IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2183 of 2017
and CMP No.11578 of 2017

The Divisional Manager,
Royal Sundaran Aliance Insurance Co. Ltd.,
No.5, R.T.Plaza, Katpadi Main Road,
Near Palar Bridge, Virudhampet,
Vellore. ... Appellant (2nd respondent)

-vs-

1. Shabiullah

2. Shammunisha

3. Minor Hamshia
Minor rep. By her Father /NF
/Guardian Tr.Shabiullah ... Respondents 1 to 3(Claimants)

4. Navashkhan ... 4th Respondent (1st respondent)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 04.03.2017 made in MCOP.No.176 of 2016 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge, MCOP) at Tiruvannamalai.

For Appellant : Mr. M.Krishnamoorthy

For Respondents: Mrs.Subathra
for Mrs.Malar for RR 1 to 3

No appearance for R4

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The challenge in this Appeal is to the award of the Motor Accident Claims Tribunal, Tiruvannamalai, granting a sum of Rs.13,28,000/- as compensation to the parents and sister of one

Indhiyas, who died in a motor accident that occurred on 09.12.2012.

2. According to the claimants, the said Indhiyas, was working as a cleaner in the Tractor with Tipper bearing Registration No.TN 25 AB 0995, belonging to the 4th respondent herein and insured with the appellant Insurance Company. On 09.12.2012, the driver of the Tractor with Tipper drove the vehicle in a rash and negligent manner fiercely hitting a speed breaker. As a result of the impact, the tractor as well as the tipper toppled and the deceased fell down and he was crushed under the Tractor, resulting in his instantaneous death. Contending that the accident had occurred due to the negligent driving of the driver of the tractor, the claimants sought for a compensation of Rs.10,00,000/-.

3. The Insurance Company resisted the claim contending that the Tractor was used for illegal smuggling of sand and hence there is a violation of the policy condition regarding the user of the vehicle. It was also contended the driver of the tractor did not possess a valid driving license at the time of the accident. It is also the contention of the Insurance Company that the deceased having travelled in a tractor which is not meant for carrying passengers, the Insurance Company cannot be held liable to pay the compensation. The quantum of compensation claimed was also termed as excessive.

4. The Tribunal on a consideration of the material on record concluded that the accident occurred due to the rash and negligent driving of the driver of the tractor. In coming to such a conclusion, the Tribunal relied upon the FIR as well as the evidence of P.W.2, eyewitness. The Tribunal faulted the Insurance Company for not examining the driver of the tractor or the owner. The evidence of R.W.2 was rejected by the Insurance Company, inasmuch as he was not an eyewitness to the accident.

5. On the question of liability of the Insurance Company, the Tribunal found that the Policy Schedule which was marked as Ex.R5, and attached to the Investigation Report Ex.R6 disclosed that the Insurance Company has collected premium for two persons under IMT.28. Therefore, the Tribunal found that the deceased was not an unauthorized passenger. The Tribunal also pointed out that R.W.2 the Legal Officer of the Insurance Company had admitted that as per the contract of the Insurance, the Insurance Company had agreed to cover two persons, who travelled in the tractor. On the above conclusions, the Tribunal found that the Insurance Company is liable to pay compensation for the death of the said Indhiyas.

6. As regards the quantum, the Tribunal fixed the income at Rs.6,500/-, added 50% towards future prospects and arrived at the notional income for determination of the loss of dependency

at Rs.9,750/-. Deducting 1/2 towards personal expenses, the deceased being a bachelor, and applying a multiplier of 18, the Tribunal arrived at the total loss of dependency of Rs.10,53,000/-. The Tribunal also awarded a sum of Rs.1,50,000/- towards loss of love and affection to their parents and Rs.1,00,000/- towards the loss of love and affection to the sister. In all, the Tribunal awarded a sum of Rs.13,28,000/- as compensation, including a sum of Rs.25,000/- towards funeral expenses.

7. This award is challenged by the Insurance company.

8. We have heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellant Insurance Company and Mrs.Subathra, learned counsel appearing for Mrs.Malar, learned counsel for the respondents 1 to 3. The 4th respondent owner of the Tractor, though served does not appear either in person or through counsel.

9. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant Insurance Company would submit that inasmuch as there is a violation of Policy Condition, the Insurance Company should not have been made liable to pay the compensation. The violations of policy conditions, according to him, are :-

1) The user of the vehicle for non agricultural purpose;

2) Carrying passenger in a tractor which is normally not meant for the said purpose;

3) The driver of the Tractor do not possess a valid driving license.

