

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2561 of 2016
and
CMP.No.18359 of 2016

Bajaj Allianz General Insurance Co. Limited
No.319/1, Mangalam Road
Opp. Diamond Theatre
Tiruppur.

.... Appellant/2nd Respondent

Vs

1. K.Kannammal
2. K.Prabhu
3. K.Chiranjeevi
4. G.Malliga
5. P.Raju

.... Respondents/Petitioners 1 to 4/
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 7.4.2016 passed in M.C.O.P.No.526 of 2008 by the Motor Accidents Claims Tribunal, Principal District Court, Tiruppur.

For Appellant : Mr.M.B.Raghavan

For Respondents: Mr.A.Tamilrajan (for R1)
No Appearance (for R2 to R5)

JUDGMENT

Calling into question the decree and judgment dated 7.4.2016 passed in M.C.O.P.No.526 of 2008 by the Motor Accidents Claims Tribunal, Principal District Court, Tiruppur, the present civil miscellaneous appeal is filed.

2. The facts in a nutshell are as under: The first respondent is the wife of the deceased, Kittan. The second and third respondents are the sons of the deceased and the fourth respondent is the daughter of the deceased. Respondents 1 to 4 have filed claim petition. In the claim petition it is stated

that on 1.8.2007, at about 5.00 PM, when the deceased was walking on the left side of the road north to south, near 11, Chettipalayam Pirivu Palli Thottam, Thirumurugan Poondi Ring Road, Tirupur, the fifth respondent herein drove the vehicle, i.e., two wheeler Bajaj CT 100, bearing registration No.TN 39 AD 9313 in a rash and negligent manner and in a high speed and dashed upon the deceased from back side. Due to the collision, it is stated that the deceased suffered grievous injuries on his head. The deceased was admitted to Priya Hospital at about 9 PM and after giving first aid, he was shifted to the General Hospital, Coimbatore and on 2.8.2007 at about 12.15 AM in the early morning he died.

3. The third respondent lodged a complaint against the fifth respondent on 2.8.2007 before the Annupurpalayam Police Station and a case was registered under Sections 279, 304A of the Indian Penal Code in Crime No.405 of 2007.

4. It was the say of respondents 1 to 4 that the deceased had provided the entire livelihood to all the members of the family and due to his demise, all the claimants are put to irreparable loss and hardship. Thus, respondents 1 to 4 claimed compensation of Rs.10 lakhs.

5. The claim petition was resisted by the appellant insurance company contending that the person driving the vehicle has "no relation in force" as on the date of accident to drive the vehicle. It was also stated that the driver of the vehicle was not holding a valid and effective driving license at the time of the accident. The appellant also disputed the age and income of the deceased and the mode of accident. In any event, it was pleaded that the amount claimed is exorbitant.

6. The learned Tribunal, by award dated 7.4.2016, granted compensation of Rs.7,70,686/-.

7. Assailing the said award, the present appeal is filed by the insurance company.

8. It is the contention of the learned counsel appearing on behalf of the appellant insurance company that the motorcycle was not at all involved in the accident and the evidence adduced by the insurance company to fortify the said plea has been rejected by the Tribunal.

9. It is further contended that the eye-witness (P.W.5), examined on behalf of the claimants, could not have been present at the time of accident and his evidence has been stage-managed by the claimants.

10. In any event, he submitted that the amount awarded by the Tribunal is excessive.

11. Per contra, the learned counsel appearing for the respondents 1 to 4 reiterated the reasons that weighed with the Tribunal and prayed for dismissal of this appeal.

12. I heard Mr.M.B.Raghavan, learned counsel for the appellant and Mr.A.Tamilrajan, learned counsel for the 1st respondent and perused the documents available on record. No representation on behalf of the respondents 2 to 5.

13. The main grievance of the appellant is that the fifth respondent, who was driving the offending vehicle has no relation in force as on the date of accident to drive the vehicle and the Tribunal erred in considering the said aspect. Moreover, at the time of accident, the fifth respondent was not qualified for holding or obtaining such driving licence and he has not satisfied the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989 and further has contravened the provisions of the Motor Vehicles Act, 1988 and the rules framed thereunder and had also committed breach of terms and conditions of the policy.

