IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 30.09.2016
CORAM
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN
C.M.A. No.2291 of 2016
and C.M.P.No.16187 of 2016

The Branch Manager
M/s.Reliance General Insurance Company Ltd.,
Branch Office No.73, 1st Floor,
Above HDFC Bank, Officer Line,
Vellore - 1 .. Appellant

Vs.

1. Vennila
2. Minor Namitha
3. Minor Narmatha
4. Radha
5. T.Dhandavarayan .. Respondents

[Minors/respondents 2 and 3, rep. by their next friend mother Vennila, the 1st respondent]

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri in MCOP No.759 of 2013 dated 30.03.2015.

For Appellant : Mr.P.Suresh

JUDGMENT

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

With the consent of the learned counsel for Reliance General Insurance Company Limited, the appeal itself is taken up for hearing.

2. Short facts leading to the appeal are that on 20.01.2013, about 6.30pm, when the husband of the 1st respondent Kaliappan, was proceeding in his Yamaha motorcycle bearing Regn.No.TN23AT1944, with a pillion rider on the extreme left side of the road, on Thirupattur to Singarapettai Road, opposite, to Meganoorpatti Government Hr. Sec. School, a TATA ACE vehicle bearing Regn.No.TN23BY9649, owned by the 5th respondent, and insured with Reliance General Insurance Company Limited, which came in the opposite direction, and driven in a rash and negligent manner, at a high Speed, by the driver,

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dashed against the motorcycle. Due to the impact, both the rider and pillion, were thrown off from the vehicle. They sustained grievous injuries, and both died on the spot. In this regard, a case in Cr.No.21 of 2013 under Sections 279 and 304 (A) IPC, has been registered against the driver of TATA ACE vehicle. Wife, two minor children and mother of Kaliappan, rider of the motorcycle filed MCOP No.759 of 2013 on the file of the Special District Court / Motor Accidents Claims Tribunal, Krishnagiri, claiming compensation of Rs.15,00,000/-, under various heads.

3. Before the tribunal, Reliance General Insurance Company-the appellant herein, has denied the manner of accident. Insurance company has further submitted that police has lodged a false case, against the driver of the TATA ACE vehicle, insured with them. They also submitted that police had not charge sheeted the driver. According to the company, the accident occurred solely due to the rash and negligent riding of the motorcyclist. Thus they denied negligence and consequently, the liability to pay compensation. Without prejudice to the above, they have also disputed the age, avocation, income and the quantum of compensation, claimed under various heads.

4. Before the tribunal, wife examined herself as PW1 and narrated the manner of accident. PW2, is the eyewitness. Ex.P1, FIR, P2, Postmortem certificate of Kaliappan, Ex.P3, Registration Certificate of TATA ACE bearing Regn.No.TN23BY9649, Ex.P4, Insurance policy, pertaining to TATA ACE vehicle, Ex.P5, photocopy of legal heir certificate and Ex.P6, Death certificate of the deceased, have been marked. On the side of the respondent, no oral or documentary evidence, has been adduced.

5. Evaluating the pleadings and evidence and placing reliance on the decision of this Court in the Managing Director, Tamil Nadu State Transport Corporation, Salem Division-I Vs. Mallika and 4 others, reported in 2010(3) MWN Civil 245, the tribunal found that the driver of the TATA ACE bearing Regn.No.TN-23-BY-9649 and insured with Reliance General Insurance Company, the appellant herein, was negligent in causing the accident.

6. The deceased was stated to be a mason and a building contractor. Taking a notional income of Rs.300/- per day, the tribunal has fixed the monthly income of the deceased as Rs.9,000/-, for the purpose of computing the loss of income to the family. Thereafter, having regard to the number of dependants, the tribunal has deducted 1/4, towards the personal and living expenses of the deceased. As per the entry in Ex.P2, postmortem certificate, age of the deceased was shown as 25 years. Therefore, the tribunal applied 18 multiplier and computed the loss of contribution to the family, as

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Rs.14,58,000/-. That apart, the tribunal, has awarded Rs.1,00,000/- as consortium to the wife, aged 22 years, at the time of accident. For minor children aged about 4 years and one year, respectively, the tribunal has Rs.1,00,000/- each, under the head loss of love and affection. To the widowed mother, the tribunal has awarded Rs.50,000/- under the said head. That apart, the tribunal has awarded Rs.10,000/-, for transportation and Rs.20,000/-, for funeral expenses. Altogether, the tribunal has awarded Rs.18,38,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit and apportioned the same, to the legal representatives/claimants. The tribunal has directed the owner and the insurance company to deposit the amount within one month, from the date of the award, failing which, directed them, to pay interest, at the rate of 9% per annum.

