BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.11.2017
PRONOUNCED ON : 05.12.2017

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1345 of 2011
and
M.P(MD)No.1 of 2011

The Manager,
Royal Sundaram Alliance General
Insurance Company Limited,
No.21, Pattullos Road,
Chennai. ... Appellant/2nd Respondent

vs.

1.Ilayarani
2.Minor Yugesh Raghava
3.Balaji ... Respondents 1 to 3/Petitioners
4.Mathu ... 4th Respondent/1st Respondent

(Minor R – 2 rep. by his mother and next friend R - 1)

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order, dated 25.03.2011 made in M.C.O.P.No.574 of 2006 on the file of the Motor Accident Claims Tribunal (Principal District Court), Pudukkottai.

For Appellant : Mr.S.Srinivasa Raghavan
For RR 1 to 3 : Mr.R.P.Ramachanthiran
For R – 4 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Royal Sundaram Alliance General Insurance Company against the fair and decreetal order, dated 25.03.2011 made in M.C.O.P.No.574 of 2006, on the file of the Motor Accident Claims Tribunal (Principal District Court), Pudukkottai.

2.The brief facts of the claim petition is that the deceased Senthil Kumar, who is the husband of the first respondent/first claimant, father of the second respondent/second claimant and the brother of the third respondent/third claimant, who are the claimants before the Tribunal, has stated that the deceased Senthil Kumar on 03.02.2006 was travelling in a TATA Indigo Car bearing Registration No.TN-10J-3054 from Pudukottai to Chennai and when the vehicle was crossing in Mangalamedu Police jurisdiction near Chinnaru Electricity Board Office along with National Highways, the driver, namely Adaikappan, drove the vehicle in a rash and negligent manner and hit against the lorry coming from the opposite side ie., from North to South, and caused the said accident. The lorry did not stop, where the deceased-Senthil Kumar sustained grievous injuries and died on the spot. The said Adaikappan, who drove the vehicle belonging to the fourth respondent/first respondent, also died on the same day. Hence, the claimants filed a claim petition and claimed a sum of Rs.22,80,000/- as compensation and they restricted the same to Rs.20,00,000/-. The claimants have submitted that the deceased-Senthil Kumar was working as a Marketing Associates in the Loan Section in I.C.I.C.I Bank and drawing a salary of Rs.12,000/- per month and only with the income derived by the said deceased, who has been the sole bread winner, the entire family was running and the deceased-Senthil Kumar was 31 years old at the time of accident.

3.The appellant/second respondent-Royal Sundaram Alliance General Insurance Company filed a detailed counter-affidavit rebutting the averments made in the claim petition and the income derived by the deceased-Senthil Kumar and the manner in which the alleged accident has taken place. However, the appellant/second respondent-Royal Sundaram Alliance General Insurance Company did not deny the vehicle, in which, the deceased-Senthil Kumar was travelling and the same was not insured at the time of the accident and the policy has been issued in favour of the fourth respondent/first respondent, as per the Motor Vehicles Act and Rules in terms of the conditions which is applicable to a private car. The appellant/second respondent-Royal Sundaram Alliance General Insurance Company also raised an issue that as the deceased-Senthil Kumar was a gratuitous / unatuthorised passenger in the car and hence, the appellant/second respondent-Royal Sundaram Alliance General Insurance Company is not liable to pay any compensation to the respondents 1 to 3/claimants, since the policy does not cover any legal liability to unauthorised gratuitous passengers.

4.Before the Tribunal, on the side of the claimants, the wife of the deceased, the first respondent/first claimant in the present appeal, was examined as P.W.1 and one Subbiah was examined as P.W.2 and six documents viz., Exs.P.1 to P.6 were marked and on the side of the respondents, two witnesses viz., R.W.1 and R.W.2 were examined and three documents viz., Exs.R.1 to R.3 were marked and Ex.X.1 and Ex.X.2 were marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the learned counsel appearing on either side and also appreciating the evidence on record, in its finding had held that the accident took place only due to the rash and negligent act of the driver-Adaikappan, who also died on the spot and held that the vehicle in which, the deceased-Senthil Kumar was travelling was insured with the appellant/second respondent-Royal Sundaram Alliance General Insurance Company and they are not liable to pay compensation, as the policy had given a wider cover. As far as the question of quantum of the award is concerned, the Tribunal has awarded a sum of Rs.8,28,000/- fixing a sum of Rs.6,000/- per month as salary earned by the deceased and adopted '17' multiplier. Apart from awarding Rs.10,000/- towards loss of love and affection and Rs.2,000/- towards cremation charges, the Tribunal has also fixed 7.5% of interest from the date of filing of the claim petition till the date of deposit.

