IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1987 of 2017

M/s.United India Insurance Company Ltd.,
No.1090, P.H.Road
Chennai-600 084

...Appellant /2nd respondent.

Vs

R.Sulochana (deceased)
1.J.Lakshmi
2.S.Vasantha Kumari
3.S.Kalavathy
4.K.Padmini
5.R.Gunasekaran
6.R.Dheenadayalan
7.R.Babu

..Respondents 1 to 7 /Petitioners 2 to 8

8.M/s.Sankar Syndicate
No.27, Sengupta Street
Ramnagar, Coimbatore
Pincode-641 009
9.Ramadoss Sampath

..Respondents 9 and 10 /Respondents 1 and 3.

Civil Miscellaneous Appeal filed against the judgment and decree dated 21.12.2016 passed in M.C.O.P.No.385 of 2008 on the file of Motor Accidents Claims Tribunal, In the Court of Chief Judge, Small Causes, Chennai.

For appellant : : Mr.J.Michael Visuvasam
for Respondents: : M/s.Shanmugha Associates for R1 to R7
M/s.Krishna Ravindran for R8

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company, challenging the judgment and decree dated 21.12.2016 passed in M.C.O.P.No.385 of 2008 on the file of Motor Accidents Claims Tribunal, In the Court of Chief Judge, Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the Petitioner/R.Sulochana who filed M.C.O.P.No.385 of 2008 is that on 27.01.2006 at about 20.30 hours, while the deceased Venkatesan was riding his motor cycle bearing Reg.No.TN-02-K-5348 in Ambattur Estate Road, while coming near Shanthinikedan colony, a Maruthi car bearing Reg.No.TAG-7800 came at high speed, driven in a rash and negligent manner, dashed against the two wheeler in which the deceased was travelling, causing him fatal injuries, resulting in his death on the spot itself. The accident occurred only due to rash and negligent driving by the 1st respondent car driver. The deceased was aged 38 years and was employed as Editor in Sun TV Ltd., Teynampet, Chennai, and earned Rs.14,000/- per month. The Petitioner who is the mother of the deceased was dependant on his income. Now due to the demise of his son, the Petitioner has lost the bread winner of the family and also the love and affection of her son. Thus the Petitioner sought a sum of Rs.8,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle. Subsequently, the mother of the deceased viz., R.Sulocaha died and hence, the legal heirs of the deceased Petitioners 2 to 8 are brought on record, who are the appellants 1 to 7 herein.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 1st respondent/owner of the vehicle contends that the petition is to be dismissed for not impleading necessary parties, viz., the driver and the owner of the vehicle bearing Reg.No.TN-02-K-5348 inspite of the name of the owner/driver being mentioned in Column No.16A of the petition itself. The 1st respondent sold the Maruthi car bearing Reg.No.TAG-7800 to one Ramadoss Sampath on 27.01.2006 itself. Once the said purchaser took possession of the car on the same day afternoon itself, the 1st respondent is not liable to pay any compensation. Further the car was insured with the 2nd respondent and as there was valid insurance coverage, only the insurer is liable to pay compensation. The accident occurred on 27.01.2006 at about 20.30 hours and as the car has been sold in the forenoon itself, the 1st respondent is not liable to pay any compensation. The Police registered case against the purchaser Ramadoss Sampath only and on medical examination of Ramdoss Sampth, a certificate was issued confirming the drunken mood in which the vehicle was driven by the said Ramdoss Sampath. As such, Ramadoss Sampath is a necessary party and his negligence alone caused the accident. Thus, the 1st respondent sought for dismissal of the petition against him.

4. Likewise, the 2nd respondent/Insurance company opposed the petition by filing counter contended that the accident did not occur in the manner alleged by the petitioner. The

negligence of Maruthi car driver is not the cause for the accident. The petitioner has to prove that the driver possessed valid driving licence and the deceased was third party to the vehicle insured in the accident. The vehicle was driven by the 1st respondent driver in a drunken mood and the same amounts to violation of policy condition. The petitioners are not dependants of the deceased and they are not entitled for any compensation. Thus, the 2nd respondent sought for dismissal of the petition.

