IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.375 of 2018
and
C.M.P.No.3617 of 2018

National Insurance Company Limited,
L.R.N.Colony,
Saradha College Main Road,
Hasthampatti, Salem. ..Appellant/2nd Respondent

Versus

1.Chinna Ponnu
2.Kumar
3.Vijaya @ Chithra .. Respondents/1 to 3 Petitioner
4.D.Durairaj ..Respondent/1st Respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 31.07.2017 made in M.C.O.P.No.2292 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District and Special Court of Essential Commodities Act, Salem.

For Appellant : Mr.N.B.Surekha
For Respondents : Mr.C.Richardsuresh Kumar [for R1 to R3]

J U D G M E N T

The Appellant/Insurance Company has filed this appeal against the judgment and decree dated 31.07.2017 made in M.C.O.P.No.2292 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District and Special Court of Essential Commodities Act, Salem.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners is that on 22.08.2016 while the deceased was riding his motor cycle in Thedavur - Veeraganur Main Road, at about 18 hours near Balamurugan Koil, Rayarpalayam, a Hero motor cycle bearing Registration No.TN.77-F-0361 came at a high speed in the same direction dashed against the cycle, which the deceased Kulandhaivel was riding, resulting in fatal injuries causing his death. The petitioners who are the

wife and children of the deceased contended that the accident occurred only due to negligence of the 1st respondent two wheeler rider. At the time of the accident, the deceased was aged 54 years and was earning Rs.15,000/- per month from his avocation as agriculturist and milk vendor. As the petitioners were dependent of the income of the deceased who is the only breadwinner of the family, the petitioners suffered loss of income; thus the petitioners sought for a sum of Rs.25,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petitioners, by filing counter, the 2nd respondent/Insurance Company disputes the claim in respect of the age, avocation and income of the deceased. The respondents also denies the nature of accident as alleged in the petition. The respondents contended that the rider of two wheeler was not negligent and he was not responsible for the accident. On the other hand, the deceased only crossed the road in a negligent manner without noticing the on coming vehicle, resulting in the accident. The 1st respondent who is the owner of the two wheeler was riding the vehicle and as per the accident register issued by G.H., Attur, the 1st respondent breath smelt of alcohol, and on the same amounts to violation of policy conditions. Hence, the 2nd respondent/Insurance Company is not liable to pay compensation. The claim of the petitioners is exorbitant. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.4 to prove their claim. On the side of the respondents R.W.1 and R.W.2 were examined and documents Exs.R.1 to R.2 were marked. Before the Tribunal, Ex.X.1 document was also marked. On the basis of available evidence on record, the Tribunal concluded that the negligence of the 1st respondent rider only resulted in the accident and awarded a sum of Rs.6,70,000/- as compensation to the petitioners. Aggrieved over the said findings of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

6. The learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal failed to consider the evidence properly. Even though the accident register issued to 1st respondent stated that the 1st respondent was under the influence of alcohol at the time of the accident, the same was not accepted by the Tribunal. The Tribunal ought to have held that the accident has occurred owing to negligence of the 1st respondent. Further, the 2nd respondent/Insurance Company is not liable to pay compensation, since the 1st respondent drove the

vehicle under the influence of alcohol, which amounts to violation of policy condition. The Tribunal failed to fix the monthly income and the age of the deceased properly. The multiplier adopted is also not correct. The amount awarded under different heads is also not correct. Hence, the 2nd respondent/Insurance Company seeks to entertain the appeal and set aside the award passed by the Tribunal.

7. Per contra, the learned counsel for the petitioners contended that the Tribunal properly considered the available evidence on record and awarded a just and fair compensation. The 2nd respondent/Insurance Company has not come up with any ground to interfere with the award passed by the Tribunal. There is no evidence to prove that the 1st respondent drove the vehicle under the influence of alcohol. As the driver of the vehicle is having valid license and the vehicle was insured with the 2nd respondent/appellant/Insurance Company, the 2nd respondent/appellant/Insurance Company is liable to pay compensation, since the accident occurred only due to negligent driving of the 1st respondent. Hence, the petitioners seek for dismissal of the appeal.

8. Heard both sides and perused the available materials on record.

9. The 2nd respondent/appellant/Insurance Company has come forward with the present appeal challenging the quantum of the award passed by the Tribunal and also disputing the liability on the ground that the 1st respondent driver drove the vehicle under the influence of alcohol which amounts to violation of policy condition. The 2nd respondent/appellant/Insurance Company relying upon Ex.A.1 - A.R.Copy contends that the 1st respondent was under the influence of alcohol at the time of the accident. However, there is no other medical record to substantiate the same. No blood test or any other test to fix that the 1st respondent was under the influence of alcohol has been conducted. Hence, the Tribunal has correctly held that there was no sufficient medical evidence available to arrive at the conclusion that the 1st respondent was under the influence of alcohol while the accident occurred. As such, the contention of the 2nd respondent/Insurance Company is that they are not liable to pay any compensation, since the 1st respondent drove the vehicle under the influence of alcohol, amounting to violation of policy condition is unsustainable and the same has to fail.

