

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1469 of 2011
and
M.P.No.1 of 2011

M/s.National Insurance Co. Ltd
2nd Floor, No.169, Anna Salai,
Chennai. Appellant/2nd respondent

...vs...

1.Thiruvengadam
2.Vijayarangan
3.Krishnamurthy
4.Vijayaprakash
5.Krishnaraj Respondents 1 to 5/Petitioners
6.Santhi 6th Respondent/1st respondent
7.Senthilkumar 7th Respondent/3rd respondent
8.National Insurance Co. Ltd.,
No.110, J.N. Street,
Pondicherry. 8th respondent/4th respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act,1988, against the Order and Decretal Order dated 26.10.2007 made in MCOP.No.982 of 2005 on the file of the Motor Accident Claims Tribunal/(Principal District Judge) Villupuram.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : M/s.V.Suguna for
M/s.C.Munusamy for R1 to R5

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 26.10.2007 made in MCOP.No.982 of 2005 on the file of the Motor Accident Claims Tribunal/(Principal District Judge) Villupuram, the present appeal has been filed by the 2nd respondent Insurance Company to set aside the award passed by the Tribunal.

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

3.The case of the petitioners is that on 21.08.2005 at about 7.00 a.m., while the first petitioner's wife Malliga and others were proceeding in a car bearing Registration No.TN-01-C-8368, while going near Keelakolai Village, the lorry bearing Registration No.PY-01-J-5922, came in the opposite direction at high speed, driven in a rash and negligent manner, dashed against the car in which the first petitioner's wife was proceeding. Due to the accident, the first petitioner's wife suffered fatal injury and others suffered multiple grievous injuries. The first petitioner's wife Malliga died on the spot itself. The deceased who was aged 47 years, was earning Rs.10,000/- per month from her self employment. The petitioners who are the husband and sons of the deceased have lost the love and affection and contribution to the family by the deceased. Thus, the petitioners sought for a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicles.

4.On the other hand, opposing the claim petition, the 2nd and 4th respondents/Insurance Company by filing counter contends that the accident does not occur in the manner alleged by the petitioners. The age, occupation and income of the deceased as alleged by the petitioners is not correct. The amount claimed by the petitioners is highly excessive. Thus, the third respondent Insurance Company seeks for dismissal of the petition.

5.Before the Tribunal, the petitioners filed MCOP.No.982 of 2005 and it was taken up for joint trial along with four other MCOPs. The petitioners examined P.W.1 to P.W.6, produced documents Ex.P1 to Ex.P43 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6.The Tribunal, on the basis of materials available on record, found the negligence of the driver of the first respondent lorry driver alone caused the accident passed an award for a sum of Rs.4,72,500/- as compensation payable by the respondents 1 and 2 to the petitioners. The claim petition was dismissed against the other respondents. Aggrieved over the said findings of the Tribunal, the 2nd respondent/Insurance Company has come forward with this present appeal to set aside the award passed by the Tribunal.

7.Heard the learned counsel appearing for the appellant/2nd respondent Insurance Company and the learned counsel appearing

for the respondents 1 to 5/claimants and perused the materials available on record.

8.The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the award passed by the Tribunal is highly excessive. The Tribunal erred in adopting multiplier 13. The compensation given by the Tribunal is on the higher side. The monthly income of the deceased was fixed at Rs.4,500/- without any basis. Thus, the 2nd respondent Insurance Company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

9.Per contra, the learned counsel appearing for the respondents 1 to 5/claimants contends that the Tribunal after fixing the negligence on the lorry driver belonging to the first respondent insured with the second respondent passed an award for a just and reasonable compensation, which requires no interference. Thus, the respondents 1 to 5/claimants/petitioners sought for dismissal of the appeal.

10.The vehicles involved in the accident are insured with the one and the same Insurance Company. As such, the conclusion of the Tribunal that the negligence of first respondent lorry driver alone caused the accident is not challenged by the 2nd respondent Insurance Company. It is only the quantum of award that is in dispute. As such, the conclusion of the Tribunal regarding the negligence aspect has become final.

11.As petition averments, the deceased who is the wife of the first petitioner was running a Rice Mill and Dairy Farm, earning a sum of Rs.10,000/- per month. The first petitioner who deposed as P.W.1 stated that the age of the deceased was 45 years. It is evident from Ex.P22 School Transfer Certificate that the deceased who is the wife of the first petitioner was born on 29.06.1959. As the accident occurred during 2005, her age is fixed as 45 years. Even though, the petitioners claimed that the deceased was earning Rs.10,000/- per month, as there was no proof, the Tribunal fixed the notional monthly income at Rs.4,500/- and adopted multiplier 13. The Tribunal calculated the loss of income suffered by the petitioners at Rs.4,68,000/-. In view of the reasoning stated by the Tribunal for its conclusion, this Court feels that there is no error in the award passed by the Tribunal regarding the quantum. Thus, no ground is made out to prove that the conclusion of the Tribunal is not correct. Further, the second respondent Insurance Company is not able to point out any error or omission on the part of this Tribunal in passing the award under challenge. As such, the quantum of award passed by the Tribunal is just and proper and the same does not require any interference. Therefore, the appeal has to fail, the point is answered accordingly.

12.In the result, the civil miscellaneous appeal is dismissed. No costs. The Order and Decreetal order dated 26.10.2007 made in MCOP.No.982 of 2005 on the file of the Motor Accident Claims Tribunal/(Principal District Judge) Villupuram is hereby confirmed. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rrg

To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Villupuram.

2.The Section Officer,
V.R. Section,
High Court, Madras 104.

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.48845

+1cc to Mr.C.Munusamy, Advocate Sr.49211

+1cc to Mr.T.Dhanyakumar, Advocate Sr.49589

C.M.A.No.1469 of 2011

ss[co]
srg 14/09/2018

WEB COPY