IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.02.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.No.2271 of 2014
and
M.P.No.1 of 2014

United India Insurance Co Ltd.,
C.G.Complex,
139, Kumaran Road,
Tiruppur-641 604. ... Appellant/3rd Respondent

Vs.

1.Tmt.Sreelekha
2.Minor U.Mouneesh
3.Minor Monisha ...Respondent 1 to 3/Petitioners

4.N.Pechimuthu ...4th Respondent /1st Respondent

5.M/s.Jolly Ride Transports,
14, Sheriff Colony, Cross Road,
Tiruppur-641 604. ...5th Respondent/2nd Respondent

6.A.B.Raman

7.Tmt.Chinthamani ... 6th & 7th Respondents/
4th & 5th Respondents

(Minor respondents 2 & 3 are represented by
their mother/guardian 1st respondent)

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 19.08.2013 made in M.C.O.P.No.188 of 2011 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Coimbatore.

For Appellant :Mr.T.Ravichandran

For Respondents : Mr.V.Thillaisamy (For R1 to R3, R6 & R7)
R4, 5- Exparte

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Challenging the findings rendered by the Motor Accident Claims Tribunal (III Additional District Judge), Coimbatore, in and by award dated 19.08.2013 in M.C.O.P.No.188 of 2011, in fixing the liability on the part of the Insurance Company to pay the compensation amount by indemnifying the owner of the vehicle, the present appeal has been filed by the Insurance Company.

2.The respondents 1 to 3 herein are the claimants before the Tribunal and they are the wife, minor son and minor daughter of the deceased Umamaheswaran. The respondents 6 & 7 herein are the parents of the deceased Umamaheswaran. It is the case of the claimants before the Tribunal that they live in Vadamadurai, Coimbatore. On 13.01.2009, the said Umamaheswaran, after finishing his work for the day at Tiruppur, was returning to his home in Vadamadurai, by travelling in a bus bearing Reg.No.TN39AE555 belonging to the 5th respondent herein and insured with the appellant herein/Insurance Company. On the way, before reaching Coimbatore Bus Stand, he wanted to purchase medicines for his mother from a medical shop at Ramanathapuram, from where he used to purchase the medicines frequently, and he asked the conductor of the bus, to stop the bus at a bus stop near Sowripalayam Pirivu. The bus was stopped with the engine running and while the said Umamaheswaran was getting down from the bus, the driver of the bus suddenly moved the bus, as a result of which the said Umamaheswaran lost his balance and fell down from the bus and sustained grievous injuries. He was immediately taken to CMC Medical College Hospital, where he was declared brought dead. Since the accident had occurred due to the negligent act of the driver of the bus, the claimants filed the claim petition before the Tribunal claiming a sum of Rs.30 lakhs as compensation from the owner of the bus as well as insurer of the bus.

3.The claim made by the claimants was resisted by the Insurance Company by taking a defence that the accident had occurred only when the deceased made an attempt to get down from the moving bus, therefore the Insurance Company is not liable to pay the compensation amount.

4.Before the Tribunal, in order to prove the case, on the side of the claimants, the 1st claimant/wife examined herself as P.W.1 besides examining one Chandrasekran as P.W.2 and one Sampath as P.W.3, who is an eye-witness to the accident, and marked 11 documents as Ex.P.1 to Ex.P.11. On the side of the Insurance Company, the Manager of the Insurance Company was examined as R.W.1 and seven documents were marked as Ex.R.1 to Ex.R.7.

5.The Tribunal, after analyzing the entire evidence adduced on either side, has come to the conclusion that the driver of the bus is solely responsible for the accident and by coming to such a conclusion, the Tribunal has made the calculation under different heads and passed an award for a total sum of Rs.22,20,000/- as compensation. Aggrieved over the same, the present appeal has been filed by the Insurance Company.

6.The learned counsel for the appellant/Insurance Company submitted that it is the specific defence of the Insurance company that accident had occurred only due to the negligent act of the deceased and that it is the deceased Umamaheswaran who made an attempt to get down from the moving bus. Hence, the driver of the bus insured with the appellant/Insurance Company is not responsible for the accident. In order to substantiate their defence, on the side of the Insurance Company, the Manager of the Insurance Company was examined as R.W.1, through whom seven documents were marked as Ex.R.1 to Ex.R.7. The learned counsel for the appellant/Insurance Company would further submit that the final report filed before the Judicial Magistrate No.8, Coimbatore, was marked as Ex.R.7. A perusal of the said final report would show that accident had occurred only when the deceased made an attempt to get down from the moving bus. Further, the FIR was closed as action dropped. Hence, by accepting Ex.R.7, the Tribunal ought to have dismissed the claim petition or at least, 50% negligence on the part of the deceased ought to have been fixed by the Tribunal. But, instead of doing so, the Tribunal has fixed the entire liability on the part of the driver of the bus. Hence, the said finding rendered by the Tribunal has to be set aside.

