IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2018

CORAM:

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

CMA.No.463 of 2018
and
CMP.No.4195 of 2018

1. The United India Insurance Company Ltd.,
No.134, Silingi Building, Greams Road,
Chennai - 600 006.
... Appellant/2nd Respondent

-vs-

1.S.Thangaraj
2.T.Shanthi ...1st and 2nd Respondent/Petitioners
3.K.Balaji ... 3rd Respondents/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 03.10.2017, made in M.C.O.P.No.1256 of 2012, on the file of Motor Accident Claims Tribunal (V Court of Small Causes) of Madras.

For Appellant : Mr.S.Manohar

For Respondents: Mr.P.Kuppusamy
Mr.M.Venkatesan for R1 and R2

: No Appearance for R3

J U D G M E N T

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

The Insurance company which suffered an award on payment of Rs.15,53,000/- with interest at 7.5% per month in M.C.O.P.No.1256 of 2012 on the file of the Motor Accident Claims Tribunal (V Court of Small Causes, Chennai) has come forward in this appeal challenging the liability as well as the quantum.

2. The claim petition was preferred by the respondent 1 and 2 herein. The deceased namely T.Sampathkumar aged about 26 years died in the motor accident that occurred at 00:45 hrs on 01.01.2012. According to the claimants (respondents 1 and 2), while he was travelling as a pillion rider in the motor cycle bearing registration No.TN-06-C-1481 which was owned and driven by the 3rd respondent herein on the new year day, the driver of the vehicle drove it in a rash and negligent manner and dashed against the road divider. As a result of the accident, the deceased Sampathkumar sustained injuries in neck causing instantaneous death. The claimants sought for a compensation of Rs.10,00,000/-.

3. The Insurance company resisted the claim contending that the vehicle namely, the motor cycle bearing registration No.TN-06-C-1481 was not involved in the accident. It was also contended that the First Information Report doest disclose the involvement of the vehicle. It is, further contention of the Insurance company that the quantum of compensation claimed is excessive. The Tribunal on consideration of evidence of PW1 and PW2 as well as Ex.P1 to P11 marked on the side of the claimants concluded that the accident occurred due to the rash and negligent driving of the motor cycle by the 3rd respondent. The Tribunal laid specific emphasis on the evidence of PW2 Murugan who deposed that the vehicle was driven by 3rd respondent with the deceased as a pillion rider. As a result of the rash and negligent driving, the vehicle hit against the center median of the road on which iron rods were fixed. As a result of the impact, the deceased hit against the iron rods causing a deep cut injury in his neck resulting in his death.

4. On the quantum, the Tribunal took the monthly income of the deceased at Rs.8,000/-, adding 50% towards future prospects, the annual income was computed at Rs.1,44,000/- deducting 50% towards his personal expenses, the deceased being a bachelor, the Tribunal arrived at the pecuniary loss at Rs.72,000/- per annum. Considering the age of the deceased, the Tribunal applied a multiplier of 17 and arrived at the total loss of dependency at Rs.12,24,000/-. Awarding a sum of Rs.2,00,000/- for loss of love and affection, a sum of Rs.1,00,000/- towards loss of expectation of life, Rs.25,000/- towards funeral expenses, Rs.4,000/- towards damage to clothing and articles, the Tribunal arrived at the total compensation of Rs.15,53,000/-. It is this award that is challenged in this appeal by the Insurance company.

5. We have heard Mr.S.Manohar learned counsel appearing for the appellant Insurance company and Mr.P.Kuppusamy learned counsel appearing for the respondents 1 and 2. The 3rd respondent, owner of the vehicle those serve does not appear either in person or through counsel.

6. Mr.S.Manohar learned counsel appearing for the appellant Insurance company would contend that the Tribunal erred in relying upon the evidence of PW2 to conclude that the accident occurred in the manner claimed by the respondents 1 and 2. Pointing out the fact that the First Information Report registered based on a complaint made by a constable who was on duty does not disclose the vehicle number, he would contend that the involvement of the motor cycle belonging to 3rd respondent itself is doubtful. He would also point out that the post-mortem report says that the deceased had died of shock and hemorrhage due to cut injury in the neck. Mr.S.Manohar would also also draw our attention to the charge sheet and contend that the registration number of the motor cycle belonging to the 3rd respondent has been subsequently included though the First Information Report does not disclose the number. It is the further contention of Mr.S.Manohar that the Tribunal erred in relying upon the evidence in PW2 inasmuch as he has not an eye-witness but the Magazar witness. In order to his contention regarding the status of PW2, Mr.Manohar would invite us to the contents of Ex.P3 charge sheet which includes the inspection of Magazar.

7. As regards the quantum of compensation is concerned, Mr.S.Manohar would contend that the Tribunal was not right in adopting the monthly income at Rs.8,000/-, inasmuch as the accident occurred in 2012. He would also fault the award on the ground that the Tribunal has added 50% towards future prospects which is against the quantum of future prospects suggested by the Honourable Supreme Court in National Insurance Company Vs. Pranay Sethi reported in 2018 (1) LW 331. It is the further contention of Mr.S.Manohar that the award under the heads of conventional damages granted by the Tribunal are is on the higher side.

8. Per contra, Mr.Kuppusamy learned counsel appearing for the respondent 1 and 2/claimants would contend that PW2 has deposed to the effect that he has seen the accident. He would also draw the attention to the proof affidavit filed by the PW2 wherein he has specifically stated that he had seen the accident. He would also pointed out that there is no cross examination on this aspect by the appellant Insurance company.

