IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.02.2017
CORAM
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.750 of 2017
C.M.P.No.4085 of 2017

The Divisional Manager
National Insurance Co. Ltd.,
Pondy. ... Appellant

vs.

1. Lalitha
2. Ramasamy ... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree made in M.C.O.P.No.159 of 2014, on the file of the Motor Accidents Claims Tribunal (III Additional District & Sessions Judge) Cuddalore at Vriddhachalam, dated 16.12.2015.

For appellant : Mr.M.Krishnamoorthy

JUDGMENT

(Judgement of this Court was made by S.MANIKUMAR, J.)

National Insurance Company Ltd., Pondy, has filed this appeal against the judgment and decree made in M.C.O.P.No.159 of 2014, on the file of the Motor Accidents Claims Tribunal (III Additional District & Sessions Judge) Cuddalore at Vriddhachalam, dated 16.12.2015, fastening liability on the company to pay compensation.

2. In an accident, which occurred on 31.01.2014, involving a Motorcycle, bearing registration No.TN 31 AS 3297, driven by one Mr.V.Anand and insured with the appellant herein, son of the 1st respondent/claimant, pillion rider, died. Mother of the deceased, claimed compensation.

3. Appellant Insurance Company resisted the claim denying the manner of accident and liability to pay compensation, on the ground that, the driver of the motorcycle, was under the influence of alcohol, at the time of accident and hence, the deceased himself contributed to the accident. Without prejudice to the above, they disputed the quantum of compensation claimed under different heads.

4. The mother/claimant examined herself as P.W.1 and reiterated the manner of the accident. P.W.2 is the eye-witness to the accident. Ex.P1, dated 31.01.2014 - xerox copy of the F.I.R., Ex.P2, dated 07.02.2014 - xerox copy of Motor Vehicle Inspector's report, Ex.P3, dated 31.01.2014 - xerox copy of Accident Register copy issued by GH, Jayankodam, Ex.P4, dated 12.03.2014 - Discharge Summary issued by KSDC Hosiptal, Thanjavur, Ex.P5, dated 25.03.2014 - Death Certificate, Ex.P6, dated 28.04.2013 - xerox copy of insurance policy, Ex.P7, dated 04.05.2010 - Driving Licence of V.Anand, Ex.P8, dated 17.05.2011 - Xerox copy of the Registration Certificate, Ex.P9 - Profile of the deceased, Ex.P10 - xerox copy of educational qualification of the deceased, Selvakumar, Ex.P11 - Officer of appointment of the deceased Selvakumar, Ex.P12, dated 24.08.2013 - Salary Certificate of the deceased Selvakumar, Ex.P13 - Income-Tax particulars, Ex.P14 - Xerox copy of Pan Card, Ex.P15 - Medical Bills for Rs.5,56,529/-, have been marked on the side of the respondents/ claimants. Though the appellant-Insurance Company has examined R.W.1, Doctor and R.W.2, Assistant of the Insurance Company, failed to mark any documentary evidence, on their behalf.

5. On evaluation of pleadings and evidence, the claims tribunal came to the conclusion that the driver of the motorcycle, was negligent, in causing the accident and accordingly, fastened the liability on the appellant-Insurance Company to pay compensation of Rs.45,26,680/- with interest, at the rate of 7.5% per annum and costs.

6. Challenging the finding fixing negligence on the driver of the motorcycle, bearing registration No.TN 31 AS 3297, owned by the 2nd respondent herein, and insured with the appellant-Insurance Company, fastening liability on

the company to pay compensation to the legal representatives of the deceased, company has preferred the present appeal seeking for reversal of the judgment.

7. Mr.M.Krishnamoorthy, learned counsel for the appellant insurance company submitted that the tribunal has failed to consider that the deceased was under the influence of alcohol, fell down from the motorcycle and hence, responsible for travelling in careless manner. He further submitted that the Tribunal has erred in not considering the entry in Ex.P3 - Accident Register, issued by the Government Hospital, Jayankondam, wherein, initial treatment was given to the deceased, which clearly indicated that "smell of alcohol". Quantum of compensation is also challenged.

Heard the learned counsel for the appellant Insurance Company and perused the material available on record.

