

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

CORAM:

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

CMA.No.3259 of 2017
& CMP No.20340 of 2017

The Branch Manager,
M/s.Reliance General Insurance Company Limited,
No.73, First Floor, Officers Line,
Above HDFD Bank, Opp. Lakshmi Theatre,
Vellore 632 001.

... Appellant/2nd Respondent

-vs-

1. E.Suriya Gandhi
2. S.Jayaprithiya (Minor)
3. S.Kavya (Minor)
4. S.Karthiraj (Minor)

(Respondents 2 to 4 Minors Rept.
By Mother & NF 1st respondent)

5. The Correspondent,
A.R.M. Nursery & Primary School,
Vettiyanthozhuvam Village & Post,
Arani Taluk, Thiruvannmalai District.

... Respondents/Petitioners 1 to 4 & 1st Respondent

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 24.02.2017 made in MCOP.No.103 of 2011 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Arani, Thiruvannamalai District.

For Appellant : Mr.R.Mohan Babu
for Mr.M.B.Gopalan Associates

For Respondents: Mr. R.Nalliyappan for RR 1 to 4

No appearance for R5

J U D G M E N T

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

This Appeal is at the instance of the Insurance Company which suffered an award of payment of a sum of Rs.34,79,384/- for the death of one Bhavani, wife of the 1st respondent and mother of respondents 2 to 4 in MCOP No.103 of 2011 on the file of the Motor Accident Claims Tribunal, Arani.

2. According to the claimants, the deceased who was working as a Headmistress in Government School was on her way to the School in a TVS-50 Moppet, bearing Registration No.TN-25-U-9297, while so, the passenger bus bearing Registration No.TN-25-AZ-6601, belonging to the 5th respondent herein and insured with the appellant Insurance Company, driven by its driver in a rash and negligent manner, came from behind and dashed against the two wheeler. As a result of the accident, the deceased fell down from the two wheeler and the bus ran over her hip. One Parimala, who happened to be the friend of the deceased and her husband, took her to the Primary Health Centre and on medical advice, she was shifted to the Vellore Government Hospital where she died, despite treatment. A compliant was also lodged with the Arani Police Station and the case was registered under Crime No.452 of 2011 against the driver of the bus. Claiming that the deceased was a hale and healthy person, aged about 41 and earning a sum of Rs.30,425/- per month, the claimants, namely respondents 1 to 4 sought for a compensation of Rs.50,00,000/-.

3. The Claim Petition was resisted by the Insurance Company contending that the accident occurred due to the negligence of the deceased, as she unexpectedly swerved to the right while riding the two wheeler. The age, educational qualification and the income of the deceased were also disputed by the Insurance Company.

4. The Tribunal, which heard the Original Petition, concluded that the accident occurred due to the rash and negligent driving of the bus driver. In coming to the said conclusion, the Tribunal relied upon the contents of the FIR, which was marked as Ex.A1 and the fact that the Insurance Company has not let in any evidence, to establish absence of negligence on the part of the bus driver or negligence on the part of the deceased. Though, it was contented that the deceased did not possess a valid driving license and that the driver of the bus also did not possess a valid driving license. The Tribunal found that the driver of the bus had a license to drive a passenger vehicle with badge on the date of the

accident. The Tribunal also concluded that the deceased also had a valid driving license. The fact that both the vehicles were insured was also established before the Tribunal.

5. On the quantum, the Tribunal taking note of the salary certificate, namely Ex.P5 concluded that the deceased was earning a sum of Rs.30,425/- as monthly income. After deducting 1/4 towards personal expenses and applying a multiplier of 14, the Tribunal arrived at the loss of dependency at Rs.38,33,760/-. The Tribunal also deducted 10% towards Income Tax and arrived at the total compensation for loss of dependency at Rs.34,50,384/-. The Tribunal had granted a sum of Rs.10,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium and Rs.3,000/- to the minor children for loss of love and affection. In all the Tribunal granted a sum of Rs.34,79,384/-.

6. Aggrieved by the said award, the Insurance Company has come forward with the above appeal.

7. We have heard Mr.Mohan Babu, learned counsel appearing for Mr.M.B.Gopalan Associates, for the appellant Insurance Company and Mr.R.Nalliappan, learned counsel appearing for the claimants/respondents 1 to 4 and the 5th respondent owner of the bus, though served has not entered appearance through counsel.

8. Mr.Mohan Babu, learned counsel appearing for the Insurance Company would contend that in the absence of concrete evidence through eye witnesses, the Tribunal was not right in fixing the negligence on the driver of the bus. The said contention is stated only to be rejected because the Insurance Company has not attempted to lead evidence to show that the accident happened due to the negligence of the deceased. It is seen from the records that the Insurance Company did not even attempt to examine the driver of the bus. After all the owner of the bus was the insurer and if the Insurance company wanted to absolve itself from the liability to pay the compensation, it should have taken steps to examine the driver or the owner of the bus. In the absence of such evidence did not think that we should allow the Insurance Company to raise the plea regarding negligence. Therefore, we are of the considered opinion that the finding of the Tribunal on the question of negligence and liability do not call for any interference.

9. On the quantum Mr.Mohan Babu, learned counsel appearing for the Insurance Company is unable to pick holes with the

award. The income of the deceased is borne out by a salary certificate issued by the Government Department and therefore, the same cannot be disputed.

10. The Tribunal has not taken into account the future prospects and the amounts awarded by the Tribunal towards conventional damages, namely loss of consortium, loss of love and affection, funeral expenses etc. is very much on the lower side. We, therefore, see no grounds to interfere with the award of the Tribunal and hence the appeal is dismissed. However there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Subordinate Court,
Arani, Thiruvannamalai District.

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

+1cc to Mr.M.B.Gopalan Associates sr.no.63204
+1cc to Mr.R.Nalliappan, Advocate sr.no.62273

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