10. The 1st petitioner deposed as P.W.1 and stated that her husband/deceased was aged 54 years and was earning Rs.15,000/- per month from the agriculture and milk vending business. It is the evidence of petitioners as well as Ex.P.1 - F.I.R that the accident occurred only due to negligence of the 1st respondent

driver. The 1st respondent has not contradicted the claim of the petitioners. The driver of the vehicle/1st respondent ought to have been examined to disprove the version of the petitioners about the accident. However, the 1st respondent has not been examined before the Tribunal. In such circumstances, based on the oral evidence of P.W.2 and Ex.P.1 document produced by the petitioners, it is clear that the negligence of the 1st respondent alone caused the accident.

11. The petitioners stated that the deceased was aged 54 years and the same is established by Ex.P.2 - Postmortem certificate as well as Ex.P.3 - Death certificate. Neither the school certificate or birth certificate of the deceased has been produced. In Ex.R.2 - Adhar Card issued to the deceased Kulandhaivel his age is mentioned as 63. In such circumstances, the age of the deceased is to be fixed on the basis of Ex.R.2 - Adhar Card only. As such, the Tribunal erred in fixing the age of the deceased as 55. In view of the above said discussion, on the basis of Ex.R.2 - Adhar Card, the age of the deceased is fixed as 63 years. It is apparent for the person aged 63 years the multiplier to be applied is 7.

13. The petitioners stated that by doing agricultural and milk vending business the deceased was earning Rs.15,000/- per month. Except for oral evidence of P.W.1, the wife of the deceased, no other proof regarding the income of the deceased is available on record. As such, the Tribunal fixed the notional income of the deceased at Rs.6,000/- per month. However, considering the fact that the accident occurred during 2016 and considering the normal earning of the agriculturalist and the milk vendor it will be appropriate to fix the notional income at Rs.8,000/- per month instead of Rs.6,000/- fixed by the Tribunal. Further, as there are 4 dependants, 1/3rd of the income is to be deducted for the personal expenses of the deceased. Thus, the loss of income is calculated as follows:-
Monthly income = Rs.8,000/-
1/3rd deduction towards personal expenses
Rs.8,000 - 1/3 = Rs.2,666/-
By applying multiplier of 7,

Rs. 5334 x 12 x 7 = Rs.4,48,056/-.

Thus, a sum of Rs.4,48,056/- is granted as compensation under the head “Loss of Income”. Further, a sum of Rs.10,000/- is granted as compensation under the head "Transport Charges".

13. The Tribunal has awarded Rs.75,000/- towards “Loss of love and affection”. However, following the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others],

towards loss of estate, loss of consortium and funeral expenses, this court is inclined to modify the compensation as under:-

Loss of Estate	=	Rs.15,000.00
Loss of consortium	=	Rs.40,000.00
Funeral Expenses	=	Rs.15,000.00
		Rs.70,000.00

14. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of Income	Rs.5,28,000.00	Rs.4,48,056.00
2	Funeral Expenses	Rs. 30,000.00	Rs. 15,000.00
3	Loss of Consortium	Rs. 25,000.00	Rs. 40,000.00
4	Love and Affection	Rs. 75,000.00	-
5	Loss of Estate	-	Rs. 15,000.00
6	Transport	Rs. 10,000.00	Rs. 10,000.00
7	Damages of Clothes	Rs. 2,000.00	-
8	Total	Rs.6,70,000.00	Rs.5,28,056.00 round off Rs.5,28,000.00

15. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is reduced to Rs.5,28,000/- from Rs.6,70,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above reduced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The apportionment of the modified reduced award amount is as follows:-

1st respondent/wife	-	40%
2nd respondent/son	-	30%
3rd respondent/daughter	-	30%

(iv) On such deposit, the claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(v) Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

bri

To

1.The Motor Accident Claims Tribunal,
Additional District and Special Court
of Essential Commodities Act,
Salem.

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

+1cc to Mr.C.RICHARD SURESHKUMAR, Advocate, S.R.No.17265
+1cc to Mr.N.B.SUREKHA, Advocate, S.R.No. 17313

C.M.A.No.375 of 2018

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TR(16/04/2018)