10. Elaborating on the above submissions, Mr.M.Krishnamoorthy, would contend that as per the FIR as well as the Claim Form submitted by the owner, which forms part of Ex.R6 Investigation Report, it is seen that the tractor would used for illegal quarrying of sand from the river bed. Therefore, according to Mr.M.Krishnamoorthy, the Tractor which is meant for agricultural purposes only, has been used for the illegal unauthorized purpose of sand quarrying. He would rely upon the policy which contains limitations as to use.

11. Though the clauses relating to limitation as to use reads that the policy covers use only for agricultural and forestry purposes any allied use has not been prohibited. Ex.R5 Policy also shows that it does not cover:

(1) Use for Hire or Reward, Racing, Pace making, Reliability trials or Speed testing

(2) Use for Carriage of passenger for hire or reward;

(3) Use whilst drawing a greater number of trailers in all than is permitted under law.

12. The purpose for which the tractor was used, namely quarrying of sand, is not prohibited under the Policy condition, but at the same time, we find that it is an illegal purpose. No doubt, there is a violation of a policy condition, but the same will not absolve the Insurance Company of its liability towards 3rd party, namely the claimants. At best, the Insurance Company can recover the award amount from the owner of the tractor.

13. As regards the 2nd contention of Mr.M.Krishnamoorthy that the deceased travelled as a passenger in the Tractor, there is evidence to show that the deceased was travelling as a cleaner in the tractor. It is seen from the Policy that the premium of Rs.50/- has been collected as per the IMT.28 to paid driver/cleaner. IMT.28 provides for extra premium for driver or cleaner or conductor employed in connection with the operation of insured vehicle and the premium applicable is Rs.25/- per person. From the Policy, we find that the Insurance Company had collected Rs.50/-, therefore, two persons would be covered by the Policy. Hence, the deceased whether he is termed as a cleaner or a load man would be covered by the Policy.

14. The third contention of the Mr.M.Krishnamoorthy, is that the driver did not possess a valid driving license. Here again the same cannot absolve the Insurance Company of its liability to pay the compensation with the right to recover the same from the owner. We, therefore, find that none of the contentions of Mr.M.Krishnamoorthy, learned counsel appearing for the appellant Insurance Company can be countenanced so as to avoid the entire liability of paying the compensation. We, however, make it clear that the Insurance Company will be entitled to recover the compensation paid by from the owner of the vehicle without resorting to separate proceedings.

15. As regards the quantum Mr.M.Krishnamoorthy, would submit that the Tribunal erred in adding 50% towards future prospects. Relying upon of the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2018 (1) LW 331, Mr.M.Krishnamoorthy, would contend that it could only be 40%.

16. The Tribunal has taken the income of the deceased at Rs.6,500/- and 40% of that would be Rs.2,600/-, therefore, the total income for the purposes of fixing the loss of dependency would be Rs.9,100/-. Since the deceased is a bachelor 50% of the amount should be deducted towards his personal expenses, therefore, the loss of dependency is Rs.4,550/-. The deceased

was aged about 17 years at the time of the accident hence multiplier of 18 would apply. The total loss of dependency would be Rs.4,550/- x 12 x 18 = Rs.9,82,800/-. As rightly pointed out by Mr.M.Krishnamoorthy, the compensation awarded under the conversional heads is on the higher side, we, therefore modify the compensation awarded by the Tribunal as follows:

S.No.	Heads	Amount
1.	Towards Loss of Dependency	Rs.9,82,800/-
2.	Loss Loss of Love and Affection to the parents at 40,000/- each	Rs. 80,000/-
3.	Funeral Expenses	Rs. 25,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Loss of Transportation	Rs. 2,000/-
	TOTAL	Rs.11,04,800/-

The same is rounded off to Rs.11,05,000/-. The award will carry interest at 7.5% per annum. The appeal is partly allowed.

17. Out of the award amount the mother of the deceased namely, the 2nd respondent would be entitled to a sum of Rs.7,00,000/- with proportionate interest and entire costs and the father of the deceased, the 1st respondent would be entitled to Rs.4,05,000/- with proportionate interest. The 3rd respondent being the sister is not a dependant and hence she is not entitled to any compensation. It is seen that the Insurance Company has been directed to deposit 50% of the award amount with proportionate interest by order dated 28.07.2017 made in CMP No.11578 of 2017. The Insurance Company is directed to deposit the balance amount with 7.5% interest per annum, within a period of 6 weeks from the date of receipt of a copy of the judgment. On such deposit, the claimants are allowed to withdraw the same as apportioned by us above. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

jv

To

The Special Subordinate Judge,
The Motor Accidents Claims Tribunal,
Tiruvannamalai.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.63555

+1cc to M/s.M.Malar, Advocate, S.R.No.63632

Copy to: The Section Officer,
VR Section,
High Court, Madras - 104. (2 copies)

CMA.No.2183 of 2017
and CMP No.11578 of 2017

SV(CO)
SSM(05/12/2018)