IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH

AND

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. No. 3132 of 2014

&

M.P. No. 1 of 2014

The Branch Office,
M/s. New India Assurance Co. Ltd.,
Vellore. ..Appellant/2nd Respondent in Trial Court

Vs.

1. Mrs. Meenakshi
2. Miss. Nandhini
3. Miss. Malini
4. Minor Shalini
5. Minor Magesh

(Minors are represented by their mother Meenakshi/1st respondent)

6. Mrs. Unnamalai
7. Mr. Seenuvasan .. Respondents/plaintiffs 1 to 6 & 1st Respondent in Trial court

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 07.03.2014 passed in M.C.O.P. No. 240 of 2009 by the Motor Accidents Claims Tribunal (Sub Court), Cheyyar District.

For Appellant :: Mr.J. Chandran

For Respondents :: Mr.S. Makesh for R1 to R6

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed by the Insurance Company questioning the liability fastened on them as well as the quantum of compensation awarded by the Tribunal, in and by award dated 07.03.2014 in M.C.O.P. No. 240 of 2009 passed by the Motor Accidents Claims Tribunal (Sub Court), Cheyyar.

2. It is the case of claimants 1 to 6, before the Tribunal, who are the wife, daughters, minor daughter, minor son and mother of the deceased, namely, Arumugam, that on 13.03.2009, at about 1.15.p.m., when the deceased, who was working as Head Constable, in Anakkavoor Police Station, Cheyyar Circle, Tiruvannamalai District, after finishing his duty, came out of the Police Station in his two wheeler bearing Registration No.TN.25 C 5926, a Tata Sumo Van bearing Registration No. TN 46 C 4777, driven in a rash and negligent manner, dashed against the two-wheeler of the deceased and thus caused the accident. In the said accident, the victim Arumugam suffered severe grievous injuries. Initially, he was admitted in Government Hospital, Cheyyar and thereafter, he was referred to Sri Ramachandra Medical Centre, Porur, Chennai, where he took treatment as an inpatient from 13.03.2009 to 24.03.2009, again from 25.03.2009 to 06.04.2009 and thereafter, from 26.04.2009 to 02.06.2009. The victim Arumugam had suffered Poly Skeletal Trauma, Grade 1 Compound Comminuted Fracture, Right Proximal Third Tibia and Fibula Fracture, Right 2nd, 3rd, 4th and 5th metatarsal base fracture righ foot left lower limb – closed distal 3rd femur fracture with distal tibia and fibular fracture. Inspite of the treatment given, the said Arumugam died on 02.06.2009. Hence, respondents 1 to 6 /claimants made their claim as against the owner of Tata Sumo Van bearing Registration No. TN 46 C 4777 as well as against the appellant Insurance Company, who is the insurer of the said vehicle.

3. Before the Tribunal, the Insurance Company had taken a defence that death was not due to the injuries sustained by the deceased in the accident. The victim Arumugam, who was treated at Sri Ramachandra Medical Centre, Porur, Chennai, after full recovery was discharged by the hospital authorities on 24.03.2009. Subsequently, he was re-admitted and according to the learned counsel, the re-admission was not due to the injuries sustained by him in the accident, but for other ailments.

4. In order to prove the claim, on the side of the claimants, the wife of the deceased was examined as P.W.1

besides examining one Doctor as P.W.2 and marking Exs-P1 to P15. On the side of the Insurance Company, the charge sheet was marked as Ex-R1 and one witness was examined as R.W.1. The Tribunal, on anaylsing the entire evidence, has rejected the defence taken by the Insurance Company and while fastening the liability on the Insurance Company, passed an award for a sum of Rs. 14,82,300/-. Challenging the same, the present appeal has been filed.

5. The only submission made by the learned counsel for the appellant is that from the Death Report marked as Exs-P6 & P8 on the side of the claimants, it could be seen that cause of death has been recorded as "COPD, Pulmonary Tuberculosis and Polytrauma with Sepsis". Therefore, the learned counsel for the Insurance Company would submit that when the deceased was suffering from other ailments as well, death could not be attributed to the injuries sustained by him in the accident alone. However, according to the learned counsel, the Tribunal, without considering the same, has fastened the liability on the Insurance Company to pay the compensation.

6. Per contra, the learned counsel for the claimants would support the award passed by the Tribunal.

7. Keeping the submissions of the learned counsel on either side, we have carefully gone through the entire materials on record.

8. From a perusal of the materials on record, it could be seen that after the accident on 13.03.2009, the deceased was taking continuous treatment for a period of 3 months. Originally, he was admitted in Sri Ramachandra Medical Centre on 13.03.2009 and from 13.03.2009, he took treatment as an inpatient till 24.03.2009 and thereafter, he was discharged. Again, he was re-admitted on 25.03.2009 and took treatment till 06.04.2009 and thereafter, on 26.04.2009, again he was admitted and was undergoing treatment till 02.06.2009, which shows that pursuant to the accident and only on account of the injuries sustained in the accident, he was taking continuous treatment. Though according to the learned counsel for the appellant, in the death report, marked as Ex-P6 & P8, under the cause of death, COPD and Pulmonary Tuberculosis have also been stated as reasons for death, we find that in the said report, with regard to cause of death, it is found mentioned " Polytrauma with Sepsis" which would go to show that the injuries sustained by him in the accident have also been the cause for his death. Though the deceased might have had other ailments, the evidence on record would clearly show that only right from the date of

the accident, he was taking continuous treatment for a period of three months and thereafter only he died. Therefore, it cannot be conclusively said that death was due to other reasons and not owing to the injuries sustained by the victim in the accident. Therefore, we are unable to agree with the submission made by the learned counsel for the appellant and we are of the opinion that the Tribunal was right in fastening the liability on the appellant Insurance Company.

9. Insofar as the quantum of compensation awarded by the Tribunal is concerned, the Tribunal, based on Ex-P10, Salary Certificate of the deceased, had fixed his monthly income as Rs.11,000/- and after deducting one-fourth towards his "Personal Expenses", arrived at Rs.8,250/- as his "Monthly Contribution to his family". Since the deceased was aged about 49 years, the Tribunal adopted multiplier 13, as per II Schedule of Motor Vehicles Act, and calculated "Loss of Dependency" as Rs.12,87,000/- (Rs.8250/- x 12 x 13) besides awarding Rs.20,000/- towards " Loss of Consortium", Rs.10,000/- towards "Funeral Expenses", Rs.10,000/- to each of respondents 1 to 6, totalling to Rs.60,000/- towards "Loss of Love and Affection" and Rs.1,05,300/- towards " Medical Expenses" supported by Ex-P14. Totally, the Tribunal had passed an award for a sum of Rs.14,82,300/- together with interest @ 7.5% per annum. Absolutely, we do not find any infirmity in the award passed by the Tribunal, as it is well within the principles laid down by the Honourable Apex Court in various judgments and we are not inclined to interfere with the same. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Connected M.P. is closed.

10. The appellant Insurance Company is directed to deposit the entire award amount with interest and costs, if not already deposited, before the Tribunal within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw their respective shares as per the apportionment of the Tribunal. As far as the shares of the minor claimants are concerned, the same shall be deposited in any one of the Nationalised Banks in interest bearing Fixed Deposit till they attain majority and the 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The MACT (Subordinate Judge), Cheyyar

copy to

The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.S.MAKESH, Advocate, S.R.No. 840
+1cc to Mr.J.CHANDRAN, Advocate, S.R.No. 944

C.M.A. No. 3132 of 2014

MG(CO)
TR(13/02/2018)