IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1594 of 2018
and
CMP.No.12724 of 2018

M/s. Reliance General Insurance Co. Ltd.,
Reliance House, VI Floor,
No.6, Haddows Road,
Chennai - 600 006. ... Appellant/2nd Respondent

..vs..

1.Swarnalatha
2. Mohan ... Respondents 1 & 2/Petitioners
3. Balamurugan ... 3rd Respondent/1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal order dated 23.01.2014 made in MCOP.No.3417 of 2008, on the file of the Motor Accident Claims Tribunal/The Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mr.M.B.Gopalan
Respondents : Ms.G.Anitha for R-1 and R-2
R-3 Notice Dispensed with

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 23.01.2014 made in MCOP.No.3417 of 2008 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Court of Small Causes, Chennai, the present appeal has been filed by the Second Respondent Insurance company to set aside the award passed by the Tribunal.

2.With both parties consent, this appeal is disposed of at the stage of admission itself.

3. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

4. The case of the petitioner is that on 15.08.2008 at about 5.20 p.m., while the deceased was riding his Motor Cycle bearing Registration No.TN-10-M-3494 from Mahabalipuram to Chennai, the first respondent's Tipper Lorry bearing Registration No. TN-20-U-0354, came at high speed, driven in a rash and negligent manner, dashed against the vehicle of the deceased, causing him fatal injuries resulting in his death on the spot. The accident occurred due to the negligence of the first respondent's Tipper Lorry driver only. The deceased was aged 23 years and by working as a manager in a private concern was earning Rs.4,50,000/- per annum. The petitioners who are the parents of the deceased were depending on the income earned by their son. Thus, due to the sudden demise of their son, the petitioners have lost not only the love and affection of their son, but also the monthly contribution to the family by the deceased. Thus, the petitioners seeks a sum of Rs.75,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

5. On the other hand, opposing the claim of the petitioners, by filing counter, the second respondent/Insurance Company contends that the accident does not occur in the manner alleged by the petitioners. The petitioners have to prove that the vehicle had valid policy coverage. The petitioners are also to prove that the driver of the first respondent's vehicle possessed valid driving license. The accident does not occur due to the negligence of the first respondent's driver. The amount claimed by the petitioner is highly excessive. Thus, the second respondent seeks dismissal of the claim petition.

6. Before the Tribunal, the petitioners examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P13 to prove their claim. The respondents examined R.W.1 and R.W.2 produced documents Ex.R1 to Ex.R5 to counter the claim of the petitioners.

7. The Tribunal, after analyzing the evidence on record, found negligence of the first respondent's vehicle driver alone caused the accident, passed an award for a sum of Rs.6,88,000/- payable by the respondents to the petitioners. Aggrieved over the said findings of the Tribunal, the Second respondent/Insurance Company has come forward with the present appeal.

8.Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the petitioners/claimants and perused the materials available on record.

9.The learned counsel appearing for the appellant/Insurance Company contends that the Tribunal has awarded much higher amount as compensation without considering the materials on record properly. The Tribunal erred in considering the age of the deceased for fixing the multiplier instead of the age of the claimants. Thus, the appellant/Insurance Company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

10.Per contra, the learned counsel appearing for the respondents 1 and 2/petitioners/claimants contends that there is no merit in this appeal and it is clear from the grounds raised by the appellant/Insurance Company itself, that there is no merit in this appeal. Thus, the respondents 1 and 2 herein/petitioners/claimants seeks for dismissal of the appeal.

11.Even though, the appeal is filed by the second respondent/ Insurance Company, they have not raised any ground regarding negligence and liability. The Tribunal, on the basis of eyewitness account of P.W.3 and the contents of Ex.P1 First Information Report registered against the first respondent vehicle driver and E.X.P5 Charge Sheet filed against the same driver, correctly concluded that the negligence of the first respondent vehicle driver alone caused the accident. As such the only issue to be considered in this appeal is quantum only.

12.Even though the second respondent/Insurance Company contended that the Tribunal wrongly fixed the quantum of award, no specific, acceptable valid contention is raised by the second respondent/Insurance Company to modify or to set aside the quantum of award passed by the Tribunal.

13.The deceased stated to be 23 years and was employed as manager in a private company, earning Rs.4,50,000/- per annum. It is clear from Ex.P3 postmortem certificate and Ex.P2 death certificate, as well as Ex.P6 driving license of the deceased, he was aged 22 years. Admittedly, he died as a bachelor. According to the first petitioner who deposed as P.W.2, her son was carrying on business in the name of Venkateswara Industries and produced Ex.P8 Memorandum of Understanding, Ex.P10 Certificate of Registration, in support of their contention. Further, the income tax returns for the assessment year 2006-2007 to 2008-2009 is also produced. The Bank pass book of the deceased was produced as Ex.P12. The Tribunal, considering the fact that the said Venkateswara Industries was in the name of the first petitioner and on the basis of P.W.2 evidence fixed the monthly income of the deceased at Rs.6,000/-. Further, as the deceased was bachelor, deducted 50% of the income towards personal expenses. As the deceased was aged 22 years, the correct multiplier to be applied is 18. Thus, the loss of dependency will be Rs.6,48,000/- (3,000 X 12 X 18 = Rs.6,48,000/-).

14. The Tribunal provided a sum of Rs.25,000/- towards loss of love and affection, Rs.10,000/- towards funeral expenses and Rs.5,000/- towards transport expenses. Thus, the total sum of Rs.6,88,000/- was provided as compensation for the petitioners. Even though, the quantum of award is challenged in the appeal, there is no acceptable substantial contention raised by the appellant/2nd respondent Insurance Company to modify the award passed by the Tribunal. Absolutely, there is no valid ground made out by the appellant Insurance Company to interfere with the award passed by the Tribunal. As such, considering the age and qualification of the deceased, the award passed by the Tribunal is just and proper and the same does not warrant any interference. Therefore, the appeal has to fail. The point is answered accordingly.

15.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The amount of Rs.6,88,000/- awarded by the Tribunal dated 23.01.2014 made in MCOP.No.3417 of 2008 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Court of Small Causes, Chennai is hereby confirmed. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rrg/ssi

To

The Chief Judge,
Court of Small Causes,
Chennai.

GJ(CO)
sm:11.9.2018