5. Before the Tribunal, while the MCOP.No.385 of 2015 was pending, the only petitioner who is the mother of the deceased passed away and her children were brought on record as Legal Representatives as Petitioners 2 to 8. Before the Tribunal, the Petitioners examined P.W.1 and produced documents Ex.P.1 to Ex.P.8 to prove their claim. On the side of the respondents, R.W.1 to R.W.3 were examined, documents Ex.R.1 to Ex.R.10 were marked. The Tribunal, on appreciation of evidence available on record, found the negligence of the 1st respondent vehicle driver alone caused the accident and passed the award for a sum of Rs.10,45,000/- payable by the respondents to the Petitioners. Aggrieved over the said finding, the 2nd respondent/Insurance Company has come forward with the present appeal.

6. The learned counsel appearing for the appellant/2nd respondent-Insurance company contends that the Tribunal erred in passing the award for higher amount than the amount sought for in the petition itself. The Petitioners are not dependants on the deceased and the same was not considered by the Tribunal. The Petitioners being married sisters and brothers of the deceased, they cannot be termed as dependants. The claim of the Petitioners about the age, avocation and income of the deceased is not established. The notional income was fixed at Rs.7000/- even though the accident occurred in the year 2006 when the notional income was only fixed at Rs.3000/-. The Tribunal erred in fixing negligence on the 9th respondent merely on the basis of charge sheet without considering any independent oral evidence. The Tribunal erred in granting 50% of the income towards future prospects. The amount awarded under different heads is exorbitant. Thus, the 2nd respondent/Insurance Company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the Petitioners/claimants contended that the mother of the deceased filed a petition seeking compensation and as she passed away, pending the claim petition, her legal heirs were brought on record. As such, the petition is maintainable. The Petitioners further contended that the accident occurred only due to the negligence of the 1st respondent vehicle driver and as such, the respondents who are the owner and insurer of the vehicle are

liable to pay compensation. It is further contended that there is no proof of sale of the vehicle by the 1st respondent produced and as no name transfer is obtained, the 1st respondent is liable to pay compensation. The Tribunal considered the young age of the deceased and other attendant circumstances and has awarded just and fair compensation. Hence, there is no need to interfere with the same. Thus, the Petitioners sought for dismissal of the appeal.

8. Heard both sides and perused the records carefully.

9. On the side of the Petitioners, the 6th Petitioner while deposing as P.W.1, narrated about the manner in which the accident occurred. However 6th petitioner is not an eyewitness to the accident. The Police however registered Ex.P.1-FIR against the driver of the 1st respondent vehicle only. The Petitioners also produced Rough Sketch of the accident spot as Ex.P.6. It is clear from Ex.P.2-Post Mortem Report that the deceased died due to after effects of the injury suffered by him. Further after completing investigation, the Police laid charge sheet against the 1st respondent vehicle driver only as evidenced by Ex.R.1-Copy of Charge sheet. It is also clear from Motor Vehicle Inspector's Investigation Report-Ex.R.6 that there was no mechanical defect in the vehicle. In the case on hand, neither the Petitioners, nor the respondent examined any eyewitness to the occurrence. The driver of the 1st respondent is also not examined. In such circumstances, on the basis of Ex.P.1-FIR; Ex.R.1-Charge sheet and the evidence of R.W.1-Sub Inspector of Police, it will be appropriate to conclude that negligence on the 1st respondent vehicle driver alone has caused the accident. The 1st respondent contended that he sold the vehicle (Maruthi car) on 27.01.2006 and handed over the vehicle to the purchaser on the same day afternoon itself. The accident occurred in the evening on 27.01.2006 at 20.30 hours. On that ground, the 1st respondent contends that he is not liable to pay any compensation. However, there is no proof of name transfer effected and the necessary entries made in the official record. As such, the contention of the 1st respondent that he is not liable to pay any compensation is to be rejected. According to the petitioners, the accident occurred due to the negligence of the 1st respondent vehicle driver. Admittedly, the vehicle was driven by one Ramdoss Sampath on the occurrence day. It is contended by the 2nd respondent that the accident occurred only because of the said person Ramadoss Sampath who drove the vehicle was in drunken mood. The 2nd respondent produced Ex.R.2 copy of the Drunkenness certificate issued by the authority concerned to prove the same. Further, the 2nd respondent examined R.W.1-S.Elango, Inspector of Police to prove that the vehicle was driven by Ramadoss Sampath in drunken mood. It is also clear from Ex.R.1-Copy of charge sheet that the Police laid charge sheet wherein the Final report is filed under Sections 185 and 134(b) read with 187 of Motor Vehicles Act, against the driver of the 1st respondent vehicle. It is therefore clear that

