IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1637 of 2016
and
CMP.NO.124460/2016

United India Insurance Co. Ltd.,
No.48, Arcot Road,
Saligramam, Chennai-93. ... Appellant/2nd Respondent

..vs..

1.G.Nookaraju
2.G.Mahalakshmi ... Respondents/Petitioners
3.Gopalakrishnan Vaikuntan ... 3rd Respondent/1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 18.06.2014 made in MCOP.No.804 of 2012 on the file of the Motor Accident Claims Tribunal/III Additional District Judge, Thiruvallur at Poonamallee.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.M.Varadhakamaraj for R1 & R2

JUDGMENT

Being aggrieved over the finding of the Tribunal, dated 18.06.2014 made in MCOP.No.804 of 2012 on the file of the Motor Accident Claims Tribunal/III Additional District Judge, Thiruvallur at Poonamallee, the second respondent-Insurance Company has come forward with this present appeal seeking to set aside the award passed by the Tribunal.

2. With Both parties consent, the matter 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.

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4. The case of the petitioners is that on 13.07.2012 at about 05.20 a.m., while the deceased was travelling as a pillion rider in a two wheeler bearing Registration No.TN-20-AP-2560, in Velacherry Main Road, towards Tambaram, while he was going near Ramalinga Apartments, Medavakkam, the rider of the two wheeler due to high speed lost the control dashed against the centre median, while taking turn resulting in the death of the pillion rider on the spot itself. The accident occurred only due to the rash and negligent driving by the rider of the two wheeler. The deceased was aged about 23 years at the time of the accident and by working as Associate Training Engineer was earning a sum of Rs.2,80,000/- per month. The petitioners who are the parents of the deceased were depending on the income of the deceased. Thus, they sought for a sum of Rs.22,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

5. On the other hand, opposing the claim petition, the second respondent-Insurance company filed counter contending that the accident does not occurr in the manner alleged by the petitioners. The age, avocation and income of the deceased as claimed by the petitioners is denied. The rider of the two wheeler does not posses valid driving licence. While the deceased was going as a pillion in the two wheeler, a unknown lorry came at high speed and dashed against the first respondent motor cycle in Medavakkam. Consequently, the deceased fell down suffered fatal injuries and died on the spot. The rider of the first respondent motor cycle is no way responsible for the accident. As such, the respondents are not liable to pay any compensation. Hence, the second respondent Insurance Company sought for dismissal of the petition.

6. Before the Tribunal, the petitioners examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P11 to prove their claim. On the side of the respondents, no oral evidence was let in, but Ex.R1 document alone was produced.

7. The Tribunal, after analyzing the evidence available on record found the negligence on the part of the first respondent motor cycle rider alone is the cause for the accident passed Award for a sum of Rs.21,93,080/- as compensation to the petitioners. Being aggrieved over the finding of the Tribunal, the second respondent-Insurance Company has come forward with this present appeal seeking to set aside the award passed by the Tribunal.

8. I have heard the learned counsel appearing for the appellant/second respondent Insurance company and the learned counsel appearing for the appellants/petitioners and perused the materials available on record.

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9. The learned counsel appearing for the appellant/second respondent Insurance Company contends that the Tribunal failed to consider that the accident occurred only due to the hit and run by the unknown lorry. The contents of Ex.P1 first information report itself clearly states about the accident being the result of rash driving of unknown lorry driver. The Tribunal failed to appreciate the evidence properly and wrongly fixed the liability on the part of the respondents. The amount awarded by the Tribunal is very excessive. Thus, the respondents 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 to 2/petitioners/Claimant contends that the accident occurred only due to the rash and negligent driving of the first respondent vehicle driver. The Tribunal has properly appreciated the evidence on recording passed just and fair award. The claim of the second respondent-Insurance company is unsustainable. Thus, the respondents 1 and 2/petitioners sought for dismissal of the appeal.

11. The Tribunal after considering the evidence of eye witness to the occurrence who deposed as P.W.2 and the contents of Ex.P1 First Information Report as well as Ex.P7 charge sheet concluded that the negligence of the first respondent vehicle driver alone caused the accident. It is seen from Ex.P1 First Information Report that the police registered the case against the rider of the motor cycle only. Ultimately after investigation, the police laid the charge sheet against him. As such, the eye witness account of the accident given by P.W.2 stated that the rider of the two wheeler drove the vehicle in a rash and negligent manner and dashed against the divider in the middle of the road is clearly corroborated by the contents of Ex.P1 First Information Report and Ex.P7 Charge Sheet. Therefore, the conclusion of the Tribunal that the negligence of the first respondent vehicle driver alone caused the accident is based on the proper appreciation of the evidence on record and the same needs no interference.

12. The second respondent/Insurance Company contends that the accident occurred only due to hit and run committed by unknown lorry, but there is no evidence for the same. The second respondent-Insurance Company has not examined the investigator or produced any investigation report to prove their contention. As such, the finding of the Tribunal on the basis of eye witness account given by P.W.2 and the contents of Ex.P1 First Information Report and Ex.P7 charge sheet that the first respondent vehicle driver alone caused the accident is perfectly in order.

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13. The Tribunal, after analysing the evidence on record, on the basis of Ex.P6 Pan Card of the deceased, Ex.P5 I.D Card, Ex.P3 Postmortem Certificate and Ex.P2 Death Certificate, fixed the aged of the deceased as 23 year. The Tribunal, on the basis of available evidence found that the monthly salary of the deceased was Rs.20,900/- and after deducting 1/3rd amount towards the personal expenses of the deceased, fixed the monthly contribution to the family at Rs.13,930/- and awarded a sum of Rs.21,73,080/- towards loss of income. Likewise, the Tribunal provided for a sum of Rs.10,000/- towards loss of love and affection, a sum of Rs.5,000/- towards Transport Charges and for a sum of Rs.5,000/- towards funeral expenses and awarded a total sum of Rs.21,93,080/- as compensation to the petitioners. The said quantum of award passed by the Tribunal appears to be just and proper and the same is not disputed of questioned by either petitioners or the respondents. As such, this Court finds no ground to interfere with the quantum of award passed by the Tribunal. In view of the above said discussion, it is concluded that the claim of the second respondent Insurance Company that the accident occurred only due to the hit and run by unknown lorry is not proved and the same cannot be accepted. As such, the conclusion of the Tribunal that the negligence of the first respondent vehicle driver alone caused the accident and the respondents are liable to pay a sum of Rs.21,93,080/- as compensation to the petitioners is just and proper and the same need not be interfered with. The point is answered accordingly.

14. In the result, the civil miscellaneous appeal is dismissed. No costs. The amount of Rs.21,93,080/- awarded by the Tribunal dated 18.06.2014 made in MCOP.No.804 of 2012 on the file of the Motor Accident Claims Tribunal/III Additional District Judge, Thiruvallur at Poonamallee is hereby confirmed. Consequently Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

The III Additional District Judge,
Motor Accident Claims Tribunal,
Thiruvallur @ Poonamallee.

+1cc to Mr.D.Bhaskaran, Advocate sr.no.21707
+1cc to Mr.K.Varadha Kamaraj, Advocate sr.no.21650

C.M.A.No.1637 of 2016

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