IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.38 of 2016
& C.M.P.No.261 of 2016

The Divisional Manager,
M/s.National Insurance Company Ltd.,
1st Floor, T.S.No.4132,
East Main Road,
Pudukottai-622 001. .. Appellant/Respondent-II

Versus

1.Annappoornam ..1st Respondent/Petitioner
2.R.Paulraj ..2nd Respondent/Respondent-I

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 15.07.2013 made in M.C.O.P.No.352/2012 on the file of the Motor Accidents Claims Tribunal, (Principal District Judge), Perambalur.

For appellant : Mr.J.Chandran

For respondents : Mr.T.Gopinath for R1

J U D G M E N T

The Civil Miscellaneous Appeal filed by the appellant/Insurance Company is directed against the correctness of the impugned award dated 15.07.2013 made in M.C.O.P.No.352/2012 on the file of the Motor Accidents Claims Tribunal, (Principal District Judge), Perambalur, awarding a sum of Rs.3,90,000/- with 7.5% interest per annum, for the loss of life of the claimant's son, aged about 8 years at the time of accident.

2.According to the claimant, on 02.05.2012, at about 02.45 p.m., while the minor Rishi Chakkaravarthy was travelling along with his relatives in the second respondent's TATA Sumo vehicle bearing Registration No.TN-20/Y-3602, which was driven by his father namely Sathiyamoorthy, the said vehicle was proceeding on NH-45 road, from North to South and came at the place near Vijayagopalapuram bus stop and the driver of the vehicle dashed the same against the centre median. As a result, the vehicle was capsized on the road and due to the said impact, the said minor son was thrown out of the car and sustained fatal injuries all over the body. Immediately, the said minor son was taken to Government Hospital, Perambalur, but due to the accidental injuries, he was died on the enroute to the hospital. The Duty Medical Officer of the Government Hospital, Perambalur has conducted the post mortem on the body of the deceased.

3.After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the second respondent and awarded a sum of Rs.3,90,000/- as compensation payable to the claimant with interest at the rate of 7.5%. Aggrieved by that award, the appellant-Insurance Company has filed the present appeal.

4.Heard Mr.J.Chandran, learned counsel appearing for the appellant and Mr.T.Gopinath, learned counsel appearing for the claimant/first respondent and perused the documents on record. On the side of the claimant, P.Ws.1 and 2 were examined and documents Exs.P1 to P8 were marked. On the side of the appellant/Insurance Company, RWs1 and 2 were examined and Exs.R1 and R2 were marked to substantiate their claim.

5.Learned counsel appearing for the appellant/Insurance Company, assailing the impugned award passed by the Tribunal, contended before this Court that the compensation of Rs.3,90,000/- awarded by the Tribunal towards the death of 8 years minor Rishi Chakkaravarthi is highly excessive, exorbitant and unsustainable in law. When the accident had occurred solely due to the rash and negligent act of the father of the deceased, the Tribunal ought to have reduced the compensation under Section 140 of the Motor Vehicles Act. Further the Tribunal, considering the fact that the minor son while travelling in a TATA Sumo Car, which was driven by his own father, who had also entered into the witness box, admitting the accident, had sustained fatal injuries, ought to have considered the case of the Insurance Company and ought not to have awarded compensation not more than Rs.50,000/- under Section 140 of the Motor Vehicles Act. Concluding his argument, he would further submit that when the policy in question is an act policy and the deceased was an occupant of the vehicle, met with the accident and he is not a third party, the appellant/Insurance company is not liable to pay the compensation to the claimant.

6.This Court is not able to see any merits on the contention raised by the learned counsel for the appellant. The reason is that the Tribunal after considering the above argument, oral and documentary evidences of both sides, has come to the conclusion that the accident had happened only due to the negligent driving of the driver of the vehicle/P.W.2, who drove the vehicle belonging to the second respondent and has been insured with the appellant/Insurance Company. The Tribunal, while proceeding to the liability part, after dealing with the contentions raised by the appellant/Insurance Company that the deceased minor being the occupant of the car, is not a third party and that as per the policy condition, the claimant is not entitled for compensation, has come to the conclusion that the deceased minor Rishi Chakkaravarthy was an occupant of the Tata Sumo vehicle belonging to an independent person and the vehicle having been insured with the appellant Insurance Company at the time of accident and that P.W.2 had valid driving licence to drive such vehicle has held that the appellant/Insurance Company is liable to pay the compensation because the stand of the Insurance Company before the Tribunal that the vehicle was driven for hire by the father of the deceased who is not a third party has not been proved successfully before it. Therefore, the learned Tribunal, on perusal of the documents, came to the conclusion that the vehicle involved in the accident is having insurance policy at the time of accident, hence, it has come to the conclusion that when a person is having licence for four wheeler, he can drive the vehicle of his own and he can make use of the same for his family members and friends and on this score, it was further held that there was no violation of the policy condition. In my view, such a conclusion reached by the learned Tribunal cannot be found fault with.

7.With regard to fixation of loss of dependency, learned Tribunal took note of a judgment of the Hon'ble Delhi High Court in the case of National Insurance Company Ltd. v. Farzana and others (2010 (2) TNMAC 56 (Delhi)), wherein the Delhi High Court, by taking note of the fact that the boy was aged about 7 years at the time of accident, fixed Rs.15,000/- per annum as notional income by adopting multiplier 15. Therefore, learned Tribunal, by applying the said ratio, has also adopted the same formula and thereby arrived at a compensation of Rs.2,25,000/- towards pecuniary damages, since in the case on hand, the deceased minor was aged about only 8 years at the time of accident. Therefore, such compensation awarded by the Tribunal, in my view, is a just and reasonable one, therefore, the same cannot be interfered with by this Court.

8.With regard to other heads, only a reasonable amount viz. Rs.75,000/- towards non-pecuniary damages, Rs.75,000/- towards future prospects, Rs.5,000/- towards funeral expenses, Rs.5,000/- towards transport charges and Rs.3,90,000/- towards total compensation, awarded by the Tribunal, cannot be considered on the higher side. Therefore, the impugned award is upheld.

9.Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

10.Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimant to move a petition before the learned Tribunal for withdrawing of the said amount.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

vga

To

1. Motor Accidents Claims Tribunal,
   (Principal District Judge), Perambalur

2.The Section Officer, V.R.Section,
   High Court, Madras.

+1cc to Mr.J. Chandran, Advocate, S.R.No.2818
+1cc to Mr.T. Gobinath, Advocate, S.R.No.2683

VSN(CO)
EU(28/03/2016)