IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.09.2015

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM, J.,

C.M.A. No.2027 of 2015

and

M.P.No.1 of 2015

M/s.Reliance General Insurance Co. Ltd.,
1st Floor, Geejay Arcade,
141/71, Thiruvenkataswamy Road West,
R.S.Puram PO,
Coimbatore 641 002 ,
Coimbatore District. .. Appellant/3rd Respondent

Vs.

1. G.Padmavathy
2. G.Santhiya
3. Minor G.Suganya
   (minor rep. By their next friend and mother G.Padmavathy)
4. M.Singaram
5. T.Mayilsamy
6. M.Suresh Kumar
7. P.Manikandan .. Respondents/Petitioners (1 Respondent & 2nd respondent)

Prayer : Appeal under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (III Additional District Court), Dharapuram, in MCOP No.386 of 2012 dated 11.03.2015

For Appellant : Mr.S.Arun Kumar

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this appeal by M/s.Reliance General Insurance Company Limited, Coimbatore, is to the compensation of Rs.50,35,941/- with interest, at the rate of 7.5% per annum, from the date of petition till deposit, awarded to the legal representatives of the deceased viz., wife, two daughters and parents.

2. Facts leading to the appeal are that on 27.02.2015, about 8.00pm, when Ganesan, the breadwinner of the respondents was riding a motorcycle bearing Regn.No.TN33-AY-3409 at Kangayam to Dharapuram Road near Kundadam Junction, another motorcyclist, bearing Regn.No.TN38-AZ-3850, insured with M/s.Reliance General Insurance Company Limited, Coimbatore, driven in a rash and negligent manner, dashed against the motorcycle bearing Regn.No.TN33-AY-3409. In the result, the rider of the vehicle bearing Regn.No.TN33-AY-3409, was thrown out and sustained grievous injuries and on the way to hospital, he died. In this regard, a case in Cr.No.28 of 2012, under Sections 279 and 304-A IPC, has been registered against the motorcyclist, bearing Regn.No.TN38-AZ-3850, on the file of Uthiyur Police Station.

3. Respondents, wife, Daughters, aged about 21 and 16 years respectively, parents aged about 70 years and 60 years respectively, have filed MCOP No.386 of 2012 on the file of the learned III Additional District Judge, Dharapuram and claimed compensation of Rs.50 Lakhs. According to them, on the date of accident, the deceased was a foreman in Tamilnadu Electricity Board and earned Rs.36,000/- per month. They have further submitted that on account of the sudden demise of the breadwinner, they have lost his estate.

4. Opposing the claim, M/s.Reliance General Insurance Company Limited, Coimbatore, has contended that it was the deceased Ganesan, who was negligent in causing the accident. They further submitted that the deceased was riding the motorcycle bearing Regn.No.TN33-AY-3409, without a driving licence, and in a zig-zag manner, swerved the same to the right side, hit against the motorcycle bearing Regn.No.TN38-AZ-3850, insured with M/s.Reliance General Insurance Company Limited, Coimbatore. Thus, they denied the manner of accident and consequential liability to pay compensation. Without prejudice to the above, they also disputed the age, avocation, income and the quantum of compensation claimed under various head.

5. Before the claims tribunal, wife examined herself as PW1 and reiterated the manner of accident. PW2, is the eye witness and PW3, is the co-employee. Ex.P1, FIR, Ex.P2, Postmortem Report, Ex.P3, Rough Sketch, Ex.P4, Motor Vehicle Inspector's Report, Ex.P5, Inquest report, Ex.P6, Charge sheet, Ex.P7, Death Certificate, Ex.P8, Legal Heir certificate, Ex.P9, Driving licence of the 1st respondent, Ex.P10, R.C.Book of the offending vehicle, Ex.P11, Insurance policy of the offending vehicle, Ex.P12, Driving licence of the deceased, Ex.P13, Insurance policy of the vehicle of the deceased, Ex.P14, Pay slip of the deceased for the month of December 2011, Ex.P15, Appointment Letter of TNEB and Ex.P16, ITI certificate, have been marked. On behalf of the insurance company, no oral or documentary evidence has been adduced.

6. Evaluating the oral and documentary evidence, the claims tribunal came to the conclusion that the rider of the motorcycle bearing Regn.No.TN38-AZ-3850, insured with M/s.Reliance General Insurance Company Limited, Coimbatore, appellant herein, was negligent in causing the accident.

