died in a road accident.

2. The Tribunal has awarded a sum of Rs.4,00,000/- (Rupees Four Lakhs only) by directing the second respondent to pay the amount. As against the order passed by the Tribunal, the second respondent/Insurance Company has filed this appeal.

3. The brief facts of the petition before the Tribunal as follows:-

On 14.03.2008, at 10.00 a.m, the deceased Ramalingam was travelled in a Tractor along with Trailer bearing Reg.No.TN-63-F-7858 and TN-63-

F-7917 as a load-man along with Paddy Straw. At that time, the driver of the Tractor drove the vehicle in a rash and negligent manner and suddenly applied brake. Due to which, the deceased Ramalingam fell down from the Tractor and sustained injuries. Thereafter, he died in the hospital. The petitioners are the legal heirs of the deceased. At the time of accident, the deceased was aged about 40 years and he was earning Rs.8,000/- per month by doing agricultural work. The accident was occurred due to the negligence of the driver of the Tractor and the said vehicle was insured with the second respondent and hence, both the respondents are liable to pay compensation to the petitioners/claimants.

4. The gist of the counter reads as follows:-

The petition is not maintainable and the petitioners are put to strict proof of the averments made in the petition. The respondent denied the manner of the accident, age, income and occupation of the deceased. The deceased was travelled in the tractor as against the rules. The deceased travelled in the trailer as unauthorized passenger. Therefore, the second respondent is not liable to pay any compensation. Hence, the petition is liable to be dismissed.

5. Before the Tribunal, on the side of the petitioners, they have examined P.W.1 and P.W.2 and marked Exs.P.1 to P6 and on the side of the respondent, R.W.1 and R.2 were examined and Exs.R1 and R2 were marked. Apart from that, Exs.X1 to X3 were marked.

6. The Tribunal, after considering the evidence adduced on either side, awarded compensation of Rs.4,00,000/- by directing the second respondent/ Insurance Company to pay the said amount along with interest at the rate of 7.5% per annum. As against the order passed by the Tribunal, the present appeal came to be filed by the second respondent/Insurance Company.

7. The learned counsel for the appellant/Insurance Company would contend that the deceased was travelled as a gratuitous passenger in the Tractor and the coverage is only as against the driver alone and there is no coverage for the other persons and no separate premium was paid for others and hence, the appellant/second respondent has no liability to pay compensation to the respondents/claimants. Since the deceased was travelled as unauthorized passenger, the appellant/Insurance Company is not liable to

pay any compensation. The Tribunal has erroneously came to the conclusion that the deceased was travelled as a load-man and passed the award directing the appellant/second respondent to pay compensation. Therefore, the award of the Tribunal is liable to be set aside.

8. The learned counsel for the respondents 2 and 3/claimants contended that the Tractor and Trailer were duly insured with the appellant/second respondent on the date of accident and the deceased was travelled as load-man for the agricultural goods and thereby, the appellant/second respondent is liable to pay compensation to the petitioners. The policy is a package policy. The Tribunal, after considering all these aspects, correctly fixed the liability as against the appellant/second respondent and directed them to pay the amount. Therefore, the present appeal is liable to be dismissed.

9. This Court, after hearing the submissions of the learned counsels appearing on either side and perusing the documents including the order of the Tribunal, frames the following point for determination in this appeal:

i. Whether the appellant/second respondent is liable to pay the compensation and this appeal has to be allowed?

10. In this case, the Tribunal has fixed the negligence upon the driver of the Tractor. There is no appeal or cross objection filed in respect of negligence aspects. It is seen that First Information Report has also been registered as against the driver of the Tractor and the driver has also admitted the offence and paid penalty before the Judicial Magistrate concerned. Therefore, this Court is of the view that no interference is necessary in respect of the negligence aspects.

11. The main contention of the appellant/Insurance Company is that the deceased was travelled as a gratuitous passenger and for the offending Tractor and Trailer, except driver, there is no coverage for others as per the policy. However, the Tribunal in the order, held that premium of Rs.8119/- was collected and there is no particular and break up details for the said premium amount. The policy was also package policy and the deceased was travelled as load-man. Therefore, the second respondent/Insurance Company is liable to pay the compensation by relying the Judgment reported in ***2009-2-L.W-953 (New India Assurance Co. Ltd., Hosur vs. Mrs.Loganayagi and 4 others)*** and ***2010(1) TN MAC 296 (New India Assurance Co. Ltd. vs. Palani M.Samudeeswari***.

12. As per the above Judgments, after the amendment in 147(1) of Motor Vehicles Act, it is mandatory to insure for the owner of the goods and the representative of the owner of the goods. Therefore, the appellant/Insurance Company is liable to pay compensation for the owner of the goods.

13. This Court has also perused the entire records and the order of the Tribunal. The Tribunal, after referring the above said Judgments, fairly came to the conclusion and fixed the liability as against the appellant/second respondent. This Court is of the view that since the deceased was travelled in the trailer as load-man, the appellant/second respondent is liable to pay compensation to the petitioners. Therefore, the order passed by the Tribunal is in order in all aspects. In respect of the quantum of the amount, the appellant/second respondent has not disputed and the respondents/petitioners have also not filed any appeal or cross objection as against the quantum of the amount. Therefore, the appellant/second respondent is liable to pay compensation amount to the petitioners. The point is answered accordingly.

14. In result, this Civil Miscellaneous Appeal is dismissed. The award passed in M.C.O.P.No.295 of 2010 dated 04.01.2013 by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai is confirmed. The appellant/second respondent is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the major claimant is permitted to withdraw the award amount as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs. Further, the Tribunal is directed to deposit the share of the minor claimants, in any one of the nationalised banks, as fixed deposit till the minors attain the age of majors or three years whichever is earlier, and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the Bank. The minor claimants on attaining majority are permitted to withdraw their share. No costs. Consequently, connected miscellaneous petition is closed.

06.03.2024

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

To

1. The Motor Accident Claims Tribunal ,
   (Chief Judicial Magistrate), Sivagangai.

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

P.DHANABAL,J.

skn

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