IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.238 of 2014
and
M.P. No. 1 of 2014

M/s.National Insurance Co. Ltd.,
Branch Office-I,
Near Old Bus Stand,
Post Box No.15,
Salem-1.

... Appellant / 1st respondent in the claim petition

versus

1. Rani
2. Krishnan
3.Karthick

…Respondents1 to 3 / Claimants

4.Elumalai

… Respondent-4 /2nd respondent in the claim Petition

5.M/s.United India Insurance Co. Ltd.
In the claim petition)
KBS Motors Building,
36, Katpadi Road,
Gandhi Nagar, Vellore – 632 006.

… Respondent-5/Respondent-3

6. Raja … Respondent-6 (owner of the vehicle-R4 in the claim petition)

(R6 was transposed as per the order dt.25.02.2011 made in I.A.No.188 of 2011)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.04.2013 made in M.C.O.P.No.865 of 2007 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Salem.

For Appellant	:	Mr.L.Chandran
For R1 to R3 and R6	:	No appearance
For R4	:	Batta due
For R5	:	Mr.T.Ravichandran

JUDGMENT

This appeal has been filed by the Insurance Company, challenging the liability as well as the quantum of compensation awarded by the Tribunal to the claimants.

2. Originally, the father, mother and brothers filed a claim petition for compensation as legal heirs of the deceased Eswaran.

3. The deceased, Eswaran, aged 20 years, employed as a Cleaner, under the sixth respondent herein, the owner of the vehicle bearing Reg.No.TN41F 7774, earning a sum of Rs.5,000/= p.m.

4. It is alleged in the claim petition that at about 2.30 a.m. on 10.03.2007, when the deceased was travelling as a Cleaner in the Goods Vehicle lorry, driven by its driver in a rash and negligent manner, the vehicle dashed against a stationed container lorry bearing Reg.No.AP02 1611, in which the deceased, who was travelling as a cleaner died on the spot. A case has been registered in Cr.No.10 of 2007 by Vellore North Police Station under Sections 279, 304-A IPC against the driver of the offending lorry (Goods vehicle).

5. While 2nd respondent before the claims Tribunal was the owner of the container lorry bearing Reg.No.AP-02-1611, the 3rd respondent was the insurer of the said vehicle.

6. The appellant herein, who was the insurer of the offending vehicle / Goods vehicle, raised an objection regarding the maintainability of the claim petition by the first petitioner in the claim petition, viz., Raja, who is said to be the father of the deceased. On such objection being raised by the Insurance Company, the first petitioner therein was ordered to be transposed as 4th respondent in the claim petition.

7. The issue raised by the Insurance Company was whether the person, who himself was responsible for the accident, can claim compensation in respect of that accident. The Tribunal gave a finding with regard to the status of the first petitioner as well as negligence. In para-12 of the order passed by the claims Tribunal, there was a specific finding that at the time of transportation of goods, the deceased was travelling along with driver of the lorry only as a cleaner. Though the status of the deceased as a cleaner was disputed by the Insurance Company, however, the Insurance company has not chosen to adduce any rebuttal evidence contrary to the evidence adduced by the claimants. Therefore, the finding of the claims Tribunal that the deceased was travelling in the vehicle only in the capacity

as cleaner stands untraversed and unchallenged.

8. Insofar as the negligence is concerned, there was also a finding that the accident took place only on account of rash driving of the vehicle on the part of the driver of the lorry, which belonged to the 6th respondent herein, viz., Raja. The Tribunal has relied upon Ex.P1-copy of the First Information Report, Ex.P4-Motor Vehicle Inspector's report, Ex.P5-Rough sketch (which shows the place of accident) and the charge sheet as Ex.P6.

9. The Tribunal has also taken into consideration the fact that the standard of proof required in the claim petition is preponderance of probability and not proof beyond reasonable doubt. The owner of the vehicle having remained ex parte, the Insurance company should have taken diligent steps to summon the 4th respondent as a witness and should have examined him on behalf of the Insurance Company. However, no evidence, contrary to what has been adduced by the claimants is available on record to disprove the finding that the fault was only on the part of the driver employed by the 4th respondent.