8. It is the case of the respondent/claimant that on 31.01.2014, at 12.00 Hours, at Uthiragudi on T.Pazhur to Jayankondam main road, when the deceased was travelling as a pillion rider in a Hero Honda Motorcycle, bearing Registration No.TN 31 AS 3297, the rider of the said vehicle, Mr.V.Anandan, drove the same, in a rash and negligent manner, suddenly slipped, due to which, the pillion rider sustained grievous injuries, and despite treatment, died in the hospital on 03.03.2014. Mother of the deceased, examined herself as PW.1 and reiterated the manner of accident. Her testimony is corroborated by PW.2, Mr.S.Ravichandran, eye-witness and supported by the documents, Ex.P1, dated 31.01.2014 - xerox copy of the F.I.R., Ex.P2, dated 07.02.2014 - xerox copy of Motor Vehicle Inspector's report and Ex.P3, dated 31.01.2014 - xerox copy of Accident Register copy issued by GH, Jayankodam.

9. Material on record shows that though an argument was placed before the claims tribunal that the deceased was under the influence of alcohol, at the time of accident and the same is evident from Ex.P3 - Accident Register. Upon perusal of the same, the claims tribunal has clearly observed that there is no entry in Ex.P3 - Accident Register, as to whether any blood test or urine test were conducted to find out that the deceased was

under the influence of alcohol. It was further observed that the rider of the motorcycle was also not examined on the side of the appellant-Insurance Company.

10. Even in the documents, Ex.P4, dated 12.03.2014 - Discharge Summary issued by KSDC Hosipital, Thanjavur and Ex.P5, dated 25.03.2014 - Death Certificate, there is no such entry, regarding influence of alcohol. Accident has occurred on 31.01.2014. Inspite of taking treatment for nearly one month, the injured died on 03.03.2014. Had the deceased was under the influence, on the date of accident, the same would have figured in the discharge summary. For the abovesaid reasons, this Court is not inclined to accept the said contention.

11. As regards the quantum of compensation, PW.1, mother of the deceased, has deposed that at the time of accident, the deceased, aged about 28 years, was a Senior Software Engineer in I-Gate Computer Systems Ltd., Bangalore and earned Rs.30,000/- per month. Upon perusal of the documents, Ex.P11 - Offer of appointment to the deceased, by the abovesaid Company, wherein the annual salary was fixed at Rs.3,00,000/- and Rs.22,332/- as gross salary, per month and Ex.P12 - Salary Certificate, wherein, the annual income was raised to Rs.3,59,020/- and gross salary as Rs.28,030/-, the Claims Tribunal fixed the monthly income of the deceased as Rs.28,030/- and after adding 50% of the income, towards future prospects, the Claims Tribunal determined the income as Rs.42,045/-. As the deceased was an income-tax assessee, based on the decision of this Court in The Branch Manager, Oriental Insurance Co. Ltd., v. Manconalar and others reported in 2011 (1) TNMAC 1 (DB), the Tribunal deducted 10% towards income-tax. Monthly income of the deceased, taken into consideration, for the purpose of computation, under the head, loss of contribution to the family, is Rs.37,841/-. Applying '17' multiplier and after deducting 50% towards the personal and living expenses of the deceased, the Claims Tribunal determined the loss of contribution as Rs.38,59,680/- (Rs.18,920/- x 12 x 17 x 50% deduction). As the deceased was a bachelor, aged 28 years, application of '17' multiplier and deduction of 50% towards the personal and living expenses, are in terms of the decision of the Hon'ble Apex Court in Sarla Verma v. Delhi Transport Corporation reported in 2009 (5) LW 561.

12. Accident has occurred on 31.01.2014. While arriving at the quantum of compensation, the Claims Tribunal has taken note of the decisions of the Hon'ble Apex Court. Though quantum of compensation is contended to be on the higher side, having regard to the avocation substantiated, a sum of Rs.37,841/-, taken into consideration by the Claims Tribunal, for computing the loss of contribution to the family, cannot be said to be erroneous.

13. Computation of loss of contribution has been done, only for 17 years. Even taking it for granted that the deceased would have married, after some time, still the contribution to the family, would have continued for a longer time. Quantum of compensation of Rs.45,26,680/-, awarded to the legal representatives of the deceased, cannot be said to be on the higher side, warranting interference.

14. Relationship of the claimant is disputed on the ground that the door number of the residential address is not given in the claim petition. Perusal of the counter affidavit, filed by the National Insurance Co. Ltd., before the Tribunal, does not indicate any objection on this line. Said objection raised at the appellate stage, cannot be accepted.

15. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the award amount, with accrued interest and costs, to the credit of M.C.O.P.No.159 of 2014, on the file of the Motor Accidents Claims Tribunal (III Additional District & Sessions Judge) Cuddalore at Vriddhachalam, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent/claimant is permitted to withdraw the same, by making necessary applications before the

Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

The Motor Accidents Claims Tribunal
(III Additional District & Sessions Judge)
Cuddalore at Vriddhachalam.

C.M.A.No.750 of 2017

VSN(CO)
RS(20/04/2017)