IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2468 of 2017

Reliance General Insurance Company Limited,
No.57, Naigaum Cross Road,
Next to Royal Industrial Estate,
Wadala(W), Mumbai-31
... Appellants/2nd respondent

..vs..

1.Alakha Prasad ... 1st respondent/petitioner
2.D.Manavalan
... 2nd Respondent/1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 01.08.2005 made in MCOP.No.2642 of 2012 on the file of the Motor Accident Claims Tribunal/V Judge, Small Causes Court, (MACT)Chennai.

For Appellants : Mr.K.Moorthy

For Respondents : Mr.K.Malaikkannu for R-1
R2-Remain Expart

JUDGMENT

Being not satisfied with the finding of the Tribunal, dated 01.08.2005 made in MCOP.No.2642 of 2012 on the file of the Motor Accident Claims Tribunal/V Judge, Small Causes Court, Chennai, the present appeal has been filed by the 2nd respondent-Insurance Company to set aside the award passed by the Tribunal.

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

3. The case of the petitioner is that on 08.01.2011 at about 16.45 hours, while the deceased was travelling as a pillion

rider in the Motor Cycle bearing Registration No.TN-04-AZ-0095, from East to West, in Manali Express Road, Ernovoor Bridge, the first respondent container Lorry bearing Registration No.TN-05-V-6544, which was insured with the second respondent, came at high speed in a rash and negligent manner, dashed against the two wheeler, in which the deceased was travelling as a pillion rider causing him fatal injuries, resulting in death of the deceased. The accident occurred only due to the negligence of the first respondent lorry driver. At the time of accident, the deceased was aged 50 years and by working in a Private Steel Company was earning a sum of Rs.5,000/- per month. Apart from that he earned a sum of Rs.2,000/- by doing part time electrical work. The petitioner, who is the brother of the deceased was depending on his income and he seeks a sum of Rs.10,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent Insurance company by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The driver of the first respondent vehicle was not having valid licence. The age, avocation and income of the deceased alleged in the petition is not true. The claim of the petitioner is exorbitant. The petitioner is not entitled for compensation as sought for by him. Hence, the second respondent-Insurance company sought for dismissal of the petition.

5. Before the Tribunal, joint trial was conducted in MCOP.No.4642 of 2011 with MCOP.No.2642 of 2012 and the petitioners examined P.W.1 to P.W.4, produced documents Ex.P1 to Ex.P16 to substantiate their claim. On the side of the respondents, R.W.1 was examined while Ex.R1 was marked.

6. The Tribunal, on the careful analysis of evidence, found the negligence of the first respondent's lorry driver alone caused the accident, passed an Award for a sum of Rs.8,86,000/- payable by the respondents to the petitioner. Being aggrieved over the findings of the Tribunal, the 2nd respondent-Insurance Company has come forward with this present appeal to set aside the award passed by the Tribunal.

7. I have heard the learned counsel appearing for the appellant/second respondent-Insurance Company and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8. The learned counsel appearing for the appellant/2nd respondent Insurance Company contended that the Tribunal failed to appreciate the evidence on record properly and passed an Award giving higher amount as compensation. The Tribunal erred in fixing the negligence on the part of the first respondent lorry driver for causing for the accident. The claim of the

petitioner that as the brother of the deceased, he was depending on the earnings of the deceased is unsustainable. The legal heir certificate produced by the petitioner is not valid and the Tribunal ought not to have accepted the same. The amount awarded by the Tribunal is highly excessive and the same is liable to be set aside. Thus, the second respondent sought for allowing the appeal and to set aside the award passed by the Tribunal.

9. Per contra, the learned counsel appearing for the petitioner/claimant contends that the petitioner is entitled to seek compensation from the respondent as the dependent of the deceased. The amount awarded by the Tribunal is on the lower side and there is no need to interfere with the same. Thus, the petitioner/claimant sought for dismissal of this appeal.

10. The eye witness to the occurrence who deposed as P.W.3 clearly stated that the accident occurred due to the rash and negligent driving of the first respondent lorry driver only. Further, the police have registered Ex.P1 First Information Report and also laid charge sheet after completion of investigation against the driver of the first respondent container lorry. Likewise, it is clear from the evidence of R.W.1, the Investigating Officer examined by the 2nd respondent Insurance Company and Ex.R1 Investigation Report filed by him that the negligence of the first respondent lorry driver alone resulted in the accident. As such, the conclusion of the Tribunal that the negligence of the first respondent lorry driver alone caused in the accident is to be accepted as just and proper, in the absence of any contra evidence let in by the respondents.

11. The petitioner contends that the deceased was a bachelor and for the brother of the deceased is the only surviving legal heir as their parents have pre-deceased victim. The petitioner produced Ex.P7 legal heir certificate as well as Ex.P10 certificate issued by Kako East Village Panchayat Chairman. It is true that the legal heir certificate issued by the Panchayat heads and pointing out the same, the second respondent Insurance Company contends that the same is not sufficient to prove that the petitioner is the legal heir of the deceased. The petitioner has produced his Voter ID Ex.P9 and the Voter ID of the deceased is marked as Ex.P8. It is pointed out that in both Ex.P8 and Ex.P9, the father name is one and the same and they are brothers.

12. On the other hand, the learned counsel appearing for the second respondent Insurance Company contends that the legal heir certificate is not issued by competent authority and as such the claim of the petitioner is unsustainable. It is further stated that the deceased was working in Chennai, while

the petitioner was staying in Bihar and he is not dependent of the deceased. Thus the respondent contends that the petitioner is not entitled to seek any compensation. Further, it is contended that the quantum of award passed by the Tribunal is highly excessive. Thus the respondent sought for setting aside the award passed by the Tribunal by entertaining the appeal.

