IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.08.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2096 of 2017
and
C.M.P.No.11128 of 2017

The Branch Manager,
National Insurance Company Limited,
Salem. .. Appellant/2nd Respondent

/Vs/

1.Dhanalakshmi
2.Muruganantham
3.Navaneetham
4.A.Ramaswamy ..Respondents/Petitioners & 1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.12.2015 made in M.A.C.T.O.P.No.69 of 2014 (M.C.O.P.No.671 of 2011) on the file of the Motor Accidents Claims Tribunal, Special District Court, Dharmapuri.

For Appellant : Mrs.N.B.Surekha
For Respondents No.1 to 3 : Mr.R.Selvakumar

JUDGMENT

The deceased, M.Tamilvanan, aged about 21 years, earning a sum of Rs.9,000/- per month died in the accident that occurred on 03.07.2011. The parents and brother of the deceased filed claim petition claiming a sum of Rs.15,00,000/-.

2. The Tribunal, on considering the oral and documentary evidence, passed an award for a sum of Rs.7,98,000/-, under the following heads :-

Loss of income	Rs.6,48,000/-
Loss of Love and affection	Rs.1,00,000/-
Transportation charges	Rs. 25,000/-
Funeral Expenses	Rs. 25,000/-
Total	Rs.7,98,000/-

Challenging the negligence as well as the quantum of compensation awarded as excessive and disproportionate, the present appeal has been filed by the appellant.

3. The mode of accident and the role played by the deceased is important in order to appreciate the finding on negligence.

4. According to the averments made in the claim petition, the deceased was riding a motorcycle from Namakkal to Salem and at that time, the Maruthi Car bearing registration No. TN-28-Q-3344 came and dashed against him.

5. It is the contention of the Insurance Company/appellant that the accident took place only on account of the negligence of the deceased and therefore, no liability can be fastened on the insurance company. It is contended that even though the first information report was against the driver of the Maruthi Car, later, after investigation, the police officer spelt out that the negligence was on the part of the deceased and, therefore, final report was filed only as against the driver of the two wheeler and therefore, the negligence was only on the part of the deceased. In other words, it is contended that when the deceased is a tort-feasor, the legal representatives have no right to make any claim in respect of the fault committed by the deceased. Alternatively, it is contended by the learned counsel for the appellant that the deceased was under the influence of alcohol and there was a mention of the same in the records and therefore, in any event, the deceased having contributed to the accident, proportionate amount has to be reduced towards contributory negligence.

6. Per contra, it is submitted by the learned counsel for the respondents that the investigating agency has not properly conducted the enquiry and has filed a doctored final report to suit the insurer. It is pointed out by the learned counsel for the respondents that insofar the contention relating to the deceased being under the influence of alcohol is concerned, the chemical analysis report clearly reveals that neither poison nor alcohol was found in the viscera of the deceased and therefore, the contention that the deceased was under the influence of alcohol has no basis and the same should not be accepted.

7. When the final report has been filed as against the driver of the two wheeler/the deceased, whether the contention that no claim can be made against the insurer of the opposite vehicle is sustainable.

8. It is settled law that the finding of the trial court and the court records are not final and thereafter, an independent

enquiry can be conducted to find out who was at fault. However, in the case on hand, no enquiry whatsoever has been conducted by the insurance company to find out the truth or otherwise of the matter. The insurance company not having taken proper steps to conduct an enquiry, mere reliance on the final report filed by the police authorities alone will not suffice to turn down the finding rendered by the Tribunal, which is based on evidence available on record. Therefore, this Court is not inclined to differ with the finding arrived at by the Tribunal and, accordingly, the same is confirmed.

9. A perusal of the award of the claims tribunal reveals that the contention relating to the deceased being under the influence of alcohol, has been considered and the Tribunal has relied upon the evidence of RW1, Doctor who, during his cross examination, has clearly admitted that under Ex.P10, chemical analysis report, there is a clear mention that neither poison nor alcohol was found out in the viscera of the deceased. The witness for the insurance company himself having admitted a fact, which is borne out by record, the contention of the insurer that the deceased was under the influence of alcohol cannot be accepted.

10. Further, it is the duty of the parties participating in the proceedings to produce the best evidence possible to assist the court to arrive at the truth. The driver of the Maruti car is the best person to speak about the cause of accident and he has not been examined and no acceptable explanation has been given as to why best evidence available was withheld for consideration before the claims tribunal. Under such circumstances, the contention that the deceased himself was negligent cannot be accepted.

11. Though it is submitted by the learned counsel for the respondents/claimants that a cross appeal/cross objection has been filed by the claimants seeking enhancement, however, inspite of repeated requests, the case number has not been given. No other details relating to filing of the cross appeal/cross objection is forthcoming from the claimants. In such circumstances, this Court is not inclined to deal with the purported cross appeal said to have been filed by the claimants.

12. For the reasons aforesaid, this appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions is closed.

13. The appellant/Insurance company is directed to deposit the entire award amount along with interest at 7.5% per annum, as determined by the claims tribunal, from the date of petition

till the date of deposit, less the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount, as per the proportion fixed by the tribunal, directly to the bank account of the claimants/1 to 3 respondents through RTGS within a period of two weeks thereafter.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

sms/GLN
To
1.The Motor Accidents Claims Tribunal,
Special District Judge, Dharmapuri.

+1 CC to Mrs.N.B. Surekha, Advocate sr 58266.
+1 CC to Mr. Selvakumar, Advocate sr 88407.

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MG(CO)
SP(10/04/2018)