

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.653 of 2011

Bajaj Alliance General Insurance Co. Ltd.,
Tiruppur.

Appellant

..vs..

1.Ayyavu

2.Thirupathi

Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreeal order dated 17.08.2010 made in MCOP.No.162 of 2007 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Attur.

For Appellant : Mrs.R.Sri Vidhya

For Respondent : Mr.S.Ambigapathi for R-1.

JUDGMENT

This civil miscellaneous appeal arises out of the Judgment and decree dated 17.08.2010 made in MCOP.No.162 of 2007 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Attur.

2. For sake of convenience, the parties were hereinafter be referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioner is that on 11.07.2007 at about 9.00 a.m., when the petitioner, who is the husband of the deceased Valli along with deceased Valli were walking along the Pappanaickenpatti Bazar Road, near Palani Tailoring shop, a Bajaj Motor cycle bearing Registration No.TN-40-Y-2230, driven by its rider at high speed in a rash and negligent manner dashed against the petitioner's wife Valli and she fell down, in the impact suffered head injuries and died in the spot itself. The petitioner states that the accident occurred only due to the rash and negligent driving of the first respondent motor cycle

rider and as such the respondents who are the owner and insurer of the offending vehicle are liable to pay the compensation. It is further stated by the petitioner that the deceased Valli was aged about 35 years and by doing Milk vending business and Cooli work, she was earning a sum of Rs.5,000/- per month. Due to her death, her husband, the petitioner herein has suffered loss of income and other material benefits. Hence, the petitioners seek payment of Rs.5,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioner, the second respondent Insurance Company has filed the detailed counter stating that the rider of the motor cycle was not having valid driving license and further as he was driving the vehicle under the influence of Alcohol, the same will amount to violation of policy condition and as such the second respondent is not liable to pay any compensation. Further, the second respondent was not informed about the accident within 30 days from the concerned police station. The petitioner is not a dependent on the deceased and now he has married another lady and living with her. Further, the accident occurred only due to the negligence of the deceased and suddenly crossed the road without noticing on coming vehicle. Hence, the respondent seeks dismissal of the petitioner claim.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and two other witnesses as P.W.2 and P.W.3 and produced Ex.P1 to Ex.P3 to prove his case. On the side of the respondent, two witnesses are examined as R.W.1 and R.W.2 and produced Ex.R1 to Ex.R5.

6. On the basis of material available before it, the Tribunal found the driver of the first respondent vehicle is responsible for the accident and as the vehicle was covered under the insurance policy with the second respondent, directed the respondents to pay a sum of Rs.3,35,000/- as compensation to the petitioner. The Tribunal also upheld the contention of the second respondent that due to policy violation they are not liable to pay, but permitted them to pay the amount at first instance and recover the same from the first respondent/owner of the vehicle herein. Being aggrieved over the Award passed by the Tribunal, the second respondent Insurance Company has preferred this appeal. Challenging the finding of the Tribunal on the aspect of negligence as well as the quantum of compensation awarded by the Tribunal.

7. The learned counsel appearing for the second respondent/appellant contended that the finding of the Tribunal directing the second respondent Insurance company to pay and recover the award amount is not proper and the same is unsustainable. As per the rulings of the Apex Court, the multiplier adopted by the Tribunal is also disputed by the

second respondent and quantum of compensation arrived at is stated to be on the higher side. Hence, the second respondent seeks to entertain the appeal and set aside the award passed by the Tribunal.

8. Per contra, the learned counsel for the petitioner/claimant contended that the fact of first respondent vehicle being covered under Insurance policy of the second respondent is not disputed and as such for any policy condition violation committed by the first respondent, the insurance cannot disown liability under the Insurance Policy and as such the finding of the Tribunal directing the second respondent to pay the award amount and recover the same from the first respondent view of the policy condition violation is just and proper and the same is needs no interference. The learned counsel for the petitioner/claimant further contended that the Tribunal has considered the available materials on record properly and arrived at just and proper compensation amount. Hence, the petitioner/claimant seeks dismissal of the present appeal.