13. The learned counsel for the petitioner pointed out that in case of death of a person, in Motor Vehicle Accident, right to claim compensation is available not only to the legal representative of the deceased but any dependent who can file a claim for compensation. The Tribunal elaborately discussed the number of ruling relied upon by the petitioner and concluded that the petitioner as the brother of the deceased as well as dependent is entitled to seek compensation from the respondent. The petitioner while reiterating the same, relied upon the Ruling reported in 214 ACJ 667 in MONTFORD BROTHERS OF ST. GABRIEL AND ANOTHER Vs. UNITED INDIA INSURANCE CO. LTD AND ANOTHER, wherein it has held as follows:-

> "Motor Vehicles Act, 1988, Section 166(1)(c)- Claim application-Maintainability of - Legal representative - Death of member of a registered charitable society in an accident while driving jeep due to negligence of driver of an insured Gypsy- Member after joining society renounces the world and is known as 'Brother' - 'Brother' severs all his relations with his natural family and whatever benefit the 'Brother' receives as salary, gifts, pension insurance, etc., belong to the community as by right and goes into common purse - Deceased was Headmaster of School and claim application against owner and insurance company of Gypsy was filed by the society - Maintainability of claim application for want of locus standi of the claimant was not pressed by opposite parties and Tribunal awarded compensation - Insurance company preferred writ against order of the Tribunal which was allowed by the High Court on the ground that claimant was not competent to claim compensation under Motor Vehicles Act- Contention that as the term 'legal representative'; has not been defined under Motor Vehicles Act, taking guidance from section 1-A of Fatal Accidents Act, claim should be confined only for the benefit of wife, husband, parent and child of the deceased - Motor Vehicles Act creates new and enlarged right for filing application for compensation and this right cannot be hedged in by limitations under Fatal Accidents Act - Whether claim application is maintainable - Held: yes; dependent society cannot be denied right to claim

compensation for the death of its member without and justification; order of the Tribunal restored."

The petitioner also relied upon another ruling reported in 2014 ACJ 1454 in BRANCH MANAGER, NATIONAL INSURANCE CO. LTD., Vs. SUMATHI AND OTHERS, wherein it has held as follows:-

> "Claim Application - Legal representative - Married daughter - Claim application filed by son and married daughters for death of their mother - Death of son during pendency of claim petition and Tribunal allowed compensation to married daughters of the deceased mother - Contention that married daughters are not entitled to claim compensation more than Rs.50,000 for no fault liability under Section 140 of Motor Vehicles Act - Meaning of words 'legal representative' in Section 166 cannot be narrowed down to mean only 'dependents' excluding married daughters/sisters - Just because a brother or sister in married the right to represent the estate of deceased is not taken away making the provisions of law of successions ineffective - Limiting payment of compensation to some of the legal representatives as per Section 140, to the exclusion of others, would amount to violation of Article 14 of the Constitution - Whether married daughter can be barred or prohibited to prefer a claim under Section 166 - Held: no; case law discussed."

14. In view of the above said rulings relied upon by the petitioner/claimant, it is clear that the petitioner as the brother of the deceased is entitled to seek compensation and the petition is maintainable. The petitioner states that the deceased was aged 50 years and was employed in a private company earning a sum of Rs.5,000/- per month and he also earned Rs.2,000/- from his part time work. Admittedly, there is no documentary proof for the earnings of the deceased. Since the accident occurred, during 2011, as such it would be appropriate to fix the notional income of the deceased at Rs.7,500/- per month. Accordingly, towards future prospects, 30% of the amount viz., Rs.2,250/- is added. (Rs.7,500/- + 2,250/- = Rs.9,750/-). The deceased being a bachelor, 50% of the amount of Rs.4,875/- is deducted towards his personal expenses. The deceased is stated to be 50 years old, as per Ex.P6 postmortem certificate. Hence, the multiplier to be applied is 13. As such, the loss of income is calculated as follows:-

Rs.4875/- x 12 = Rs.58,500/- x 13 = Rs.7,60,500/-

The sum of Rs.50,000/- given by the Tribunal under the head of funeral expenses is hereby reduced to Rs.15,000/-. Further, the sum of Rs.25,000/- given towards loss of love and affection and a sum of Rs.50,000/- towards loss of expectation of life given by the Tribunal is set aside. Considering the circumstances, a sum of Rs.10,000/- is awarded towards Transportation and a sum of Rs.15,000/- is awarded towards loss of estate. Accordingly, the sum of Rs.8,86,000/- awarded by the Tribunal is hereby reduced to Rs.8,00,500/- and the same is rounded to Rs.8,00,000/-.

15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.8,86,000/- awarded by the Tribunal dated 01.08.2005 made in MCOP.No.2642 of 2012 on the file of the Motor Accident Claims Tribunal/V Judge, Small Causes Court, Chennai is reduced to Rs.8,00,000/-. The appellant/Second respondent-Insurance Company is directed to deposit the entire award amount of Rs.8,00,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. The second respondent Insurance company is entitled to withdraw the excess amount, if any paid. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
The V Judge,
Small Causes Court,
Chennai.

Copy to

The Section Officer,VR Section,
High Court, Chennai-104.

+1cc to Mr.K.Moorthy, Advocate sr.no.37251
+1cc to Mr.V.Balamurugan, Advocate sr.no.36511

C.M.A.No.2468 of 2017

pvs(co)
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