

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.1007 and 1008 of 2018

C.M.A.No.1007 of 2018:-

- 1.M.Annammal
 - 2.M.Priya (Minor)
 - 3.M.Praveena (Minor)
 - 4.M.Karthikeyan (Minor)
- Minors represented by their
mother / guardian 1st petitioner

..Appellants/Petitioners

C.M.A.No.1008 of 2018:-

- 1.Sivagangai
- 2.S.Deepa (Minor)
- 3.S.Yogesh (Minor)
- 4.S.Harish (Minor)
- 5.Amirthavalli

..Appellants/Petitioners

Vs.

1.M.Giril

- 2.The Reliance General Insurance Company Ltd.,
Heavitree, Unit No.1
3rd floor, No.23, Spur Tank Road
Chetpet, Chennai-600 031.
Now at
Reliance General Insurance Co Ltd.,
6th Floor, 6 Haddows Road
Nungambakkam, Chennai-34

..Respondents in both CMAs.

Prayer:- Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 23.12.2011 passed in M.C.O.P.No.1769 and 1770 of 2008 on the file of Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore District.

For appellants : : M/s.A.N.Viswanatha Rao.

for Respondents : : Mr.S.Arunkumar for R2

R1- Remained exparte before Tribunal.

C O M M O N J U D G M E N T

Both the above Civil Miscellaneous Appeals are filed by the Claimants/Petitioners, challenging the judgment and decree dated 23.12.2011 passed in M.C.O.P.No.1769 and 1770 of 2008 on the file of Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore District.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the Petitioners is that on 06.05.2008 at about 3.45 p.m., while the deceased Murugan was riding his two wheeler bearing Reg.No.TN-51-R-0382 in Chidambaram to Karaikal Main road, while going near Kazhuvan Thittu cross road, the 1st respondent vehicle bearing Reg.No.TN-32-A-8174 came at high speed in the opposite direction, dashed against the two wheeler of the deceased, causing him fatal injuries, resulting in his death on the spot. The Petitioners who are the wife and children of the deceased contend that the accident occurred only due to negligence of the 1st respondent vehicle driver. At the time of accident the deceased was aged 35 years and by working as a Fisherman, was earning Rs.10,000/- per month. The Petitioners were depending on the earnings of the deceased. Due to sudden death of the bread winner of the family, the Petitioners are suffering. Hence, the Petitioners sought for a sum of Rs.25,00,000/- as compensation from the respondents, who are the owner and insurer of the vehicle.

3. The Petitioners in MCOP.No. 1770 of 2008 states that the deceased Sankar who travelled as pillion rider in the two wheeler bearing Reg.No.TN-51-R-0382 driven by the deceased Murugan in respect of whom, the claim petition in MCOP.No.1769 of 2008 is filed, met with the accident as stated above and died on the spot. The deceased Sankar was aged 26 years and by working as Fisherman was earning Rs.10,000/- per month. The Petitioners, who are wife, children and mother of the deceased were depending on the earning of the deceased. Due to his sudden death, the Petitioners are unable to maintain themselves.

As such, the Petitioners sought for a sum of Rs.25,00,000/- as compensation from the respondents.

4. Before the Tribunal, the 2nd respondent, even though entered appearance failed to file any counter. Both MCOP.No.1769 and 1770 of 2008 were taken up for joint trial before the Tribunal. The Petitioners examined P.W.1 to P.W.3 and produced documents Ex.P.1 to Ex.P.7; as the respondents failed to come forward to contest the matter, neither oral nor documentary evidence was let in. As such, the Tribunal, considering the evidence let in by the Petitioners, found

negligence of the 1st respondent driver alone caused the accident, passed an award of Rs.8,89,000 in MCOP.No.1769 of 2008 and Rs.8,89,000/- in MCOP.No.1770 of 2008 payable by the Respondents to respective petitioners.

5. Being not satisfied with the quantum of the award, the appellants/claimants/Petitioners have come forward with the present appeals.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the Petitioners/claimants contend that the Tribunal ought to have fixed the monthly income of the deceased at Rs.10,000/-, but fixed only as Rs.6000/-. The Tribunal failed to consider the future earnings of the deceased as they were middle aged persons. The amount awarded under different heads is very meager and sought for enhancement of the award amount by allowing the appeals.

8. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that on the date of the accident, there was no policy coverage for the 1st respondent vehicle and the said vehicle involved in the accident was not insured with them. Thus, the 2nd respondent contends that they are not liable to pay any compensation as there was no policy in force. Thus the 2nd respondent sought for dismissal of the appeal.

9. Before the Tribunal, the Petitioners examined eyewitness to the occurrence as P.W.3 and he clearly stated that on 06.05.2008 at about 3.45 p.m., while he was standing near Kazhuvan Thittu Cross road in Chidambaram to Karaikal Main road, he saw a two wheeler bearing Reg.No.TN-51-R-0382 driven by Murugan along with deceased Sankar as pillion rider and the rider was going from south to north direction on the extreme left side of the Chidambaram-Karaikal Main road, and at that time, the 1st respondent car bearing Reg.No.TN-32-A-8174 came from opposite direction at high speed in rash and negligent manner, dashed against the two wheeler resulting in both the persons suffering fatal injuries. The Police also registered Ex.P.1-FIR against the car driver only. Based on the contents of Ex.P.1-FIR and P.W.3 eyewitness account, the Tribunal found that due to negligence of the 1st respondent's vehicle driver alone, the accident occurred. In the absence of any contra evidence, the said finding needs no interference.

10. The Petitioners/claimants in both the appeals contend that the Tribunal ought to have fixed the monthly income of the deceased at Rs.10,000/-. However, considering the fact that there was no acceptable proof of the monthly earnings of the deceased, the Tribunal fixed the notional income at Rs.6000/- per month. The same is just and proper and needs no interference.

11. The tribunal, in MCOP.No.1769/2008, on the basis of Ex.P.3-Post Mortem Certificate, fixed the age of the deceased as 35 years; in MCOP.No.1770/2008, on the basis of Ex.P.6-Post Mortem Certificate fixed the age of the deceased as 30 years and adopted multiplier '16' in both cases. Considering the number of dependants, the Tribunal deducted 1/4th towards personal expenses of the deceased and awarded Rs.8,89,000/- in both MCOPs, which, this court is of the view that the said compensation amount arrived at by the Tribunal in both MCOPs is just and proper and needs no interference.

12. The Tribunal found that the vehicle was insured with the 2nd respondent as evidenced by Ex.P.5 - Copy of Insurance Policy and the driver of the offending vehicle was having valid licence as per Ex.P.2-MVI Report. Thus, the Tribunal directed the respondents to pay the award amount jointly and severally. However, during the course of argument, the learned counsel for the 2nd respondent/Insurance company filed a memo stating that on the date of the occurrence viz., 06.05.2008, there was no valid insurance consequent to dishonour of the cheque issued towards premium for the 1st respondent vehicle insured with them. However it is conceded by the 2nd respondent/Insurance company that unfortunately the Insurance company failed to let in any evidence before the Tribunal to prove dishonour of the cheque issued by the 1st respondent towards premium. As such, considering the fact that there is no evidence placed before the Tribunal or before this court to prove that premium amount was not paid by the 1st respondent/owner and as per Ex.P.5-Policy Coverage was in force on the date of the accident, this court is not inclined to entertain the plea of the 2nd respondent to set aside the award on the ground that there was no Policy coverage on the date of accident. . However, the 2nd respondent is at liberty to recover the award amount from the 1st respondent, if law permits them to do so, by initiating separate proceedings.

13. In the result, this court finds no merit in the appeals. Accordingly, the Civil Miscellaneous Appeals are dismissed, confirming the award of the Tribunal passed in MCOP.Nos.1769 and 1770 of 2008 dated 23.12.2011. The appellants are not entitled for interest for the period of delay of 1918 days in filing the appeals as per order dated 23.04.2018 pass in CMP.No.11232/2017 in CMA.SR.No.52556 of 2017 in CMP.No.11233 of 2017 in CMA.SR.No.52559 of 2017 respectively. The 2nd respondent / Insurance company is at liberty to take necessary steps to recover the amount from the 1st respondent, if law permits them to do so. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Motor Accidents Claims Tribunal,
Principal District Judge, Cuddalore District.

2. The Section Officer,
V.R. Section, High Court, Madras. (2 copies)

C.M.A.Nos.1007 and 1008 of 2018

RJI (CO)
TR(02/08/2018)

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