14. The appellant also contended that in the first information report, the offending vehicle's number was not mentioned and that the motorcycle in question was not involved in the accident. Stating so, it was contended by the appellant that they are not liable to pay any compensation.

15. Admittedly, no documentary evidence has been produced by the appellant to prove that the offending motorcycle was not involved in the accident. On the other hand, the evidence of P.W.1 and other witnesses establish that due to hitting of the fifth respondent's motorcycle, the deceased was sustained grievous injuries and succumbed to injuries on 02.8.2007.

16. It is seen from the report of the Motor Vehicle Inspector that on 9.8.2007 itself, the motorcycle in question was subjected for testing. In Ex.P6-charge sheet, the offending motorcycle number of has been mentioned, which would prove the involvement of the offending motorcycle in the accident and also the fifth respondent is the owner of the motorcycle. As rightly held by the Tribunal, if really the fifth respondent aggrieved over the motorcycle tested by the Motor Vehicle Inspector, he would have lodged a complaint. But no such complaint was lodged by the fifth respondent. The fifth respondent remained ex parte in the claim petition.

17. In his evidence, R.W.1 deposed that he had investigated

the case and prepared Ex.R1 report. In Ex.R1, R.W.1 clearly stated that the body of the deceased was lying in the scene of occurrence. The aforesaid piece of evidence would also clearly show the involvement of the fifth respondent's motorcycle and had caused the accident.

18. The appellant contended that the fifth respondent is closely related to the family of the deceased and without properly examining witnesses, the police have subjected the fifth respondent's motorcycle for inspection. The legal officer of the the appellant insurance company was examined as R.W.2. In her evidence, R.W.2 deposed that despite notice given to the fifth respondent calling upon him to produce the driving licence, he had failed to produce the same before the appellant insurance company, which would prove that at the time of accident, the fifth respondent was not having valid driving licence.

19. In the present case, though the appellant denied the manner of accident, nothing has been produced to establish the same. However, on the side of the respondents 1 to 6, rough sketch has been produced and on examining the rough sketch, the Tribunal held that the accident was not occurred while the deceased crossing the road and motorcycle bearing registration No.TN-39 AD 9313 alone hit the deceased on the back side. Thus, from the rough sketch, it is proved that the accident was due to the negligence of the fifth respondent. It is also proved that at the time of accident, the offending motorcycle was insured with the appellant insurance company and the fifth respondent was also having valid driving licence to drive the motorcycle. Considering the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the rider of the motorcycle bearing registration No.TN-39 AD 9313. Therefore, the Tribunal was right in holding that the appellant and the fifth respondent were jointly and severally liable to pay the compensation.

20. As far as the quantum of compensation awarded by the Tribunal is concerned, the Tribunal awarded total compensation of Rs.7,70,686/- by taking the monthly contribution to the family at Rs.3,881/- after giving addition of 15% towards future prospects and also after deducting one-fourth towards personal expenses. The said amount includes the conventional damages.

21. The case of the respondents 1 to 4 is that at the time of accident, the deceased Kittan was working as Kalasi in Basiraja Transport, Tiruppur and was getting salary of Rs.6,000/- per month. To prove that the deceased was working as Kalasi in Basiraja Transport, the respondents 1 to 4 have examined P.W.3 co-employee, who categorically deposed that the

deceased was working as Kalasi in Basiraja Transport, Tiruppur and was earning Rs.200/- per day. No document has been produced by the respondents 1 to 4 qua receiving of Rs.200/- per day as salary by the deceased at the time of accident. The evidence of P.W.3 clearly shows that at the time of accident, the deceased was working as Kalasi in Basiraja Transport, Tiruppur. However, in the absence of proof, the Tribunal has taken the monthly income of the deceased at Rs.4,500/-, which in my considered opinion is reasonable.

22. At the time of accident, the deceased was aged 50 years and the same was proved through Ex.P2-death certificate. By relying upon the decision of the Hon'ble Supreme Court in Sarla Verma and others v. Delhi Transport Corporation and another, reported in 2009 ACJ 1298, the Tribunal has given 15% addition towards future prospects. Since the deceased was aged 50 years and was working in a company as Kalasi, if he alive, he would have earned more. Therefore, 15% addition given by the Tribunal towards future prospects is reasonable. Since the dependents are 4 in numbers, the Tribunal has rightly deducted one-fourth towards personal and living expenses of the deceased and has taken Rs.3,881/- as monthly contribution to the family. Adopting multiplier "13", the Tribunal calculated the loss of dependency at Rs.6,05,436/- and the same is confirmed.

