

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3480 of 2010

The Manager,
Bajaj Allianz General Insurance Co. Ltd.,
Bhagawathi Palace, 2nd Floor,
U Block, No.13, Avenue Anna Nagar East,
Madras - 102. ..Appellant/2nd Respondent

Vs.

1. T.Bommi,
2. Minor. T. Naresh
3. Minor. T. Sangeetha ... Respondents 1 to 3/Petitioners
4. The Proprietor,
Blue Dart Express Ltd.,
Airport Exit Road,
Bangalore.560 017. ...4th Respondent/1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 to against the award and decree dated 29.06.2010 made in M.C.O.P.No.46 of 2009 on the file of the Motor Vehicles Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

For Appellant : Mr. S. Arun Kumar

For Respondent : Mr. C.Prabakaran for R1 to R3
Mr. A.John Britto for R4

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the award dated 29.6.2010 passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore in MCOP.No.46 of 2009.

2. The brief facts leading to the filing of the instant appeal are as follows;

(i) One Tamilselvam @ Selvam died on 3.8.2008, as a result of an accident caused by a Maruthi Baleno Car bearing Registration No.KA-03-ME-8249 owned by the 4th respondent and insured with the appellant. The deceased while crossing the road, in a Hero Honda Motor Cycle bearing Registration No.TN-23-AE-6871 on the Bangalore High Way at Sethuvalai Bus Stop, the abovesaid car bearing Registration No. KA-03-ME-8249, driven by its driver in a rash and negligent manner, dashed against the motor cycle and caused the accident, as a result of which, the deceased sustained severe injuries and he later died in the Vellore Government Hospital.

(ii) The dependants of the deceased are the respondents 1 to 3 in this appeal. They are his wife and two children. They preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.46 of 2009 seeking a compensation of Rs.35 lakhs for the death of Tamilselvam @ Selvam.

(iii) The Motor Accident Claims Tribunal, by its award dated 29.6.2010 in MCOP.No.46 of 2009 directed the appellant to pay the respondents 1 to 3, a sum of Rs.6,70,000/- together with interest at the rate of 7.5% per annum from the date of claim, till the date of realisation.

3. Aggrieved by the Award dated 29.6.2010 passed in MCOP.No.46 of 2009, the instant appeal has been filed by the Insurance Company.

4. Heard Mr. S.Arun Kumar, learned counsel for the appellant and Mr. C.Prabakaran, learned counsel for respondents 1 to 3 and Mr.A.John Britto, learned counsel for 4th respondent, owner of the insured vehicle.

5. According to the learned counsel for the appellant, the appeal has been filed challenging the findings of the tribunal on negligence as well as on quantum. According to him, only due to the fault of the deceased, the accident had happened. According to him, the deceased suddenly crossed the road and invited the accident. He also drew the attention of this Court to the rough sketch which is marked as Ex.R.1 before the tribunal. According to him, as seen from the rough sketch, it is clear that only due to the fault of the deceased, the accident had happened. Learned counsel further contended that the quantum of compensation awarded by the tribunal under the impugned award is excessive.

6. Per contra, learned counsel for the respondents 1 to 3 would submit that the FIR was registered only against the driver of the car insured with the appellant. Further he submitted that charge sheet was also filed only against the driver of the insured vehicle.

7. According to him, the tribunal has rightly come to the conclusion that only due to the rash and negligent driving by the driver of the car insured with the appellant, the accident had happened.

8. Learned counsel for the respondents 1 to 3 further contended that in view of the Constitution Bench Judgment of the Honourable Supreme Court in the case of National Insurance Company Limited versus Pranay Sethi and others reported in 2017 (2) TN MAC 609(SC), the total compensation awarded under the impugned award is a just compensation.

9. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following;

a) The Tribunal under the impugned award has passed a reasoned and well considered award. It has considered the oral and documentary evidence placed by the respective parties and only thereafter, has passed the impugned award in favour of the respondents 1 to 3. FIR has been registered only against the driver of the insured vehicle and after investigation by the police, a charge sheet has also been filed against the driver of the insured vehicle.

b) The FIR as well as the charge sheet was marked as Ex.P.1 and P4 respectively before the tribunal, but the tribunal has not considered the rough sketch Ex.R.1 filed by the appellant before the tribunal. As seen from the rough sketch, there is a possibility that the deceased also may have been responsible for the cause of the accident. The accident happened in an intersection. The deceased was riding his motor cycle from East to West in the National High Way and the insured vehicle was coming from West to East in the opposite direction in the same High Way in the next lane.

c) As seen from the rough sketch, the deceased has taken a right turn at the intersection towards Northern side cutting across the National High Way. Being a national Highway, it is natural that the vehicles ply at a high speed. Due to the sudden right turn made by the deceased, there is a possibility that the insured vehicle which was coming in the opposite direction in the same High Way may have been unable to apply sudden brakes to avoid hitting against the motor cycle in which the deceased was travelling. Therefore it can be inferred that the deceased is also responsible to some extent of contributory negligence for the occurrence of the accident.

d) Considering the facts and circumstances of the instant case and the materials available on record, this Court assesses the contributory negligence on the part of the deceased at 10% and the contributory negligence on the part of the driver of the insured vehicle at 90%.

e) Insofar as the quantum of compensation awarded by the tribunal, this court is of the considered view that it is a just compensation in view of the Constitution Bench Judgment of the Honourable Supreme Court in the case of National Insurance Company Limited versus Pranay Sethi and others reported in 2017 (2) TN MAC 609(SC). Therefore the appellant has not made out any case for interference in so far as the quantum is concerned.

f) In the light of the above observations, the appellant is directed to deposit 90% of the total compensation amount awarded by the tribunal together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

10. In the result,

(i) the appeal is partly allowed. No costs.

(ii) The appellant is directed to deposit 90% of the total compensation amount awarded by the tribunal together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation, less the amount, if any, already deposited, to the credit of MCOP within a period of four weeks from the date of receipt of a copy of this order;

(iii) On such deposit being made, the respondents 1 to 3 are permitted to withdraw the same by filing an appropriate application.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msr

To

1. The Motor Vehicles Accident Claims Tribunal,
Chief Judicial Magistrate, Vellore.

2. The Record Clerk,
VR Section,
Madras High Court.

+1cc to M/S.C.Prabakaran, Advocate Sr.75684
+1cc to M/S.Arunkumar, Advocate Sr.76115

C.M.A.No.3480 of 2010

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srg 12/12/2018