IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.361 of 2018
and
CMP.No.11288 of 2018

M/s.United India Insurance Co. Ltd.,
No.134, Silingi Buildings, 4th floor,
Greams Road,
Chennai-600 006. ... Appellant/2nd respondent

..vs..

C.Mangamma(Deceased)
1.N.Eswaramma
2.C.Ramana ... Respondents/Petitioners

3.A.G.Harjinder Singh ... Respondent/1st respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 10.11.2017 made in MCOP.No.3211 of 2015 on the file of the Motor Accident Claims Tribunal/Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.Amar D Pandiya (For caveator) for R1 and R2.

JUDGMENT

Aggrieved over the finding of the Tribunal, dated 10.11.2017 made in MCOP.No.3211 of 2015 on the file of the Motor AccidentClaims Tribunal/Chief Judge, Small Causes Court, Chennai, 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 21.03.2015, while the deceased Venkataramana was walking along the Thiruvallurvar Salai, while he was going near Thiruvanmiyur Hundai Showroom, at about 10.15 hours, the first respondent car bearing Registration No.TN-10-AM-3652, came at high speed, driven in a rash and negligent manner, dashed against the pedestrian causing him fatal injuries resulting in his death on the spot. The negligence of the first respondent vehicle driver alone caused the accident. The deceased was aged 65 years and by working as a mason was earning Rs.500/- per day. The petitioners, who are the wife and children of the deceased were depending on the income of the deceased. Thus, the petitioners sought for 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 filed counter contending that the accident does not occur in the manner alleged by the petitioners. Further, the deceased died due to natural cause and not due to the injuries suffered in the accident. The claim of the petitioner is exorbitant. The averments in the petition regarding age, avocation and income of the deceased is denied. 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.2, produced documents Ex.P1 to Ex.P14 to substantiate their claim. The respondents examined R.W.1 but no document was produced.

6.The Tribunal, on careful analysis of evidence, found the negligence of the first respondent's car driver alone caused the accident, passed an Award for a sum of Rs.3,66,000/- payable by the respondents to the petitioners. Aggrieved over the said finding of the Tribunal, the second respondent-Insurance Company has come forward with this present appeal seeking to set aside the award passed by the Tribunal.

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

8.The learned counsel appearing for the appellant-Insurance Company contends that the Tribunal erred in fixing the negligence on the first respondent vehicle driver. The accident occurred only due to the negligence of the deceased, as he suddenly crossed the road without noticing the on coming vehicle resulting in the accident. Ex.P3 Postmortem certificate reveals that the death was due to natural reasons. The Tribunal failed to consider the evidence properly, which clearly proves that the negligence of the deceased contributed to the accident. The Tribunal wrongly fixed the income of the deceased at Rs.6000/- per month and awarded higher amount as compensation. The appellant-Insurance Company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

9.Per contra, the learned counsel appearing for the respondents 1 & 2/claimants contends that the Tribunal has not properly appreciated the evidence on record, awarded a very meager amount as compensation. The Appellant-Insurance Company is not justified in challenging the same. There is no ground to interfere with the award passed by the Tribunal. Thus, the respondents 1 and 2/petitioners/claimants sought for dismissal of the appeal.

10.It is only quantum appeal. Both sides have not seriously disputed the findings of the Tribunal regarding negligence aspects. The 3rd 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 person who witnessed the accident deposed as P.W.2 and clearly stated that on 21.03.2015 at about 10.15 a.m., while he was proceeding near the Honda showroom in Thiruvalluvar Salai, Thiruvanmiyur and standing in the signal, he saw a 60 year old person coming on foot from west to east and at that time, a car bearing Registration No.TN-10-AM-3652 came from behind and dashed against him causing multiple injuries to the said person. Thus, P.W.2 clearly stated about the manner in which the accident occurred. The Police also registered Ex.P1 First Information Report against the first respondent vehicle driver only. Further, on completion of investigation, the police filed Ex.P6 charge sheet against the first respondent vehicle driver only. The contents of Ex.P1 FIR and Ex.P6 Charge sheet corroborates the oral version of P.W.2. Further, Ex.P4 the copy of the Rough Sketch of the occurrence spot also supports the claim of the petitioners.