10. With regard to the liability of the Insurance Company, there was a specific finding in para-14 of the order of the Tribunal that the Insurance Policy covers the liability in respect of cleaner also.

11. On the basis of the above evidence available on record, the Tribunal has fastened the liability on the insurer of the offending vehicle, viz., the appellant herein. Though similar contentions has been raised before this Court, however, in the absence of any evidence to support such contentions, this Court is of the opinion that the findings rendered by the Tribunal with regard to negligence as well as the liability of the appellant herein deserves to be sustained.

12. Insofar as the quantum of the compensation is concerned, earning of the deceased has been taken at Rs.3,000/- p.m. and by deducting 50% towards his personal expenses and adopting multiplier of '18', the loss of dependency has been awarded at Rs.3,24,000/-; awarding Rs.5000/- towards funeral expenses and Rs.5,000/- towards transportation, the total compensation has been quantified at Rs.3,34,000/-. The mother of the deceased had been awarded a sum of Rs.2,00,000/- and rest of the claimants are awarded Rs.67,000/- each.

13. The main contention of the learned counsel appearing for the appellant is that when the owner of the vehicle, the 4th respondent in the claim petition is found vicariously liable, the claim made by the very same 4th respondent, as the father of

the deceased, along with other claimant, viz., wife and sons before the Tribunal is not maintainable. This contention cannot be accepted for the reason that though there is a relationship of father and son between the 4th respondent and the deceased, however, legal status in employment is totally different from personal relationship status. There exists an employer-employee relationship between the deceased and the 4th respondent and when the claimants have been shown to be the legal representatives of the deceased, the claim petition by the claimants including the 4th respondent, as father of the deceased, is maintainable.

14. It is the contention of the insurer/appellant that for the fault committed by the driver employed by the 4th respondent, the 4th respondent alone is answerable and accountable. When there is a valid policy covering the liability of cleaner, then the insurer of the vehicle is liable as per the contractual terms of the policy and the insurer cannot wriggle out of its liability to pay the compensation on the ground that there exists father-son relationship between the owner of the vehicle and the deceased.

15. It is neither the claim made by the owner himself in respect of injuries caused to him nor it is the claim made by the legal representatives in respect of death of the owner himself, where, for the fault committed by the driver employed, the owner himself becomes responsible. In the case on hand, it is a claim made, though by the owner of the vehicle, but, however, not in the capacity as owner of the vehicle, but in the capacity as father of the deceased. In other words, the father and son stand as two different personalities before the law and their personal relationship do not merge them as a single entity and the employer-employee relationship has to be taken into consideration while a claim is made for compensation as per the terms and conditions of the policy. Thus, there is no bar for the father to be the sharer of the compensation in respect of the death of the son. It is unfortunate that the father, who is the owner of the vehicle, should become the payee as well as the recipient himself.

16. It is also relevant to mention here that even in cases, where, the owner cum driver himself is the victim of the accident, in specified circumstances, the legal representatives are entitled to compensation on the principle of 'no fault liability'.

17. The learned counsel appearing for the appellant submits that even the name of the driver had not been mentioned and in all probability, the deceased could have been driving vehicle. The Court cannot rely on surmises and conjectures and in the absence of clear proof to show that it is only the deceased, who

was driving the vehicle at the time of accident, the liability of the insurance company cannot be disputed.

18. Further, the Tribunal has taken into consideration all aspects of the matter and has awarded very meagre amounts as compensation under various heads. When there was a specific finding on negligence and when there was a specific finding with regard to the liability on the part of the Insurance company, it is mandatory on the part of the Insurance company to satisfy the award in terms of the policy issued and the contentions raised by the appellant/insurer in the grounds of appeal are unsustainable and the appeal is liable to be dismissed.

19. For the reasons, the appeal is dismissed confirming the award passed by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

20. The Insurance Company is directed to deposit the award amount as ordered by the Tribunal along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, less the amount, if any, already deposited to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the respective claimants as per apportionment made by the Tribunal through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
(I Additional District Court),
Salem.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.87

C.M.A.No.238 of 2014

SJ(CO)
GSP(28/01/2019)