

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2017

CORAM
THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CMA.No.570 of 2012
and
MP.No.1 of 2012

National Insurance Co. Ltd.,
Tiruppur Branch,
Tiruppur
Tiruppur Taluk & District

...Appellant/2nd respondent

Vs.

1. Meenakshi
2. Nandana
3. Solaiyan @ Chinnasamy

...Respondents/Petitioners

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in MCOP No.818 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Dharmapuri dated 10.02.2011.

For Appellant : Mr. R.Ravichandran

For R1 to R3 : Mr.M.Selvam

JUDGMENT

The Insurance Company is the appellant. Respondents 1 to 3 have filed the claim petition seeking compensation for the death of Laxshmanan @ Sekar, who died in a Motor Accident on 24.05.2009. According to the claimants, the deceased, on the date of accident, was standing in front of a bus stop on Papparapatti-Pennagaram Road, the rider of a bike, bearing registration No.TN 39 AS 8244 riding his bike in a rash and negligent manner and dashed against the deceased Lakshamana @ Sekar. As a result, he sustained grievous injuries and he was taken to Government Hospital, Dharmapuri and from there, he was shifted to Nimahans Hospital, Bangalore. Again, he was shifted to Dharmapuri Hospital. However, on 02.06.2009, he died.

2. The Tribunal, after considering the materials on record, held that due to rash and negligent act of the rider of the motor cycle, the accident occurred. The Tribunal awarded total compensation of Rs.5,75,930/-.

3.This appeal has been preferred against the said award. The Tribunal found that the rider of the two wheeler was at fault, at the time of accident and he has violated policy conditions. The trial Court directed the insurer to pay the compensation in the first instance and thereafter, recover the amount from the owner of the offending vehicle by way of execution petition in the same proceedings before the tribunal.

4. It is not in dispute that the vehicle involved in the accident was insured with the appellant company. The learned counsel for the appellant pointed out that the name of the deceased is mentioned as Sekar alone in Accident Registrar copy (Ex.R.1), however in the First Information Report (Ex.A.1), the name of the deceased is shown as Lakshmanan @ Sekar. PW1, the wife of the deceased has stated that her husband's name is Lakshmanan @ Sekar. Therefore, the contention of the appellant that the identity of the deceased has not been established by the claimant cannot be accepted.

5.Coming to the quantum of compensation, the learned counsel for the appellant-Insurance Company pointed out that the multiplier was not correctly applied by the Tribunal.

6. Accident occurred in the year 2009. The Tribunal, on the basis of Ex.A.10 Transfer Certificate issued by the Education Department, fixed the age of the deceased as 34 years. The Tribunal has adopted the multiplier '17'. As per the decision in SARLA VERMA vs. DELHI TRANSPORT CORPORATION [(2009) 6 SCC 121], for the age groups of 31 to 35, the appropriate multiplier is 16. However, the tribunal omitted to take into account future prospects, while computing loss of income. As the deceased was aged 34, 50% of his monthly income can be added towards future prospects. Even multiplier 16 is applied, the amount fixed by the tribunal under the head 'loss of income' is on the lower side. Therefore, the tribunal was justified in fixing the loss of income at Rs.5,44,000/-. The deceased was doing Iron scrap and plastic business at Bangalore. The Tribunal fixed the monthly income as Rs.4,000/-, and there are three dependents, namely father, mother and wife. The Tribunal deducted 1/3rd of his income towards personal expenses and awarded Rs.5,000/- towards loss of consortium and Rs.5,000/- under the head 'love and affection', Rs.5,000/- towards transportation expenses and Rs.5,000/- for funeral expenses. The Tribunal awarded only reasonable amount towards medical expenses and it is supported by medical bills (Ex.A8). I am justified that the award is justified on facts. Considering the modest compensation, I hold that it does not require any interference.

7. The tribunal, on careful consideration of the facts and circumstances of the case, directed the insurer to pay the compensation in the first instance and thereafter, recover the amount from the owner of the offending vehicle by way of execution petition in the same proceedings before the tribunal.

Having regard to the facts and circumstances of the case and in

view of the specific finding to the effect that there was violation of policy condition, it cannot be said that the tribunal committed error in passing an order for pay and recover.

8. For the reasons stated above, the appeal stands dismissed. The award of the tribunal passed in M.C.O.P.No. 818 of 2009, dated 10.02.2011, is confirmed. The appellant/Insurance company is directed to deposit the award amount with interest as ordered by the tribunal and costs, less the statutory deposit, to the credit of M.C.O.P. No.818 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Dharmapuri, within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

dpq

To

- 1.The Motor Accidents Claims Tribunal
(Principal District Judge) at Dharmapuri
- 2.The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.M.Selvam, Advocate, sr.13985

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and
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mp (co)
ss (10/5/2017)

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