He would further contend that in the absence of any cross examination on the specific claim of PW2 that he had seen the accident, the Insurance company cannot be allowed to contend that the vehicle namely motor cycle bearing registration No.TN-06-C-1481 was not involved in the accident. On the quantum of compensation, Mr.Kuppusamy would contend that the Tribunal was right in granting 50% towards future prospects, inasmuch as the deceased was a graduate. Considering the fact that the Tribunal has not granted any amount towards loss of estate. The overall compensation is just and reasonable.

9. We have considered the rival submissions. On the basis of the contentions of the counsel on either side, the following points arise for determination in this appeal.

i) Whether the Tribunal erred in concluding that the accident occurred due to the rash and negligent driving of the motor cycle bearing registration No.TN-06-C-1481 by the 3rd respondent?

ii) Whether the quantum of compensation awarded by the Tribunal can be said to be just and reasonable?

10. No doubt, the First Information Report that was filed immediately after the occurrence by a police constable who was on duty in the vicinity of the accident does not disclose the registration number of the vehicle that was involved in the accident. In the First Information Report it is stated by the complainant that she was on duty at Walajah Road and four or five motor cycles were driven by the new year revellers, from west towards Marina beach. After vehicles crossed she found the deceased lying on the road unconcious. When she went near him she found that he had suffered a cut injury in the neck and was dead. Subsequently, the police had filed a charge sheet on 17.02.2012 stating that the accident that occurred while the deceased was travelling as a pillion rider in the vehicle bearing registration number TN-04-C-1481. As a result of the accident, the vehicle dashed against the centre median and the deceased who was a pillion rider was injured by the iron rods fixed on the centre median he died on the spot.

11. Mr.S.Manohar would vehemently contend that the involvement of vehicle has not been established. We find that the said plea of the Insurance company cannot be countananced for the following reasons:

i) No witness has been examined on the side of the Insurancce company.

ii) From the evidence of the PW2 we find that there was no cross examination by the Insurance company disputing his claim in the proof affidavit that he was an eye-witness to the accident.

iii) The Insurance company has not chosen to summon the owner of the vehicle who has been accused of rash and negligent driving and causing the accident.

iv) The charge sheet has been filed by the police stating that the accident occurred due to the rash and negligent driving of the motor cycle bearing registration No.TN-06-C-1481.

12. It is a triate position of law that if the Insurance company seeks to avoid the liability by contending that the vehicle was not involved in the accident it has to prove the same by examining competent witnesses. Though the initial burden is on the claimants once some evidence is placed before the Tribunal regarding the manner in which the accident occurred the burden shifts on to the Insurance company to show that the vehicle was not involved in the accident. We find that there is total lack of evidence on the part of the Insurance company. Not even an attempt has been made to examine the owner of the vehicle who is said to be defending the criminal case contending that his vehicle was not involved in the accident. We do not think that we can countenance of the arguments of Mr.S.Manohar when the Insurance company had not taken any steps to establish that the vehicle was not actually involved in the accident. We are therefore of the consider opinion that the finding of the Tribunal regarding the involvement of the motor cycle bearing registration No.TN-06-C-1481 in the accident does not call any interference. Therefore question number 1 is answered against the appellant.

13. On the quantum, Mr.S.Manohar would contend that the Tribunal was not right in fixing the monthly income at Rs.8,000/-. It is in evidence that the deceased is a graduate in arts and he was working as a Advocate Clerk. Considering that the accident took place on 01.01.2012, we find that the adoption of sum of Rs.8,000/- as monthly income cannot be faulted. The Tribunal has added 50% towards future prospects. In view of the

judgment of the larger bench of the Honourable Supreme Court in National Insurance company Vs. Pranay Sethi referred to Supra. The Tribunal should have added only 40% towards future prospects. Thus, worked the monthly income of the deceased would be as Rs.11,200/- (8,000 + 3,200). The deceased was a bachelor therefore 50% of his income should be deducted towards his personal expenses. Thus, the monthly loss of dependency is Rs.5,600/-. The multiplier applicable is 17, considering the age of the deceased i.e 24 years. The total loss of dependency would be 5,600 x 12 x 17 = 11,42,400. The Tribunal has awarded a sum of Rs.2,00,000/- towards loss of love and affection and same is reduced to Rs.80,000/- and at Rs.40,000/- each for the claimants. The award of Rs.1,00,000/- towards loss of expectation of life is unsustainable.

14. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, Rs.4,000/- towards loss of clothing the same are sustained. A sum of Rs.15,000/- is awarded loss of estate. The total compensation is as follows:

Loss of dependency	-	Rs.11,42,400/-
Loss of love and affection	-	Rs. 80,000/-
Funeral expenses	-	Rs. 25,000/-
Damage to clothing and other articles	-	Rs. 4,000/-
Loss of estate	-	Rs. 15,000/-
Total		Rs. 12,66,400/-

Thus, it is rounded off to Rs.12,67,000/-.

15. For foregoing reasons, the appeal is partly allowed, the compensation awarded by the Tribunal is reduced to Rs.12,67,000/- from Rs.15,53,000/- with proportionate interest and cost. The Insurance company is liable to pay 7.5% interest per annum from the date of filing of the claim petition till date of realization. The compensation is apportioned as follows:

The 1st respondent, father of the deceased is entitled to Rs.3,67,000/- and 2nd respondent, the mother will be entitled to a sum of Rs.9,00,000/-. The Insurance company is granted 6 weeks time from the date of receipt of copy of the order to deposit the awarded amount less the amount, if any already deposited. On such a deposit, the claimant would be permitted to withdraw the same. There shall be no order to cost in this appeal.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kk

To

Motor Accident Claims Tribunal,
(V Court of Small Causes) Madras.

+1cc to M/S.S.Manohar, Advocate Sr.60499

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and
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sj[co]
srg 10/10/2018