In the High Court of Judicature at Madras

Dated 20.09.2017

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The Honourable Mr.Justice R.SUBBIAH
AND
The Honourable Mr.Justice P.VELMURUGAN

C.M.A.No.2695 of 2016
and
C.M.P.Nos.19411 & 12932 of 2017

Royal Sundaram Alliance Insurance Co. Ltd.,
having office at Mangalam Buildings,
Four Roads, Omalur Main Road,
Salem-7. ......Appellant

..vs..

1.K.Kokilam
2.C.Amirtha
3.Azhaghu Navanya

4.Premnath ......Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 12.09.2016, made in M.C.O.P.No.546 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Judge), Salem.

For Appellant : Mr.G.Vasudevan

For Respondents : Mr.C.Richard Sureshkumar (For R1 to R3)

JUDGMENT

R. SUBBIAH, J.,

This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Special District Judge), Salem, in and by award dated 12.09.2016 in M.C.O.P.No.546 of 2014, directing the Insurance Company to pay the compensation amount of Rs.13,51,270/- to the claimants/respondents 1 to 3 herein.

2.The respondents 1 to 3 herein are the claimants before the Tribunal. They are the wife and daughters of the deceased Chinnadurai, who died in the accident that had occurred on 06.01.2014 involving the van bearing Reg.No.TN 33 AU 4881, owned by the 4th respondent herein and insured with the appellant herein/Insurance Company.

3.It is the case of the claimants before the Tribunal that on 06.01.2014 at about 8.45 pm, while the said Chinnadurai (deceased) was riding his two-wheeler bearing Reg.No.TN 37 AA 5643 on the Chennimalai-Erode main road, an omni van bearing Reg.No.TN 33 AU 4881 owned by the 4th respondent herein and insured with the appellant/Insurance Company, came in a rash and negligent manner from the opposite direction, by overtaking a bus, without following the trafic rules and regulations, and dashed against the two-wheeler. In the said accident, the said Chinnadurai lost his life. It is further case of the claimants that the said Chinnadurai (deceased) had retired from service as Zonal Deputy Tahsildar and he was receiving pension of Rs.15,000/-. He was aged about 59 years at the time of accident. Hence, the claimant made a claim for a sum of Rs.20 lakhs.

4.The claim made by the claimants was resisted by the Insurance Company by filing a counter affidavit taking a defence that the said insured vehicle (Maruti Van) has been registered as Tourist Motor cab/taxi and that the driver of the van did not have valid driving licence to drive the transport vehicle; hence, the Insurance Company is not liable to pay the compensation amount.

5.Before the Tribunal, in order to prove their claim, on the side of the claimants, the 1st claimant/wife examined herself as P.W.1, besides examining one Prakash as P.W.2 and marked 13 documents as Ex.P.1 to Ex.P.13. On the side of the Insurance Company, one Arulraj, Assistant, Zonal Transport Office, Erode, was examined as R.W.1, besides examining one Vaitheeswaran as R.W.2 and one document was marked as Ex.R.1. That apart, two other documents were also marked Ex.X.1 & Ex.X.2 before the Tribunal.

6.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident is the result of the rash and negligent act of the driver of the van and the Insurance Company is liable to pay the compensation. By coming to such a conclusion, the Tribunal has calculated the compensation amount under different heads and passed an award for a total compensation amount of Rs.13,51,270/-. The breakup details of the same are as follows_

1)Loss of Income	=	Rs.12,51,270/-
2)Funeral Expenses	=	Rs. 25,000/-
3)Loss of consortium	=	Rs. 25,000/-
4)Loss of love & affection	=	Rs. 50,000/-
Total		Rs.13,51,270/-

Aggrieved over the same, the present appeal has been filed by the Insurance Company.

7.Now, it is the submission of the learned counsel for the appellant/Insurance Company that the Insurance Company had taken a specific defence that at the time of accident, the driver of the van did not have valid driving licence and he was not authorised to drive a transport vehicle; therefore, there is a clear violation of policy conditions of the Insurance Policy. Hence, the Insurance Company is not liable to pay the compensation.