9. I have considered the rival submissions and perused the materials available on record.

10. The petitioner, who is the husband of the deceased and eye witness to the occurrence stated in his evidence that while himself and his wife deceased Valli were walking along the Pappanaicken Patti, Bazzar Road at about 9.00 a.m., on 11.07.2007, the motor cycle bearing Registration No.TN-Y-2230 came at high speed and dashed against the deceased resulting in her death at the spot itself. Further, the other two witnesses examined as P.W.2 and P.W.3 also corroborated the version of P.W.1 about the manner in which the accident occurred. The police also registered Ex.P1 first information report in respect of the said accident, wherein the first respondent motor cycle rider is shown as accused. Further, Ex.P2 rough sketch also makes it clear that the accident occurred only by the side of the above said road, which makes it clear that there was no negligence on the part of the deceased in causing the accident. Ex.P3 rough sketch will clearly disprove the contention of the second respondent/insurance company that the accident took place only because the deceased crossed the road without seeing the on coming vehicle. Further, as pointed out by the Tribunal, the rider of the motor cycle, who deposed as R.W.2 himself has admitted that he alone is responsible for the accident. In such circumstances, in the light of the evidence available on record, it is clear that the above said accident occurred only due to the rash and negligent driving of the two wheeler by the first respondent rider. Thus, the finding of the Tribunal in that regard is confirmed. The point is answered accordingly.

11. The age of the deceased is stated to be 35 years in the petition. However, as per Ex.P2 post mortem report her age is stated as 40. Hence, the age is to be fixed as 40 only. P.W.1 stated that his wife was earning a sum of Rs.5,000/- per month by doing cooli work and also milk vending business. However, there is no proof for income earned by the deceased. In such circumstances, the finding of the Tribunal that it would be appropriate to fix Rs.2,400/- as monthly income of the deceased and after deduction of 1/3 to her personal expenses, she would have contributed Rs.1,600/- to her family is just and proper. The same is to be confirmed. The amount awarded by the Tribunal towards loss of income at Rs.1600/- x 12 x 15 = Rs.2,88,000/- and the amount awarded under the other conventional heads is just and normal and the same is not disputed by the second respondent/appellant herein.

12. The only contention of the second respondent/Insurance company is that they are not liable to pay and recover the award amount. As stated earlier the fact of first respondent vehicle bearing Registration No.TN-40-Y-2230 was insured with the second respondent at the time of accident is not denied. The only allegation is that the rider of the motor cycle was not having valid driving license and he was under the influence of alcohol at the time of accident. In that case, it will only amount to violation of policy condition, as such the second respondent/Insurance Company cannot escape its liability as insurer, but they are entitled to recover the amount from the owner of the vehicle, the first respondent herein, after satisfying the award. The Tribunal has followed the various ruling of the Apex Court as well as this Court in arriving at the conclusion that the second respondent Insurance Company is liable to make payment of the award amount at first instance and at liberty to recover the same from the owner, the first respondent herein in view of the policy condition violation. As such no ground is made out by the second respondent/Insurance Company to interfere with the said conclusion of the Tribunal. As stated earlier, apparently the rider of the first respondent vehicle was not having valid license at the point of time when the accident took place. In such circumstances, the finding of the Tribunal holding that the petitioner is entitled for compensation of Rs.3,35,000/- and the same is to be paid by the second respondent insurance company and on such payment they are entitled to recover the same from the first respondent/owner of the vehicle is just and appropriate and no ground is made out to interfere with the same. The point is answered accordingly.

13. In the result, the civil miscellaneous appeal is dismissed. The Fair and Decreetal order passed in M.C.O.P.No.162 of 2007, dated 17.08.2010 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Attur, is confirmed. No costs. The petitioner/claimant is permitted to

withdraw the award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rrg

To
The Subordinate Judge,
The Motor Accident Claims Tribunal
Attur.

copy to

The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.S.Ambigapathi Advocate sr 7338
+1 cc to M/s.Sreevidya Advocate sr 8340

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