

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1950 of 2016
and
CMP.No.15211 of 2017

The Divisional Manager,
Bharti AXA General Insurance Co. Ltd.,
Divisional Office, SDF Park Circus,
Kolkata,
West Bengal-700 016. Appellant/2nd respondent

...vs...

1.Vasantha
2.Kannaiyan Respondents 1 & 2/Petitioners
3.S.Gangadharppa 2nd respondent/1st respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 29.01.2016 made in MCOP.No.206 of 2014 on the file of the Motor Accident Claims Tribunal/(Special District Judge), Krishnagiri.

For Appellant : Mr.Srinivasan Ramalingam

Respondents : Mr.C.Prabakaran for R1 and R2.

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 29.01.2016 made in MCOP.No.206 of 2014 on the file of the Motor Accident Claims Tribunal/(Special District Judge), Krishnagiri, 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 12.11.2013, while the deceased Sankar was proceeding in the Motor Cycle bearing Registration No.TN-24-K-8978 as a pillion rider, in Hosur to Krishnagiri Road, at about 9.55.a.m., while going near Kakkanapuram "U" turn, the first respondent's car bearing Registration No.KA-40-A-0055 insured with the second respondent, came at high speed, driven in a rash and negligent manner, dashed on the motor cycle and due to the impact, the rider of the motor cycle, namely, Muniappan sustained grievous injuries and the pillion rider, namely, the deceased Sankar suffered fatal injuries and subsequently he died on 20.11.2013 in Government Mohan Kumaramangalam Medical College Hospital, Salem. The accident occurred due to the rash and negligent driving of the first respondent car driver only. The deceased was aged 22 years and by working as mason was earning Rs.450/- per day. The petitioners, who are the parents of the deceased were depending on the earning of the deceased. Due to the sudden death of the bread winner of the family, the petitioners are suffering for want of income. Thus, the petitioners sought for a sum of Rs.30,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4.On the other hand, opposing the claim petition, the Second respondent-Insurance Company by filing counter contends that the accident does not occur in the manner alleged by the petitioner. At the time of accident, the car bearing Registration No.KA-40-A-0055 was proceeding from Hosur to Krishnagiri, at that time, the two wheeler bearing Registration No.TN-24-Y-8978 suddenly crossed the Kakkanapuram "U" turn without any signal or indication and dashed on the first respondent car inspite of best efforts taken by the car driver to avert the accident. The rider of the two wheeler entered in the National Highway road and dashed on the car. Hence, the rider of the two wheeler alone was responsible for the accident. The rider of the two wheeler did not possess valid driving licence. The second respondent disputed the claim of the petitioners about the age, avocation and income of the deceased. The amount claimed by the petitioners is highly excessive. Thus, the second respondent Insurance Company sought for dismissal of the petition.

5.Before the Tribunal, the petitioners examined P.W.1 to P.W.3, produced documents Ex.P1 to Ex.P15 to prove their claim. The second respondent examined R.W.1 and R.W.2, produced Ex.R1 to Ex.R6 to contradict the claim of the petitioners.

6.The Tribunal, on the basis of materials available on record, found the negligence of the first respondent car driver only caused the accident, passed an award for a sum of

Rs.11,58,000/- as compensation to the petitioners. However, as the first respondent car was not having valid permit to operate the car in the State of Tamil Nadu, the Tribunal held that the first respondent has committed violation of policy condition and directed the second respondent to pay the entire award amount at first and then to recover the same from the first respondent/owner of the car. Aggrieved over the said findings of the Tribunal, the second respondent-Insurance Company has come forward with this present appeal.

7. Heard the learned counsel appearing for the appellant/2nd respondent Insurance Company and the learned counsel appearing for the petitioners/claimants and perused the materials available on record.

