IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2654 of 2017

1.Palaniammal
2.Govindan ... Appellants/Petitioners

..vs..

1.K.S.Chidambaram
2.United India Insurance Company Ltd.,
No.48, Arcot Road,
Saligramam,
Chennai-600 093. ... Respondents/Respondents
(R1 remained exparte before the Tribunal,
hence his presence may be dispensed with)

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.07.2014 made in MCOP.No.755 of 2013 on the file of the Motor Accident Claims Tribunal/II Additional District Court, Thiruvallur at Poonamallee.

For Appellants : Mr.M.Malar

For Respondent : Mr.D.Baskaran for R-2

JUDGMENT

This civil miscellaneous appeal arises out of the Judgment and decree dated 18.07.2014 made in MCOP.No.755 of 2013 on the file of the Motor Accident Claims Tribunal/II Additional District Court, Thiruvallur at Poonamallee.

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

3. The case of the petitioners is that on 16.06.2013 at about 9.30 p.m., when the deceased Arunkumar was travelling as a pillion rider in a motor cycle bearing Registration No.TN-18-K-8535, in Poonamallee bye pass Road, near the junction of Parivakkam, just opposite to Sri Bhavan Hotel, due to the negligent driving of the motor cycle by the rider, dashed

against the stationary car and then hit the center median resulting death of Arunkumar. The accident occurred only due to the rash and negligent driving of the first respondent motor cycle resulting in death of the said Arunkumar. The above said motor cycle belongs to the first respondent and the same is insured with the second respondent. The petitioners who are the parents of the deceased have come forward with the petition seeking compensation of Rs.20,00,000/-.

4. On the other hand, opposing the petition, the second respondent Insurance Company filed a counter stating that the first respondent was riding his motor cycle at slow speed and very cautiously. However, an unknown four wheeler came at high speed and hit against the first respondent motor cycle, in which the deceased who was travelling as a pillion rider fell down from the motor cycle and consequently died. The first respondent was not negligent and he was not responsible for the accident. Hence, the second respondent seeks dismissal of the petition.

5. To substantiate their claim, the petitioners examined P.W.1 and P.W.2 and produced Ex.P1 to Ex.P7 to prove their claim. On the side of the respondents, the second respondent examined one Doctor as R.W.1 and the investigator of the 2nd respondent Insurance Company as R.W.2 and produced Ex.R1 and and R2 on their side. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the rider of the motor cycle and directed the respondents to pay a sum of Rs.8,92,128/- as compensation. Aggrieved over the said findings of the Tribunal, the appellant/2nd respondent Insurance Company has filed the present appeal questioning the negligence as well as the quantum of compensation.

6. The petitioners, who are the parents of the deceased Arunkumar, states that on 16.06.2013 at about 9.30 p.m., when their son was travelling as a pillion rider in the motor cycle belonging to the first respondent, near Parivakkam Junction, as the motor cycle was driven at high speed in a rash and negligent manner, last the control and dashed against the car and subsequently hit the center median, as a result of which, son of the petitioners being a pillion rider fell down from the motor cycle and sustained fatal injuries resulting in his death. It is evident from Ex.P1 First Information Report that the case has been registered against the rider of the motor cycle owned by the first respondent for negligent driving. Thus, the petitioners claims the accident occurred only due to the negligent driving of the rider of the motor cycle.

7. On the other hand, disputing the claim of the petitioners, the respondents contends that the accident occurred due to the negligent driving of the motor cycle by its rider under the influence of alcohol and as such they are not liable to pay any compensation. The investigator of the second respondent Insurance Company, who has deposed as R.W.2 filed his report as Ex.R2. According to him, the driving of the vehicle by Palanisamy after consuming alcohol is violation of the policy condition and therefore, the Insurance Company is not liable to pay the compensation. The second respondent examined one Doctor as R.W.1, who deposed that on 16.06.2013, while he was on duty in Kilpauk Medical College Hospital, Chennai at 10.00 p.m., one Palanisamy was brought for treatment with smell of alcohol and copy of Accident Register issued by him is Ex.R1. The respondents also contended that as per the averments in Ex.R1 and R2, two vehicles were involved in the accident, but the case has been registered against the first respondent only and the same is done at the instance of the petitioners to get compensation.

8. It is evident from Ex.P5 that the rider of the motor cycle who was having valid license and there is nothing on record to show that the deceased was under the influence of alcohol. Ex.P2 and Ex.P3 death certificate and postmortem certificate categorically states that the victim suffered fatal injuries in the accident and died only due to that. In such circumstances, as the first information report is registered against the rider of the first respondent vehicle and the same is not contradicted by any other available evidence, the finding of the Tribunal that the negligence of the first respondent alone caused the accident is just and proper and the same needs no interference.

9. The petitioners claim that the deceased son was aged about 22 years and he was working as Operator in a Private Company and received a monthly income of Rs.15,000/-. However, no documentary proof is produced regarding the avocation and monthly income of the deceased. Ex.P7, the School Transfer Certificate is produced and on that basis, the age of the deceased fixed at 22. The correct multiplier to be applied for him is 18. In the absence of any materials to prove that the deceased earned a sum of Rs.15,000/- per month, the Tribunal fixed the notional income at Rs.6,500/-. However, considering the fact that the accident occurred during 2013 and considering the qualification of the deceased, this Court is of the view that the notional income of the deceased could be fixed at Rs.7,500/- per month. Considering the age of the deceased was only 22 years, it would be appropriate to add 40% of the amount towards future prospectus. Thus, the same is calculated as

follows:- Rs.7,500/- monthly income, added 40% as future prospectus Rs.3,000/- = Rs.10,500/- deducted 50% towards personal expenses = Rs.5,250/- x 12 x 18 = Rs.11,34,000/-.

10. Apart from that a sum of Rs.5,000/- awarded by the Tribunal under the head of funeral expenses is very low and the same is enhanced to Rs.15,000/- and a sum of Rs.15,000/- is hereby awarded under the head of loss of estate. A sum of Rs.50,000/- awarded by the Tribunal under the head of Loss of love and affection is here by set aside. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income	8,32,128.00	11,34,000.00
2.	Loss of love and affection	50,000.00	-
3.	Loss of Estate	-	15,000.00
4.	Funeral Expenses	5,000.00	15,000.00
5.	Transport Expenses	5,000.00	5,000.00
	Total	8,92,128.00	11,69,000.00

11. In view of the above modification, the civil miscellaneous appeal is partly allowed. No costs. The second respondent/Insurance Company is directed to deposit the entire modified award of Rs.11,69,000/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of copy of this order. On such deposit, the appellants/petitioners/claimants are permitted to withdraw their respective share amount with proportionate interest and costs, by filing necessary application before the Tribunal. The petitioners/appellants are not entitled for interest for the default period of 936 days.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rrg
To

II Additional District Judge,
Motor Accident ClaimsThe Tribunal
Tiruvallur at Poonamallee.

Copy to

The Record Keeper,
VR Section,
High Court, Madras.[2 copies]

+1cc to Mr.D.Bhaskaran, Advocate Sr.6284
+1cc to M/S.M.Malar, Advocate Sr.6374

C.M.A.No.2654 of 2017

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srg 29/05/2018