the vehicle was driven by the person in drunken mood which is in violation of policy condition. However, it is the fact that the person who drove the vehicle possessed the valid driving licence, the copy of which is marked as Ex.R.9. It is not disputed by the 2nd respondent that there was policy coverage on the date of the accident. As such, it is clear that the vehicle was covered by insurance policy issued by the 2nd respondent and there was only violation of policy condition, since the vehicle was driven in a drunken mood by the driver. However, it cannot be stated that the said Ramadoss Sampath was allowed to drive the vehicle in drunken mood by the 1st respondent. As such, even though the 2nd respondent-Insurance company is not liable to pay compensation, as there was clear violation of Ex.R.7 Policy condition. However, as the deceased being third party and the Petitioners being Legal Heirs of the victim viz., Petitioners 2 to 8 in MCOP.No.385/2008, they are entitled to get compensation amount and as the Insurance Coverage was available, the 2nd respondent/Insurance Company is directed to pay the award amount and in turn is permitted to recover the same from the owner of the vehicle, who is the 1st respondent, as he has committed violation of Policy condition.

10. It is contended by the 2nd respondent/Insurance company that the Tribunal has passed the award granting higher compensation without any basis. The deceased was stated to be 38 years at the time of the accident. The Petitioners produced the copy of the Transfer Certificate of the deceased as Ex.P.5, wherein, the date of birth is mentioned as 23.11.1967. The Petitioners produced copy of Post Mortem Certificate as Ex.P.2, copy of Death certificate as Ex.P.3. As such, the accident having taken place on 27.01.2006, the age of the deceased is fixed as 38 years on the date of the accident. For such age, the correct multiplier to be applied is 15. The Petitioners contend that the deceased by working as Editor, Sun TV Limited, Teynampet, Chennai, was earning Rs.17,259/- per month. However, there is no documentary proof like appointment order or pay slip to pursue the claim of the Petitioners. In such circumstances, considering the fact that the accident occurred during 2006, the Tribunal fixed the notional income at Rs.7000/-, which, in my considered opinion, is just and proper. The Tribunal awarded 50% towards Future Prospects. In the absence of any documents to substantiate the avocation of the deceased, it cannot be presumed that the deceased was earning fixed income and was a permanent employee. Hence, towards Future Prospects, 40% is added to the income of the deceased for calculating the loss of dependency instead of 50% provided by the Tribunal. Since the deceased was a bachelor, 50% of the income is to be deducted towards personal expenses of the deceased. Accordingly, the loss of dependency to the Legal Heirs of the deceased/petitioners is calculated as under:-

Monthly salary - Rs.7000/-

50% deduction towards personal expenses - 7000-50% = Rs.3500/-

40% addition towards
Future Prospects -Rs.3500/- +40%(1400) =Rs.4900
Rs.4900 x 12 x 15 = Rs.8,82,000/-.
Thus, a sum of Rs.8,82,000/- is awarded under the head "Loss of dependency". The compensation of Rs.5,000/- awarded by the Tribunal under the head "Transport expenses" is considered to be just and proper and hence, the same is confirmed. Insofar as other heads, this court is inclined to modify the award passed by the Tribunal, by applying the Ruling of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others]. Thus, the following amounts are awarded as compensation under conventional heads.

Funeral expenses	-	15,000/-
Loss of estate	-	15,000/-
Loss of consortium	-	40,000/-
Add: Loss of dependency	-	8,82,000/-
Transport expenses	-	5,000/-
Total =		Rs.9,57,000/-

Accordingly, the compensation awarded by the Tribunal stands modified to Rs.9,57,000/-. The Petitioners 2 to 8/Respondents 1 to 7 are entitled to apportionment of equal share in the award amount.

11. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed;
(ii) The award amount is reduced from 10,45,000/- to 9,57,000/-;
(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;
(iv) The Appellant/Insurance company is directed to deposit the entire award amount along with proportionate interest and cost, as ordered by this court, less the amount, if any already deposited. The Insurance company is entitled to withdraw the excess sum, if any, in deposit.
(v) The Petitioners 2 to 8/claimants/respondents 1 to 7 are entitled to withdraw their respective share amount of the award amount along with accrued interest. The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal,
Court of Chief Judge, Small Causes, Chennai.

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

+1cc to M/s.Shanmugha Associates, Advocate sr.no.26724

C.M.A.No.1987 of 2017

ca(co)
nr 06/06/2018