IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3425 of 2011

The New India Assurance Co Ltd.,
Branch office, M.G. Road,
Puducherry-1. ..Appellant/2nd respondent

..vs..

1.Latchoumy
2.Rajeswari(Minor)
3.Soundar(Minor)
(Minor respondents 2 and 3 rep. by
their mother and next friend
Latchoumy)
4.Andal ..Respondents 1 to 4/Petitioners
5.Velmurugan ..5th respondent/1st respondent

Prayer: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 29.04.2011 made in MCOP.No.75 of 2007 on the file of the Motor Accident Claims Tribunal/(Principal District Judge), Puducherry.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.V.Kumaravelan for R1 to R4
R5 : No Appearance

JUDGMENT

Aggrieved over the finding of the Tribunal, dated 29.04.2011 made in MCOP.No.75 of 2007 on the file of the Motor Accident Claims Tribunal/(Principal District Judge), Puducherry, the present appeal has been filed by the 2nd respondent-Insurance Company seeking 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 06.07.2006 at about 10.45 p.m., while the deceased Raja, who is the husband of the first petitioner and father of the petitioners 2 and 3 and son of the 4th petitioner was riding his TVS XL Super Motor Cycle bearing Registration No.PY-01-V-8059 along with the pillion rider, in the East Coast Road, while going near Anna Cement Works, Lawspet, Pudhucherry, another two wheeler bearing Registration No.PY-01-4287 came at high speed, driven in a rash and negligent manner, dashed against the two wheeler, which the deceased was riding causing him fatal injuries resulting in his death on the spot. The deceased Raja was working as a House Keeper at Hotel Ram International earning Rs.5,000/- per month. The petitioners were depending on the income of the deceased. The accident occurred only due to the rash and negligence driving of the other vehicle rider. The first respondent is the owner and the second respondent is the insurer of the offending vehicle. Due to the death of the bread winner of the family, the petitioners are suffering from loss of income. Hence, they seek a sum of Rs.10,00,000/- as compensation from the respondents.

4.On the other hand, opposing the claim petition, the second respondent Insurance company filed counter contending that the accident does not occur in the manner alleged by the petitioners. The petitioners is to prove the age, avocation and monthly income of the deceased. The petitioners is to prove that the first respondent vehicle was insured with the second respondent Insurance Company and the rider of the two wheeler possessed valid driving licence. The accident occurred only due to the negligence of the deceased. Due to over speeding the deceased dashed against the first respondent vehicle which was coming in the opposite direction. As there was head on collision, both the drivers are to be held responsible for the accident and they contributed equally for the accident. The petition is bad for non-jointer of necessary parties, namely, the owner and insurer of the vehicle bearing Registration No.PY-01-V-8059. The amount claimed by the petitioners is highly excessive. Thus, the respondent sought for dismissal of the petition.

5.Before the Tribunal, MCOP.Nos.75 and 76 of 2007 were taken up for joint trial. The petitioners examined P.W.1 to P.W.4, produced documents Ex.P1 to Ex.P16 to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on careful analysis of evidence, found the negligence of the first respondent's two wheeler rider alone caused the accident, passed an Award for a sum of Rs.7,23,000/- payable to the petitioners by the respondents. Aggrieved over the said findings of the Tribunal, the second respondent/Insurance Company has come forward with this present appeal.

7.I have heard the learned counsel appearing for the appellant/2nd respondent Insurance Company and the learned counsel appearing for the respondents 1 to 4/claimants/Petitioners and perused the materials available on record.

8.The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the Tribunal ought to have fixed the liability only on the owner of the vehicle/5th respondent herein/1st respondent, as the two wheeler was driven by a person without valid driving licence. The Tribunal failed to appreciate the oral and documentary evidence, which clearly proved that the rider of the two wheeler did not posses valid and effective driving licence. The Tribunal wrongly rejected the notice and acknowledgment card on the ground that the signature of the recipients varies. As the rider of the two wheeler was not having licence and the same amounts to violation of policy condition, the second respondent is to be exonerated. As such, the second 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 to 4/claimants/petitioners contends that the respondents have not let in any evidence to prove that the rider of the vehicle did not possess valid driving licence and as such the plea of the second respondent Insurance Company need not be entertained and therefore the insurer of the offending vehicle/the second respondent is liable to pay compensation. Thus, the respondents 1 to 4/claimants/petitioners seeks dismissal of the appeal.