8.The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the Tribunal failed to appreciate the evidence on record properly and wrongly fixed the negligence on the first respondent car driver. The Tribunal failed to consider the fact that the owner and insurer of the Motor Cycle bearing Registration No.TN-24-K-8978 involved in the accident are necessary parties to the case. The Tribunal failed to appreciate the fact that as the rider of the two wheeler was entering the National Highway from the side road, he ought to have given way to the vehicles proceeding along the main road. The Tribunal ought to have held that the rider of the two wheeler guilty of contributory negligence. The rider of the two wheeler has not produced his driving licence and the same is evidenced by Motor Vehicle Inspector's report. The Insurance Policy relating to the two wheeler was not produced for verification. The Tribunal has fixed the notional income on the higher side and adopted the multiplier 17, which is not proper. The amount awarded by the Tribunal under different heads is on the higher side and the same is liable to be reduced. Thus, the appellant/2nd respondent Insurance Company seeks to set aside the award passed by the Tribunal by entertaining the appeal.

9.Per contra, the learned counsel appearing for the respondents 1 and 2/Petitioners contends that the rider of the motor cycle is no way responsible for the accident. The Appellant-Insurance Company is not justified in filing the appeal. The Award passed by the Tribunal is based on proper appreciation of the evidence and there is no ground made out to interfere with the same. Thus, the respondents/1 and 2 petitioners sought for dismissal of the appeal.

10.The first petitioner who deposed as P.W.1 stated about the manner in which the accident occurred, but, she is not an eye witness to the occurrence. The eye witness to the accident who deposed as P.W.3 clearly stated that on 12.11.2003, while he

was standing in Kakkanapuram "U" turn around 9.55. a.m., in Hosur to Krishnagiri Highway, the two wheeler bearing Registration No.TN-24-K-8978 came at normal speed and at that time, a car bearing Registration No.KA-40-A-0055 came at high speed from Hosur to Krishnagiri and dashed on the two wheeler resulting in the rider of the two wheeler as well as pillion rider being thrown out. Both the persons suffered injuries. According to P.W.3, the accident occurred only due to the negligence of the first respondent car driver. The Sub Inspector of Police, Guruparapalli Police Station, who deposed as R.W.2 produced the Rough Sketch of the occurrence spot as Ex.P12. The Police have also registered Ex.P1 First Information Report against the first respondent car driver only. Subsequently, the police altered the First Information Report as evidenced by Ex.P2. The Police after completing of investigation laid the charge sheet against the first respondent car driver only. The same is evident from deposition of P.W.3. Thus, it is clear from the eye witness account of P.W.3 and the contents of Ex.P1 First Information Report, Ex.P2 alteration report that the accident occurred due to the negligence of the first respondent car driver only. The same is corroborated by rough sketch of the occurrence spot.

11.On the side of the respondents, the staff of the appellant-Insurance company was examined as R.W.1. The person who deposed as R.W.1 stated that he knew about the accident from the records but has not stated anything about the manner in which the accident occurred. Likewise, the person who deposed as R.W.2 also has not witnessed the occurrence and has not stated any thing about the manner of the accident. Thus, there is no contra evidence let in by the second respondent to disprove the evidence of P.W.1 and 3 about the manner in which the accident occurred. Thus, it is clear from the oral and documentary evidence available on record that the negligence of the first respondent car driver alone caused the accident.

12.The petitioners stated that the deceased Sankar was aged 26 years and by working as mason was earning Rs.450/- per day. As per the evidence of P.W.1, the deceased Sankar was aged 26 years. However, there is no documentary proof for the age of the deceased. In Ex.P3 Postmortem certificate, his age is stated to be 26 years, while in Ex.P8 and Ex.P9 Accident Register issued by the Government Hospital, Salem to the deceased, the age of the deceased is stated to be 30 years. In such circumstances, the age of the deceased is fixed as 30 years. For the said age group, the multiplier is to be applied is 17.

