

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2891 of 2011

United India Insurance Company Ltd.,
No.82, North Mada Street,
Mylapore, Chennai-600 004. Appellant/2nd respondent

...vs...

1.H.Suganthi Mala

2.Sharmila Suresh

... Respondents 1 & 2/Petitioners

3.Manjunath

.... 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 30.11.2010, made in MCOP.No.1807 of 2007 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr.S.Arunkumar
Respondents : Mr.S.Udayakumar for R-1

JUDGMENT

Aggrieved over the findings of the Tribunal dated 30.11.2010, made in MCOP.No.1807 of 2007 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Small Causes Court, Chennai. the 2nd respondent-Insurance Company filed this present appeal 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 petitioner is that on 25.06.2006 at about 6.30 hours, as the deceased was proceeding in a two wheeler

bearing Registration No.TN-22-AL-2138 as pillion rider, while going near Porur, in the Poonamallee High Road, as the rider of the two wheeler applied sudden brake, the deceased fell down from two wheeler suffered fatal injury and died. The accident occurred only due to the negligence of the rider of the two wheeler, in which the deceased was proceeding. At the time of the accident, the deceased was aged 61 years and was earning Rs.8,000/- per month from his employment as part time accountant in a private company. The petitioners who are the wife and daughter of the deceased were dependent on him. Due to sudden demise of the deceased, the petitioners have lost the bread winner of the family. Thus, the petitioners seeks a sum of Rs.10,00,000/- 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 did not occur in the manner alleged by the petitioners. The claim of the petitioners about the age, occupation and monthly income of the deceased is denied. The rider of the two wheeler was not having valid licence. The amount claimed by the petitioners is highly excessive. The claim of the petitioners that the accident occurred due to the negligence of the rider of the two wheeler as alleged in the petition is not true. The second respondent is not liable to pay any compensation to the petitioners. Thus, the second respondent Insurance Company seeks dismissal of the petition.

5.Before the Tribunal, the petitioners examined P.W.1 and P.W.2, produced documents Ex.P1 to Ex.P7 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 first respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.3,20,000/- as compensation to the petitioners. Aggrieved over the said findings of the Tribunal, the second respondent Insurance Company has come forward with the present appeal seeking to set aside the award passed by the Tribunal .

7.Heard the learned counsel appearing for the appellant/second respondent-Insurance Company and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8.The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the Tribunal erred in holding that the two wheeler bearing Registration No.TN-22-AL2138 was involved in the accident which took place on 25.06.2006. The Tribunal failed to note that the complaint was

lodged to the police after 5 days of the alleged occurrence. The Tribunal also failed to note that as per the hospital records, the deceased was found lying in unconscious condition on the road and he was taken to the Hospital by some unknown persons. As such, the claim of the petitioners that the deceased was going as pillion rider in the two wheeler driver by the first respondent, then he would have intimated the police authorities about the accident and also taken the deceased to the hospital, but he has not done so. The same will prove that the accident does not occur in the manner alleged by the petitioners. The claim of the petitioners is totally false. Hence, the award passed by the Tribunal is to be set aside by entertaining the appeal.

9.Per contra, the learned counsel appearing for the respondents 1 and 2/claimants contends that it is clear from the oral and documentary evidence let in by the first petitioner that the first respondent vehicle was involved in the accident and the deceased suffered fatal injuries due to the rash and negligent driving of the two wheeler by the first respondent. The award passed by the Tribunal is just and appropriate. Thus, petitioners/claimants seeks for dismissal of the appeal.

10.According to the petitioners, the deceased who was proceeding as pillion rider in the first respondent two wheeler bearing Registration No.TN-22-AL-2138 and driver by the first respondent himself met with accident. According to the evidence P.W.2, the accident occurred only due to the negligence of the first respondent vehicle rider. The police also registered Ex.P1 First Information Report against the first respondent vehicle driver only. On the contrary to Refute the same, the respondent has not let in any contra evidence. As such, the Tribunal has correctly concluded on the basis of P.W.2 oral evidence and contents of Ex.P1 first Information Report that the negligence of the first respondent two wheeler rider alone caused the accident and the same needs no interference.

11.The petitioners has stated that the deceased was aged 61 years, and earning Rs.8,000/- per month by working as an accountant in the private firm. The deceased has retired as Headmaster. The claim of the petitioners, that the deceased was aged 61 years is corroborated by Ex.P4 death report, Ex.P6 Postmortem Certificate and Ex.P7 Death Summary. As per the contents of said documents, the age of the deceased is fixed as 61 years.

12.It is clear from Ex.P2 legal heir certificate that the petitioners are the legal heirs of the deceased. Even though the petitioners claim that the deceased after retiring as Headmaster was employed as accountant in a private concern

earning Rs.8,000/- per month, no proof of his avocation as well as income is provided for. Even though the petitioner produced Ex.P5 challan for payment of income tax, there is no evidence on record to prove that the deceased after retirement of Headmaster was employed as accountant in a private concern earning Rs.8,000/- per month. In the absence of any independent evidence, the Tribunal has correctly concluded that the monthly income of the deceased would be Rs.4,500/-. As the number of dependents are two in number, the Tribunal deducted 1/3rd of the income towards personal expenses of the deceased and fixed the annual contribution of the deceased at Rs.36,000/-. Considering the fact that the deceased was aged 61 years, the multiplier to be applied is 7. Thus, the loss of dependency was calculated as follows. Rs.36,000/- x 7 = Rs.2,52,000/-. The Tribunal provided a sum of Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of love and affection, Rs.7,000/- towards funeral expenses and a sum of Rs.41,000/- provided towards Medical expenses. Considering the fact that the accident occurred during, 2006, the amount provided by the Tribunal under the conventional heads as stated above is appropriate and the same needs no interference. Thus, the Tribunal awarded a sum of Rs.3.20,000/- as compensation.

13. Even though the learned counsel appearing for the appellant-Insurance company contended that the first respondent vehicle was never involved in the accident, the same cannot be accepted in the absence of any supporting evidence. The first respondent has not let in any evidence to contradict the version given by the petitioners about the manner in which the accident occurred. The fact that the deceased suffered injury in the accident and died subsequently due to the same is evidenced by Ex.P6 Postmortem Certificate. As such, the contention of the respondents that the first respondent vehicle is not involved in the accident as alleged by the petitioner is unsustainable and the appeal has to fail. The point is answered accordingly.

14. In the result, this civil miscellaneous appeal is dismissed. No costs. The Order and decretal order dated 30.11.2010, made in MCOP.No.1807 of 2007 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Small Causes Court, Chennai is hereby confirmed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Judge,
Small Causes Court,
Chennai.

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

+1cc to Mr.S.Udayakumar, Advocate, S.R.No.44257

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.44576

C.M.A.No.2891 of 2011

GP (CO)
GSP (04/10/2018)



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