10.The appellant-Insurance Company has not seriously contested the conclusion of the Tribunal which proved the first respondent vehicle driver alone resulting for the accident. As far as the negligence aspects is concerned, the Tribunal, on the basis of oral evidence of P.W.2 as well as the contents of Ex.P1 First Information Report, concluded that the negligence of the first respondent driver alone caused the accident. As there was no contrary evidence let in on the side of the respondents, the conclusion of the Tribunal on the negligence aspect is appropriate and the same does not require any interference.

11.The first petitioner who deposed as P.W.1 stated that her deceased husband was aged 37 years and he was earning Rs.5,000/- per month as salary in addition to Rs.80/- per day as batta by working as House Keeper in Hotel Ram International, Pudhucherry. The petitioners have not produced any proof for the age of the deceased. On the basis of Ex.P5 copy of the Postmortem Certificate and Ex.P16 copy of the Ration Card, the Tribunal fixed the aged of the deceased at 37 years. The same is appropriate. The petitioners examined the Manager of the Hotel, wherein the deceased was employed as P.W.4 and he produced Ex.A14 certificate issued by the Hotel to prove the nature of the employment of the deceased. However, P.W.4 did not produced any Attendance Register or any documents regarding the payment of salary and batta to the deceased. As such, the Tribunal fixed the notional income of the deceased at Rs.4,500/-. Considering the fact that the number of dependents are four in number, the Tribunal deducted 1/4th amount towards personal expenses of the deceased. Thus, the monthly contribution to the family by the deceased was fixed at Rs.3,300/- and adopting multiplier 16, the loss of dependency aas calculated by the Tribunal is as follows:-

Rs.3,300/- x 12 = Rs.39,600/- x 16 = Rs.6,33,600/-.

In the absence of any contra evidence, the above said amount awarded by the Tribunal is appropriate.

12.The Tribunal has provided for a sum of Rs.40,000/- towards loss of consortium, Rs.30,000/ towards loss of love and affection to the second and third minor petitioners and a sum of Rs.10,000/- to the 4th petitioner towards loss of love and affection. The Tribunal also provided Rs.7,500/- towards funeral expenses and Rs.1,500/- towards transport charges. In the absence of any contra evidence, the above said amount awarded by the Tribunal is appropriate. The total compensation payable to the petitioner was arrived at Rs.7,23,000/-.

13.The appellant/2nd Insurance Company contending that the rider of the first respondent vehicle did not possess valid driving licence and as the same will amount to violation of policy condition and sought for exonerating them from paying any amount as compensation. There is absolutely no evidence let in by the second respondent to show that the first respondent permitted any person without driving licence to drive his vehicle. As such, the contention of the second respondent that they are not liable to pay any amount as violation of policy condition was committed has to fail. Except the said contention, the insurer has not raised any ground on the negligence and quantum aspect. As such, this Court find that there is no merit in the appeal and there is no need for interference with the award passed by the Tribunal. The point is answered accordingly.

14.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The order and decreetal order dated 29.04.2011 made in MCOP.No.75 of 2007 on the file of the Motor Accident Claims Tribunal/(Principal District Judge), Puducherry, is hereby confirmed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

rrg

To

1.The Principal District Judge,
Pudhucherry.

2.The Section Officer.
V.R. Section, High Court,
Madras.(2 copies)

+ 1 cc to MR. V. Kumaravelan, Advocate Sr.45958
+ 1 cc to Mr.Krishnamoorthy, Advocate Sr.45953

C.M.A.No.3425 of 2011

(CS-IX)
EU(23/10/2018)