6.As against the above award of the Tribunal, the present Civil Miscellaneous Appeal is filed by the appellant/second respondent-Royal Sundaram Alliance General Insurance Company on various grounds which includes that the Tribunal has erroneously awarded, as it is a case of hit and run and the deceased was a gratuitous passenger and not authorized under the policy to travel in the said vehicle.

7.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 3.

8.The learned counsel appearing for the appellant/second respondent-Royal Sundaram Alliance General Insurance Company submitted that the Tribunal had not appreciated the defence of the insurer in a proper perspective and also on the basis of the sanction granted under Section 170 of the Motor Vehicles Act. He has further submitted that the Tribunal ought not to have accepted the version of the claimants that the accident had occurred on account of the rash and negligent act of the driver of the said car and there is also a delay in registering the F.I.R, as the accident in question took place on account of hit and run by an unknown vehicle, otherwise known as hit and run case, which was falsely converted into a claim petition. He would further submit that pertaining to Section 170 of the Motor Vehicles Act, 1998, there is a collusion between the person, who is making the claim as against the person, the claim is made.

9.The learned counsel appearing for the respondents 1 to 3/claimants would submit that the order of the Tribunal has to be substantiated.

10.On a perusal of the materials available on record, it is seen that there is no dispute regarding the accident that took place on 03.02.2006 at about 10.15 p.m. It is only P.W.2-Subbiah, who was travelling in the TATA Indigo Car which is alleged to have been involved in the accident, was the eye-witness to depose about the manner in which the accident took place. But, the learned counsel for the appellant/second respondent-Royal Sundaram Alliance General Insurance Company contended that the oral evidence deposed by the said P.W.2-Subbiah cannot be taken into account, as there is a contradictory statement made by P.W.2, while he gave statement for the registration of the F.I.R and also before the Tribunal.

11.The contention of the learned counsel for the appellant/second respondent-Royal Sundaram Alliance General Insurance Company cannot be accepted, as it is seen from the evidence that the accident took place at around 10.15 p.m., the said P.W.2-Subbiah is none other than the brother of Adaikappan, the driver of the vehicle, who died in the accident. P.W.2-Subbiah also sustained injuries during the course of the accident, who deposed that the car driven by the said Adaikkappan dashed against head on collusion with a lorry coming from the opposite direction and he had fracture in his right leg, apart from fracture in his ribs. Due to which, he fainted and lost conscious at KMC Hospital and only on 04.02.2006 at about 9'o clock, he returned to conscious and he did not remember the statement made to the police when he was totally unconscious and only thumb impression was taken by the police on that day.

12.P.W.2-Subbiah is the only eye witness and he reiterated the rash and negligent driving of the said Adaikappan and the lorry which came in the opposite direction, in a high speed, the accident had taken place. Thus, the Tribunal had accepted the version of P.W.2, who was the only person alive in the accident and held that the accident had taken place due to the rash and negligent driving of the said Adaikkappan.

13.On a perusal of the deposition and the documentary evidence filed by the appellant/second respondent-Royal Sundaram Alliance General Insurance Company, this Court do not find any infirmity in the conclusions derived by the Tribunal in holding that the accident had taken place only due to the rash and negligent driving of the said Adaikkappan, who also died during the course of the accident. In the absence of any contra evidence and documentary proof filed by the appellant/second respondent-Royal Sundaram Alliance General Insurance Company, the Tribunal has to believe the statement of eye-witness and the appellant/second respondent-Royal Sundaram Alliance General Insurance Company was not able to rebut the contra evidence of the eye-witness. This Court do not find any infirmity in the conclusion derived by the Tribunal regarding the manner in which the accident had taken place.

