IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM:

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

C.M.A.No.706 of 2018

1.ROYAL SUNDARAM GENERAL INSURANCE CO LTD.
(HUBB) No.1 CLUB HOUSE ROAD
ANNA SALAI CHENNAI-600 002. ... APPELLANT

Vs

1 AMSATH BEGUM
2 MINOR YASMINE
3 MINOR TAJNISHA
4 MINOR NASIMA
5 MINOR MOHAMMED AASIF
[Minors 2 to 5 are rep by their mother Amsath Begum]
6 MRS.JAMILA BEEVI
7 SATHYAVENI ... RESPONDENTS

PRAYER: Civil Miscellaneous Appeal filed against the judgement and decree in MCOP No.179 of 2016 dated 03/11/2017 on the file of the MACT(II Additional District Judge Tiruvallur) at Poonamallee.

For appellant : Mr.M.Krishnamoorthy

For respondents : No appearance

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The award passed by the Motor Accidents Claims Tribunal, Poonamallee, in MCOP No.179 of 2016, granting compensation to the legal representatives of an employee of ITCL, Avadi, who died in a road accident is under challenge at the instance of the Insurance Company primarily on the ground that the policy was procured by the insured by giving false particulars.

2.The predecessor-in-interest of the respondents 1 to 6 was riding a motorcycle bearing registration no.TN 02 R 6856 through

CDH Road, Avadi. While so, the lorry bearing registration no.TN 04 AC 8650 insured with the appellant came in a rash and negligent manner and hit against the motorcycle. The predecessor-in-interest of the respondents 1 to 6 who was riding the motorcycle sustained grievous injuries and died on the spot. The matter was reported to the appellant. The dead body was given to the family after conducting postmortem.

3. The respondents 1 to 6 filed a claim petition before the Motor Accidents Claims Tribunal, Poonamallee, in MCOP No.179/2016 claiming a sum of Rs.20,00,000/- as compensation.

4. The claim petition was contested by the appellant both on the ground of liability and quantum. It was the contention of the appellant before the Tribunal that the insured produced a policy claiming that it was a policy issued earlier and on the basis of the particulars contained therein, obtained a new policy. However, on verification, it was found that there was no such policy. The appellant therefore pleaded that they are not liable to pay compensation.

5. The Tribunal answered the issue regarding liability against the appellant. The Tribunal awarded a sum of Rs.17,27,000/- as compensation. Feeling aggrieved by the said award, the appellant has come up with this civil miscellaneous appeal.

6. The learned counsel for the appellant contended that there was no liability to indemnify the insurer on account of the fraud played by her. According to the learned counsel, the policy was repudiated by the company after obtaining correct particulars with regard to the previous policy. It was further contended that the Tribunal granted more amount under the heads “love and affection” and “loss of consortium”.

7. None appeared on behalf of the respondent.

8. The appellant with a view to avoid liability, took up a contention that on ascertaining the correct factual position with regard to the alleged previous policy, the policy taken by the insured was repudiated. It is the contention of the appellant that Mrs.L.Sathyaveni, the insured, obtained policy for her vehicle TN 04 AC 8650 for the period from 2 February 2016 to 1 February 2017. In order to obtain the said policy, she produced the previous policy issued by United India Insurance company for the period from 2 February 2015 to 1 February 2016.

9. The Insurance Company on verification, found that there was no such policy issued by the United India Insurance Company. Therefore, the Insurance Company repudiated the policy by letter

dated 16 December 2016. The liability to pay the compensation to the legal heirs of the deceased on account of the accident that took place on 3 February 2016 is sought to be avoided on repudiation of the policy made on 16 December 2016.

10. There is no doubt that the 7th respondent has taken a policy from the appellant in respect of her vehicle bearing registration no.TN 04 AC 8650. The policy was valid for the period from 2 February 2016 to 1 February 2017. The vehicle owned by the 7th respondent met with an accident in which Thiru.Jainullabdeen, rider of the motorcycle died on account of the head injury.

11. The contention taken by the Insurance Company is not sustainable for more than one reason. The fact that the insured took a policy by giving false particulars would not absolve the Insurance Company from its liability towards third parties. The Insurance Company would be liable to pay compensation to the legal heirs of the deceased notwithstanding the fraud played by the insured in the matter of taking policy. Even otherwise, in the subject case, the appellant is liable to pay compensation for the simple reason that even the repudiation of the policy was only after the accident. The accident took place on 3 February 2016. The accident was reported to the appellant. The appellant appears to have verified the policy only after the accident, resulting in repudiation of the policy on 16 December 2016. As such, there was a policy in existence on 3 February 2016 which is the material date for fixing the liability. The policy was repudiated only after the material date. Therefore, any action taken by the Insurance Company after the accident would not absolve it from liability to third parties. We therefore reject the contention taken by the appellant with regard to liability.

12. The second contention relates to the amount awarded under different heads by the Tribunal.

13. The Tribunal has taken the monthly income of the deceased at Rs.7,500/- and after deducting 1/5th towards personal expenses, the Tribunal has arrived at monthly loss of dependency at Rs.6,000/-. Adopting multiplier of 16, the Tribunal has fixed the total loss of dependency at Rs.11,52,000/-. We find that the Tribunal has not taken into account future prospects. Considering the age of the deceased, future prospects are to be taken at 40% in view of the judgment of the larger Bench of the Hon'ble Supreme Court in National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(16) SCC 680. Thus, the monthly income for the purpose of calculation of loss of dependency should be taken as Rs.10,500/- (Rs.7,500 + Rs.3,000). Deducting 1/4th towards personal expenses, the monthly loss of dependency

is arrived at Rs.7,875/-. The annual loss of dependency will be Rs.94,500/-. Applying multiplier of 16, the total loss of dependency works out to Rs.15,12,000/-. The Tribunal has granted a sum of Rs.1,00,000/- towards loss of consortium to the wife and Rs.1,00,000/- each towards love and affection to the four children and Rs.50,000/- towards loss of love and affection to the mother. These awards are not in consonance with the decision of the larger Bench of the Supreme Court in Pranay Sethi (supra). Therefore, those awards are reduced as follows :-

The amount awarded towards loss of consortium is reduced to Rs.40,000/-. The amount warded towards loss of love and affection for the children is reduced to Rs.1,00,000/- (Rs.25,000 x 4). The amount awarded towards loss of love and affection for the mother is reduced to Rs.25,000/-. Since no amount has been awarded towards loss of estate, we fix it at Rs.15,000/-. A sum of Rs.10,000/- is awarded towards transport charges. This works out to total award amount of Rs.17,27,000/-, which is the amount awarded by the Tribunal, though under different heads. We are therefore of the considered opinion that the award of the Tribunal on the whole is just and reasonable. Hence the appeal fails.

14. In the upshot, we dismiss the civil miscellaneous appeal. There is no order as to costs. Consequently, C.M.P.No.6080 of 2018 is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The MACT(II Additional District Judge Tiruvallur)
at Poonamallee.

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.59900

C.M.A.No.706 of 2018

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srg 13/11/2018