7.That apart, the learned counsel for the Insurance Company has also submitted that the quantum of compensation awarded by the Tribunal is also on the higher side, hence, the same needs proper reduction.

8.Per contra, the learned counsel for the respondents 1 to 3/claimants made his submissions supporting the award passed by the Tribunal.

9.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

10.It is the case of the claimants that when the deceased Umamaheswaran was getting down from the bus, the said bus was moved suddenly by its driver, as a result of which the said Umamaheswaran fell down and sustained grievous injuries and died. Per contra, it is the defence of the Insurance Company that the deceased made an attempt to get down from the moving bus and in that process, he lost his balance and fell down and sustained fatal injury. In order to prove the case of the claimants, one Sampath was examined as P.W.3, who was an eye witness to the accident. P.W.3 had categorically stated in his evidence that when the deceased Umamaheswaran was alighting from the bus, the driver of the bus suddenly moved the bus. In his cross-examination, no favourable reply was elicited in support of the case of the Insurance Company. On the side of the Insurance Company, seven documents were marked through R.W.1, Manager of the Insurance Company. But, R.W.1 is not an eye witness to the occurrence. The learned counsel for the Insurance Company wholly relied up the Final reported-Ex.R.7 filed by the Police, wherein it has been stated that the deceased stepped down from the running bus and sustained fatal injury. But, in order to prove the veracity of the said documents (Ex.R.7), the Investigating Officer ought to have been examined. Whereas the respondents have failed to examine the Investigating Officer. Had the Investigating Officer been examined, the claimants would have got an opportunity to cross-examine him. Under such circumstance, We are of the opinion that much significance cannot be attached to Ex.R.7-Final Report since the same was not marked through the Investigating Officer. Considering the materials available on record, We are of the opinion that the conclusion arrived at by the Tribunal that the accident is the result of the negligent act of the driver of the bus, cannot be found fault with. Hence, We are not inclined to interfere with the said finding rendered by the Tribunal.

11.So far as the quantum of compensation is concerned, it is the case of the claimants that the deceased Umamaheswaran was working as Maintenance Engineer in M/s.Windsor Sathyam Engineering Company and earning a sum of Rs.18,000/- per month. In order to prove the income earned by the deceased, on the side of the claimants, Ex.P.6 & Ex.P.7 were marked and one Chandarasekaran, a former employee in the said company, was examined as R.W.2. Considering the evidence of P.W.2 and Ex.P.6 & Ex.R.7, the Tribunal has fixed a sum of Rs.18,000/- as monthly income of the deceased. Thereafter, the Tribunal has deducted 1/3rd amount towards personal expenses and then, by applying multiplier 15, the Tribunal has awarded a sum of Rs.21,60,000/- under the head of loss of income. The calculation made by the Tribunal to arrive at the compensation under the head of loss of income is well within the principles laid down by the Hon'ble Supreme Court in various decisions. Hence, the same needs no interference from this Court.

12.That apart, the Tribunal has awarded a sum of Rs.20,000/- for loss of consortium, a sum of Rs.30,000/- for loss of love and affection and a sum of Rs.10,000/- for mental agony. Thus, the Tribunal has passed an award for a total sum of Rs.22,20,000/-. The compensation awarded by the Tribunal cannot be said to be excessive at any stretch of imagination. Hence, We do not find any infirmity in the compensation amount awarded by the Tribunal. There is no merit in the appeal and the same is liable to be dismissed.

13.In the result, the Civil Miscellaneous Appeal is dismissed confirming the award dated 19.08.2013 in M.C.O.P.No.188 of 2011 passed by the Motor Accident Claims Tribunal (III Additional District Judge), Coimbatore. The appellant/Insurance company is directed to deposit the entire compensation amount as awarded by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st claimant/wife and the 6th and 7th respondents who are the parents of the deceased are entitled to withdraw their share amount from the award amount with accrued interest thereon by making necessary application before the Tribunal. The share amounts of the minor claimants/respondents 2 & 3 herein shall be deposited in a fixed deposit in any one of the nationalised banks till they attain majority and their mother/1st claimant is entitled to withdraw the interest accrued thereon once in every three months. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To,
1. The Motor Accident Claims Tribunal
(III Additional District Judge), Coimbatore.

2. The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.T.Ravichandran, Advocate Sr.No.8587/18

GP(CO)
sm:5.6.2018

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