11.On the other hand, opposing the claim of the petitioner, the first respondent who deposed as R.W.1 stated that the deceased alone contributed to the accident. As rightly pointed out by the Tribunal that the first respondent vehicle was driven by his daughter and charge sheet was filed against her. The first respondent who deposed as R.W.1 has not witnessed the accident. As such the Tribunal has rightly disbelieved his evidence and fixed the negligence on the first respondent vehicle driver on the basis of Ex.P1 FIR and Ex.P6 Charge Sheet as well as the eye witness account given by P.W.2. Thus, the finding of the Tribunal holding that the negligence of the first respondent vehicle driver alone caused the accident is appropriate and does not warrant any interference.

12.The petitioners states that the deceased was aged 65 years and he was earning Rs.500/- per day by working as a mason. In the absence of any document regarding the age of the deceased, the Tribunal on the basis of Ex.P3 copy of the postmortem certificate fixed the age of the deceased as 65 years. The petitioners claims that the deceased was employed as a mason earning Rs.500/- per day. However, there is no proof for avocation and income of the deceased. Therefore, as he was aged 65 years, it will be appropriate to fix the monthly income of the deceased as Rs.5,000/- instead of Rs.6000/- fixed by the Tribunal. As the number of dependents are three in number, 1/3$^{rd}$ of the income is deducted towards personal expenses of the deceased. For that age group the correct multiplier to be applied is 7. Thus, the loss of income is calculated as follows:-

Rs.5,000/-, deducted 1/3$^{rd}$ amount of Rs.1666/- = Rs.3,334/ x 12 = Rs.40,008/- x 7 = Rs.2,80,056/-.

13. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate and funeral expenses, this Court is inclined to accord compensation as under:-

| | | |
|---|---|---|
| Loss of Estate | = | Rs. 15,000.00 |
| Funeral Expenses | = | Rs. 15,000.00 |
| Total | | Rs. 30,000.00 |

14. The learned counsel appearing for the Appellants/Petitioners contended that the the petitioners 2 and 3 who are the son and daughter of the deceased have lost the love and affection of their father and they will suffer the same for their entire life but no amount was granted by the Tribunal under the head "loss of love and affection". Hence, the learned counsel for the petitioners/claimants relying upon the Ruling of the Kerala High Court reported in 2017 SCC Ker 23174 [1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010], and the Ruling of this court reported in 2018(1) TN MAC 289 [Branch Office, New India Assurance Co.Ltd., Vs. Meenkashi and others] sought for compensation towards loss of love and affection suffered by the petitioners. Considering the same, it will be appropriate to provide the petitioners Rs.20,000/- each under the head "loss of love and affection".

15. Accordingly, the compensation warded by the Tribunal is modified as follows:-

| Sl No | Heads | Amount awarded by the Tribunal | Awarded by this Court |
|---|---|---|---|
| 1. | Pecuniary Loss of income | 3,36,000.00 | 2,80,056.00 |
| 2. | Loss of Estate | 15,000.00 | 15,000.00 |
| 3. | Loss of love and affection | - | 40,000.00 |
| 4. | Funeral Expenses | 15,000.00 | 15,000.00 |
| | Total | 3,66,000.00 | 3,50,056.00 |

Accordingly, the amount of Rs.3,66,000/- awarded by the Tribunal is modified and the same is reduced to Rs.3,50,056/- and the same is rounded to Rs.3,50,000/-.

16.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.3,66,000/- awarded by the Tribunal dated 10.11.2017 made in MCOP.No.3211 of 2015 on the file of the Motor Accident Claims Tribunal/Chief Judge, Small Causes Court, Chennai is hereby reduced to Rs.3,50,000/-. The Appellant-Insurance Company is directed to deposit the entire award amount of Rs.3,50,000/- 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. Excess amount if any paid by the appellant Insurance company shall be refunded. On such deposit, the petitioners/claimants are entitled to equal share. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. Consequently, connected CMP is closed.



Sd/-
Assistant Registrar(CS VII)



//True Copy//

Sub Assistant Registrar

rrg

To

The Motor Accident Claims Tribunal,
The Chief Judge,
Small Causes Court,
Chennai-104.

Copy to

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

+2 cc to Mr.C.Paranthaman, Advocate Sr.45992
+1cc to Mr.Amar D.Panidya, Advocate Sr.46057

C.M.A.No.361 of 2018

gj[co]
srg 14/09/2018