13.The petitioners stated that the deceased was earning Rs.450/- per day. However, as there was no evidence to prove the same, the Tribunal fixed the monthly income at Rs.10,000/-. As

the accident occurred during 2013, it is appropriate to fix the notional income of the deceased at Rs.10,000/- per month. As the deceased was bachelor, 50% of the income is deducted towards his personal expenses. Thus, the loss of income would be calculated as follows:-

Rs.10,000/- deducted 50% Rs.5,000/- = Rs.5,000/- x 12 = Rs.60,000/- x 17 = Rs.10,20,000/-.

14.The Tribunal provided a sum of Rs.25,000/- towards funeral expenses, and the same is on the higher side. As such, a sum of Rs.15,000/- is provided towards funeral expenses instead of Rs.25,000/- provided by the Tribunal. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of love and affection and the same is very excessive. As such, a sum of Rs.20,000/- is provided towards loss of love and affection instead of Rs.1,00,000/- awarded by the Tribunal. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	10,20,000.00	10,20,000.00
2.	Transportation	10,000.00	10,000.00
3.	Loss of love and affection	1,00,000.00	20,000.00
4.	Funeral Expenses	25,000.00	15,000.00
5.	Damage of cloths	3,000.00	3,000.00
	Total	11,58,000.00	10,68,000.00

Accordingly, the amount of Rs.11,58,000/- awarded by the Tribunal is modified and the same is reduced to Rs.10,68,000/-.

15.The petitioners claims that they are entitled for compensation from both the respondents. However, the second respondent Insurance Company contends that the car bearing Registration No.KA-40-A-0055, which was insured with them does not have any valid permit to operate in the State of TamilNadu. The accident occurred on 12.11.2013. The staff of Chikbelapur RTO Office, Karnataka who deposed as R.W.2 stated that Ex.R7 is the extract of permit given to the car bearing Registration No.KA-40-A-0055 and as per the same, the said car is permitted to operate within the Karnataka State only. R.W.2 further stated that if the said car is to be operated in other states, temporary special permit is to be obtained. The person who deposed as R.W.1 stated that he is employed with the second respondent Insurance Company, the car bearing Registration No.KA-40-A-0055 is insured with them and produced a copy of the policy as Ex.R1. He also produced the copy of the permit issued to the car as Ex.R2. He also stated that the owner of the said

car has only paid road tax for the period from 12.11.2013 to 18.11.2013, but no temporary permit was obtained by them. On the other hand, the petitioners produced Ex.P15 Tax Receipt to show that they have paid road tax for the period from 12.11.2013 to 18.11.2013. It is thus clear that as the accident occurred on 12.11.2013, there was no valid permit for the first respondent to operate the car in the State of TamilNadu. The police produced a copy of the Registration Certificate of the car as Ex.P13. However, considering the materials available on record, the Tribunal found that the temporary permit has not been produced and as such it amounts to clear violation of the policy conditions. Hence, the Tribunal held that the second respondent Insurance Company is entitled to recover the award amount from the first respondent owner after satisfying the award. The said conclusion is appropriate and the same is confirmed.

16. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.11,58,000/- awarded by the Tribunal 29.01.2016 made in MCOP.No.206 of 2014 on the file of the Motor Accident Claims Tribunal/(Special District Judge), Krishnagiri is reduced to Rs.10,68,000/-. The appellant/Insurance Company is directed to deposit the entire award amount of Rs.10,68,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. After depositing the entire award amount, the appellant-Insurance Company is permitted to recover the same from the second respondent/owner of the vehicle bearing Registration No.KA-40-A-0055. The Appellant-Insurance company is entitled to withdraw the excess amount, if any paid. On such deposit, the respondents 1 and 2/claimants are entitled to equal share. The respondents 1 and 2/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. Consequently, connected C.M.P. is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rrg

To

1.The Special District Judge,
Krishnagiri.

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

+lcc to Mr.Prabakaran, Advocate Sr.47925

+lcc to Mr.Srinivasan Ramalingam, Advocate Sr.48194

C.M.A.No.1950 of 2016

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