8.Further, so far as the quantum of compensation is concerned, it is the submission of the learned counsel for the appellant/Insurance Company that the deceased was aged 59 years at the time of accident. The Tribunal has wrongly applied the multiplier 9, instead of 8. Therefore, by applying the multiplier 8, the compensation amount awarded by the Tribunal has to be reduced.

9.Per contra, the learned counsel for the respondents 1 to 3 herein/claimants made his submissions supporting the award passed by the Tribunal.

10.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

11.It is the contention of the learned counsel appearing for the appellant/Insurance Company that on the date of accident, the driver of the vehicle did not possess a valid driving licence, hence, there is a violation of the conditions of the Insurance Policy and as such, the Insurance Company is not liable to pay the compensation. But, in the resent decision of the Hon'ble Supreme Court reported in ***2017 (2) TN MAC 145 (SC) [Mukund Dewangan Vs. Oriental Insurance Co. Ltd],*** it has been held by the Hon'ble Supreme Court that there is no necessity for a holder of Light Motor Vehicle driving licence to obtain specific endorsement to drive transport vehicle and on that ground, the Insurance Company cannot repudiate their liability to pay the compensation amount. Admittedly, in the instant case, the driver of the offending vehicle/van was holding license to drive LMV. Hence, in view of the above said decision of the Hon'ble Supreme Court, We do not find any force in the submission made by the learned counsel for the appellant/Insurance Company in this regard.

12.So far as the quantum of compensation is concerned, We find that the deceased was a retired Zonal Deputy Tahsildar and he was receiving pension and he was aged about 59 years at the time of accident. The Tribunal by relying upon Ex.P.8 (Pension Certificate of the deceased) has arrived at a sum of Rs.19,310/- as monthly income of the deceased. Thereafter, by deducting 1/3rd amount towards personal expenses, the Tribunal arrived at a sum of Rs.12,873/- as monthly loss of income. As such, the total annual loss of income to the family works out to Rs.1,54,476/- (12,873 x 12 = 1,54,476). Thereafter, by deducting 10% amount towards income-tax, the Tribunal has arrived at a sum of Rs.1,39,030/- as annual loss of income to the family. Thereafter, on the basis of the age of the deceased, who was 59 years at the time of accident, the Tribunal applied the multiplier 9 and arrived at a sum of Rs.12,51,270/- as loss of income. The calculation made by the Tribunal to award compensation under the head of loss of income is well within the principle laid down by the Hon'ble Supreme Court in various decisions. Hence, We do not find any infirmity in the award passed by the Tribunal under the head of loss of income.

13.It is the submission of the learned counsel for the appellant/Insurance Company that the age of the deceased was 59 years at the time of accident, but, the Tribunal has wrongly applied the multiplier 9 instead of 8. But, We find that as per the dictum laid down by the Hon'ble Supreme Court in the decision reported in ***(2009) 6 SCC 121 [Sarla Verma Vs. Delhi Transport Corporation],*** the correct multiplier for the age group of 56-60 is only 9. Hence, the submission made by the learned counsel for the appellant/Insurance Company cannot be accepted.

14.Further, the Tribunal has awarded only a sum of Rs.25,000/- towards funeral expenses, a sum of Rs.25,000/- for loss of consortium to the wife and another sum of Rs.50,000/- (Rs.25,000/- each) for the loss of love and affection to the daughters of the deceased. Thus, the Tribunal has passed the award for a total sum of Rs.13,51,270/-, which cannot be said to be on the higher side. Under such circumstances, We do not find any infirmity in the award passed by the Tribunal and there is no merit in the appeal.

15.In the result, the appeal is dismissed confirming the decree and judgment dated 12.09.2016 in M.C.O.P.No.546 of 2014 passed by the Motor Accidents Claims Tribunal (Special District Judge), Salem. The appellant/Insurance Company is directed to deposit the entire compensation amount, as awarded by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw their share amount as apportioned by the Tribunal, by making necessary application before the Tribunal.

Consequently, connected Miscellaneous Petitions are closed.

No costs.

(R.P.S.J.,) **(P.V.J.,)**
20-09-2017

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Copy to

The Motor Accidents Claims Tribunal,
(Special District Judge),
Salem.

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