14.The Tribunal has rightly held that the TATA Indica car has been insured and having surviving policy, the appellant/second respondent-Royal Sundaram Alliance General Insurance Company is liable to pay the compensation.

15.Regarding the issue which has to be dealt with is that the respondents 1 to 3/claimants have claimed that the deceased-Senthil Kumar was working as a Marketing Executive in the Loan Section in I.C.I.C.I Bank drawing a sum of Rs.12,000/- as monthly salary and to prove the same, they have filed Ex.P.4, salary certificate, which would substantiate the income derived by the deceased-Senthil Kumar. The Tribunal, while considering the quantum of award, has rightly rejected the said evidence filed by the said evidence, as the author of the Salary Certificate was not examined. However, there is no contra evidence filed by the appellant/second respondent-Royal Sundaram Alliance General Insurance Company denying or disputing that the deceased was working in I.C.I.C.I Bank. The Tribunal though holding that the deceased was working at the time of accident with the I.C.I.C.I Bank has fixed the income of the deceased at Rs.6,000/- per month and deducted one-third amount towards personal expenses and fixed the monthly income of the deceased at Rs.4,000/- per month and the same arrives at Rs.48,000/- per annum and had adopted '17' multiplier for arriving at the said compensation, to be paid to the dependants of the said deceased-Senthil Kumar. The Tribunal has rightly adopted multiplier '17' as per the Second Schedule of Section 163 (A) of the Motor Vehicles Act and arrived at the compensation. However, the Tribunal has awarded a sum of Rs.10,000/- towards loss of love and affection and a sum of Rs.2,000/- towards cremation charges, which may not be correct as per the recent Judgment of the Honourable Supreme Court in National Insurance Company Limited ***Vs. Pranay Sethi and others*** reported in ***2017 (2) TNMAC 609 SC.***

16.Hence, this Court is of the view that the deceased was only 31 years at the time of accident and the first claimant was only 24 years and the second claimant was only 2 years of age on that date. Hence, the loss of the husband and the father to the child, cannot be compensated in terms of money. The love lost from the husband and the father, cannot be quantified in terms of money. Hence, this Court is of the view that as against Rs.10,000/- towards loss of love and affection awarded by the Tribunal, this Court is inclined to modify the said sum as Rs.50,000/- to each of the claimants 1 and 2. With regard to the cremation charges, as against Rs.2,000/- awarded by the Tribunal, this Court is inclined to modify the same to Rs.20,000/-. The Tribunal ought not to have apportioned Rs.50,000/- to the third claimant, who is the brother of the deceased. It is to be noted that the brother of the deceased, who is a major, aged 28 years at the time of accident and the third claimant cannot be considered as a dependant of the deceased, who himself was 31 years at the time of death. Hence, this Court modifies the award amount granted to the third claimant of Rs.50,000/-, which would go into the account of the minor son. Accordingly, the total amount of compensation is Rs.9,36,000/-. Out of which, it is apportioned as compensation to the wife of the deceased as Rs.6,00,000/- and Rs.3,36,000/- to the minor son and this Court awards an interest of 7.5% per annum from 06.09.2008 till the date of payment.

17.The appellant/second respondent-Royal Sundaram Alliance General Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount, if any, already deposited before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the major claimant is permitted to withdraw her share amount along with interest and costs by filing necessary petition before the Tribunal and the minor amount shall be kept in a Nationalized Bank and the first respondent is permitted to withdraw the interest once in three months till the date of the minor attaining the age of majority. No costs. The claimants are directed to remit the enhanced Court fee before the Court below for the enhanced award granted by this Court.

18.The Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
   (Principal District Court), Pudukkottai.

2. The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai. (2 Copies)

+ 1 CC TO Mr.R.P.RAMACHANTHIRAN, ADVOCATE IN SR No. 91091

PS
TE/KKR/SAR-3 : 25/01/2018 : 6P/5C