23. As far as the conventional damages are concerned, the Tribunal awarded Rs.10,000/- towards transport charges; Rs.250/- towards damages to cloths; Rs.50,000/- towards loss of consortium and mental agony; Rs.1,00,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. Since figures on conventional heads awarded by the Tribunal are very reasonable, the same are confirmed. Thus, the total compensation of Rs.7,70,686/- awarded by the Tribunal is just and reasonable. This Court finds no infirmity and/or perversity in the award of the Tribunal. No valid grounds have been made out to interfere with the award of the Tribunal and the appeal is liable to be dismissed.

24. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. It is stated that pursuant to the order of this Court, the appellant insurance company has deposited the entire award amount with proportionate accrued interest and costs to the credit of M.C.O.P.No.526 of 2008. It is also stated that pursuant to the order of this Court dated 28.7.2017, the respondents 1 to 4 have withdrawn Rs.2,50,000/-. The respondents 1 to 4 are permitted to withdraw the remaining amount lying in M.C.O.P.No.526 of 2008 on the file of the Motor Accident Claims Tribunal, Tiruppur with accrued interest as

apportioned by the Tribunal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

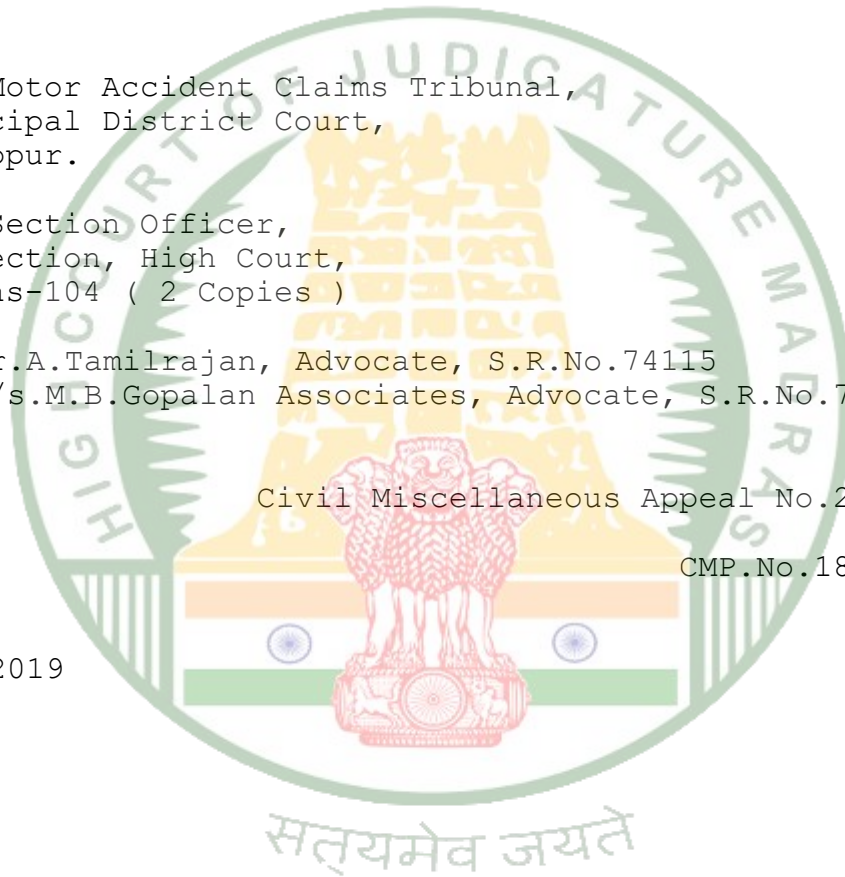
1. The Motor Accident Claims Tribunal,
Principal District Court,
Tiruppur.
2. The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+1cc to Mr.A.Tamilrajan, Advocate, S.R.No.74115

+1cc to M/s.M.B.Gopalan Associates, Advocate, S.R.No.74557

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