7. On the quantum of compensation, by adducing oral and documentary evidence, respondents/claimants have proved that at the time of accident, the deceased was a Grade-I, Foreman in TNEB. Ex.P15, is the appointment order. Ex.P14, is the Salary slip. Upon perusal of the same, the claims tribunal has recorded that at the time of accident the deceased earned Rs.35,223/-. His last drawn salary as per Ex.X1, Salary certificate, was Rs.36,641/-. On the basis of the entry in Ex.P16, ITI certificate, the claims tribunal fixed the age as 46 years and 9 months.

8. Following the decision of the Hon'ble Apex Court in Sarla Verma Vs. Delhi Transport Corporation, reported in 2009 (2) TN MAC 1 (SC), the claims tribunal, by adding up 30% (Rs.10,992/-) under the head future prospects, arrived at the annual income of Rs.3,71,596/-. After deducting income tax and by application of '13' multiplier, computed the loss of contribution to the family. While doing so, having regard to the number of dependants i.e., 5, the claims tribunal has deducted 1/4 towards the personal and living expenses of the deceased. Thus, the claims tribunal has computed the loss of contribution to the family as Rs.49,45,941/-. In addition to that, the claims tribunal has awarded the following compensation.

Loss of Consortium	: Rs.50,000/-
Loss of love and affection	: Rs.30,000/-
Funeral Expenses	: Rs.10,000/-

In all, the tribunal has awarded Rs.50,35,941/- with interest, at the rate of 7.5% per annum from the date of claim till the date of realisation.

9. Though, Mr.S.Arun Kumar, learned counsel for M/s.Reliance General Insurance Company Limited, Coimbatore, assailed the correctness of the finding fixing negligence on the motorcyclist of the vehicle bearing regn.No.TN38-AZ-3850, insured with them, and consequently, prayed to extricate the liability of the company from payment of compensation, this Court, is not inclined to accept the same, for the reason, that, the claims tribunal has considered both the oral and documentary evidence in proper perspective. Besides adducing oral evidence, to substantiate negligence, the respondents/claimants, have marked Ex.P1, FIR, Ex.P3, Rough Sketch and Ex.P6, Charge sheet filed against the motorcyclist bearing

Regn.No.TN38-AZ-3850, insured with M/s.Reliance General Insurance Company Limited, Coimbatore. No oral or documentary evidence has been adduced on behalf of the insurance company.

10. While dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court in N.K.V.Brother's Private Limited v. Kurmai [AIR 1980 SC 1354], has held that,

> "Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

11. In a decision in Union of India v. Saraswathi Debnath [1995 ACJ 980], High Court of Gauhati has held in Paragraph 6 as follows:

> "The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

12. In Bimla Devi & Ors. Vs. Himachal RTC reported in 2009 (13) SCC 530, the Supreme Court held as follows:

> “It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

13. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. In the absence of any rebuttal evidence, the finding of the Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence.

14. While determining the quantum of compensation, the claims tribunal has considered the documents, viz., Ex.16, ITI Certificate, Ex.P15, Appointment Order issued TNEB and Ex.P14, Salary slip for the month of December 2011.

15. Assessment made by the claims tribunal by adopting multiplier method and applying 30%, towards future prospects, cannot be said to be contrary to the well considered principles of law. Perusal of the award shows that the quantum of compensation awarded under the other heads viz., loss of consortium, loss of love and affection and funeral expenses, is less. There is no award under the head transportation and damages to clothes.

16. For the reasons stated supra, we do not find that the appellant has made out a case to interfere with the award. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

17. Consequent to the dismissal of the appeal, the appellant-Insurance company, is directed to deposit the entire award amount, with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and costs, less the amount already deposited, to the credit of MCOP No.386 of 2012 dated 11.03.2015 on the file of the Motor Accidents Claims Tribunal (III Additional District Court), Dharapuram, within a period of four weeks from the date of receipt of a copy of this order.

18. At the time of filing of the claim petition in the year 2012, the minor respondent No.3, was aged 16 years and by this time she would have attained majority. Therefore, on such deposit, the respondents/claimants are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, as apportioned by the tribunal, by making necessary applications.
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Sd/-
Assistant Registrar (CS.VII)

/True Copy/

Sub-Assistant Registrar

To

1. Motor Accidents Claims Tribunal,
   III Additional District Judge,
   Dharapuram

2. The Section Officer,
   VR Section, High Court,
   Madras.

+1 C.C. To MR.S.Yuvaraj, Advocate in SR.NO.50661

+1 C.C. To MR.S.Arunkumar, Advocate in SR.NO.50406

C.M.A. No.2027 of 2015

LRS(CO)
sd : 09/12/2015