7. Though, Mr.P.Suresh, learned counsel for Reliance General Insurance Company Limited, the appellant herein, assailed the correctness of the fining of the tribunal, fixing negligence on the driver of TATA ACE bearing Regn.No.TN-23-BY-9649, on the grounds that the tribunal failed to consider that the accident occurred solely due to the rash and negligent riding of the motorcycle and that the tribunal ought to have fixed contributory negligence on him, this Court is not inclined to accept the said contentions, for the reason, that though, PW1, wife of the deceased had not witnessed the accident, her oral testimony is duly supported by PW2, eye witness, who lodged Ex.P1, FIR. Insurance Company has cross examined both the witnesses. Assailing the evidence, the tribunal had categorically recorded that the suggestion of the insurance company that PW2, had not seen the accident, has been denied, and that nothing has been elicited by the Company. During cross examination of both witness PW1 and PW2, there is no adverse material. Added further, the tribunal has also taken note of the relevant factors to be taken note of, while arriving at the conclusion on negligence, in terms of the judgment of this Court in Managing Director, Tamil Nadu State Transport Corporation, Salem Division-I Vs. Mallika and 4 others, reported in 2010(3) MWN Civil 245.

8. Perusal of the award also shows that though Mr.P.Suresh, learned counsel for the appellant-Insurance Company, has argued before this Court, that the tribunal ought to have fixed contributory negligence on the motorcyclist, no oral or documentary evidence has been adduced by the appellant to support the averments made in the counter affidavit. It is well settled that mere averments do not stand the test of proof. Also it could be seen that, from the cross examination, the insurance company has not elicited any thing, in their favour. The company has not adduced any oral evidence.

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9. Oral testimony of PW1 is duly supported by PW2, eye witness and also corroborated by Ex.P1, FIR. The contention that no charge sheet has been filed and therefore driver of TATA ACE, was not at fault, cannot be countenanced.

10. It is well settled in motor accident claims cases, that finding of negligence, is arrived at by the Claims Tribunal, on the principles of preponderance of probabilities. Strict proof of evidence is not required like that of a criminal case. It is also well settled that the adjudication of claims before the Motor Accident Claims Tribunal, is summary in nature. Testing the finding of negligence recorded by the Claims Tribunal, on the above said principles, this Court is of the view that there is no perversity in the finding of negligence, warranting interference, and the same is confirmed.

11. On the quantum of compensation, the deceased is served by wife aged 22 years, two minor children aged about four years and one year respectively and widowed mother. Sum of Rs.300/- taken as the daily wage for the purpose of fixing the monthly income cannot be said to be on the higher side. The accident occurred on 20.01.2013. To provide food, shelter, clothing, education and other basic necessities to the abovesaid dependants, including two minor children, one may require a reasonable income. Even taking for granted that the deceased owned a house, there are some inevitable expenses, such as Electricity charges, water tax, transportation etc. Cost of essential commodities is not static. Method adopted for computing the loss of contribution to the family is proper.

12. Further, even a person who works in an unorganised sector would have future prospects, But, tribunal in the case on hand has not considered the above aspect while computing the loss of contribution to the family. Quantum of compensation awarded under other heads, also cannot be said to be on the higher side warranting interference. Thus, both the finding of negligence and the quantum of compensation are confirmed.

13. The only question that requires to be considered is whether the tribunal is right in awarding penal interest, in the event of default, in depositing the amount within the said period.

14. In Shanmughasundaram & Another v. Jothi & Others reported in 2005-1-L.W.-566, this court has held that while passing award, there is no statutory backing for addition of a default clause and accordingly, deleted the same.

15. Going through the material on record, we are of the view that appellant/insurance company, has not substantiated any of the grounds raised, except penal interest. We are not inclined to interfere with the impugned judgment, except to the

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limited extent of deleting the portion, relating to penal interest.

16. In the result, the Civil Miscellaneous Appeal is allowed in part, to the extent of deleting the penal interest awarded by the Tribunal. In all respects, the impugned judgment is confirmed. No Costs.

17. The appellant-Insurance Company, is directed to deposit the entire award amount with proportionate accrued interests and costs, less the amount already deposited, to the credit of MCOP No.759 of 2013, on the file of the Motor Accidents Claims Tribunal, (Special District Court), Krishnagiri, with interest, at the rate of 7.5% per annum, from the date of claim till deposit, within a period of six weeks from the date of receipt of a copy of this order.

18. On such deposit being made, except the minors, the respondents/claimants are permitted to withdraw the award amount as apportioned by the tribunal, by making necessary applications. The share of the minors/respondents 2 and 3, shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the 1st respondent/mother of the minors once in three months, till they attain majority. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. Motor Accidents Claims Tribunal,
   Special District Court, Krishnagiri.

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

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