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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM:

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

CMA.No.3456 of 2017
& CMP No.21942 of 2017

United India Insurance Co. Ltd.,
Rep. By its Divisional office-1,
104-A, Peramanur Main Road,
Salem 636 007.

.. Appellant/3rd Respondent

-vs-

1. R.Chitra
2. Minor R.Kishore
3. Minor R.Rishikesh

2 & 3 Minor Respondents rep. By
next guardian/mother 1st respondent
herein

4. R.Vijaykumari

..Respondents 1to4/Claimants

5. P.Sadasivam

6. S.Shanthi

..Respondents 5&6/Respondents 1&2

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 17.04.2017 made in MCOP.No.673 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

For Appellant : Mr.C.Paranthaman
For Respondents: Mr. K.S.Jayaganesan
for RR 1 to 5

No appearance for R6

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 had suffered an award for payment of a sum of Rs.11,21,000/- for the death of one Rajesh, aged about 32 years, who died in a motor accident that took place on 03.04.2012 at about 6.00 p.m., on the Pallipalayam to Thiruchengode Main Road, near Kovilankadu Bus Stand.



2. According to the claimants, the deceased was riding a Motor Cycle bearing Registration No. TN-34-A-2453, on the left side of the Pallipalayam Thiruchengode Main Road, the Motor Cycle bearing Registration No. TN-34-D-9239, which was driven by its rider in a rash and negligent manner, overtook a bus coming in the opposite direction and dashed against the deceased. Due to the said accident, the deceased Rajesh sustained head injury and died in the Government Hospital, Pallipalayam. Immediately after the accident, one S. Rajasekar, who happened to see the occurrence, gave a report before the Pallipalayam Police Station at about 8.00 p.m., clearly mentioning the rash and negligent driving on the part of the rider of the motor cycle bearing Registration No. TN-34-D-9239. However, the Police chose to register a case against the deceased. It was claimed that the deceased was aged about 32 years and was working as a lorry driver under one S. Jagadesh at Pallipalayam, on a monthly salary of Rs.10,000/-. Claiming that the 1st claimant widow has lost the consortium of the husband and claimants 2 & 3 the children have lost their father. The claimants sought for a compensation of Rs.15,00,000/-.

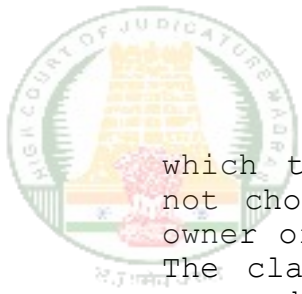
3. The respondents 1 & 2 in the Claim Petition, the owners of the offending two wheeler, remained absent.

4. The Insurance Company resisted the claim contending that it was the deceased Rajesh who drove the vehicle in a rash and negligent manner and Arunprakash, who was the rider of the motor cycle which came from east west direction had to stop the vehicle on the extreme left side of the road to avoid the accident. Unfortunately, the deceased Rajesh, who was riding a motor cycle bearing Registration No. TN-34-A-2453, lost control of the vehicle and dashed against the two wheeler driven by Arunprakash. Therefore, the negligence is on the part of the deceased.

5. The Insurance Company also pointed out that the Criminal case was also registered only against the deceased Rajesh. Inasmuch as the said Rajesh was the tort-feasor, the Insurance Company would deny its liability to pay compensation. It is also contended that the deceased Rajesh was under the influence of alcohol at the time of accident and that he did not have a valid driving license.

6. The Insurance Company filed an additional counter claiming that the owner and the insurer of the vehicle driven by Rajesh, namely No. TN-34-A-2453 were also necessary parties in the Claim Petition.

7. The Tribunal on the consideration of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the two wheeler driven by Arunprakash. One Rajendran, who was examined P.W.2, as eyewitness to the accident, had deposed about the manner in



which the accident had occurred. The Insurance Company did not choose to examine any person including the driver or the owner of the Motor Cycle bearing Registration No.TN 34 D 9239. The claim of the Insurance Company that the deceased Rajesh was under the influence of alcohol, based on the Final Report filed by the Police was also rejected by the Tribunal, on the ground that the Insurance Company has failed to produce the Postmortem Report.

8. On the quantum, the Tribunal took the monthly income of the deceased at Rs.6,500/- and after deducting 1/4th towards his personal expenses, took the loss of dependency at Rs.4,825/- applying the multiplier of 16 it awarded a sum of Rs.9,36,000/- towards the loss of dependency. The Tribunal awarded a sum of Rs.25,000/- towards funeral expenses, Rs.50,000/- towards loss of consortium to the wife, Rs.1,00,000/- towards loss of love and affection to the two minor children, Rs.10,000/- towards loss of love and affection to the 4th claimant, namely mother of the deceased. In all the Tribunal awarded a sum of Rs.11,21,000/- as compensation.

9. Aggrieved, the Insurance Company is on appeal.

10. We have heard Mr.C.Paranthaman, learned counsel appearing for the appellant Insurance Company and Mr.K.S.Jayaganesan, learned counsel appearing for the Claimants/ respondents 1 to 4.

11. Mr.C.Paranthaman, learned counsel appearing for the Insurance Company would contend that the charge sheet filed by the Police, would go show that the deceased Rajesh, was under the influence of alcohol at the time of the accident. He would also contend that the Tribunal erred in relying upon the evidence of P.W.2, which goes against the documentary evidence, namely the First Information Report and the Charge Sheet. Insofar as the question of negligent is concerned, though the FIR and the Charge sheet have been filed against the deceased Rajesh, the claimants had taken a specific plea in the Claim Petition, to the effect that the complaint was registered against the deceased, despite the fact that the eyewitness had attributed negligence to the rider of the two wheeler bearing No. TN 34 D 9239. The eyewitness Rajendran has been examined as P.W.2 and nothing has been elicited in his cross-examination in order to discredit his testimony.

12. Though, Mr. C.Paranthaman, learned counsel appearing for the Insurance Company would attempt to argue that the Final Report laid by the Police shows that the deceased Rajesh was under the influence of alcohol, we are unable to countenance the said submission of the learned counsel, because the Insurance Company has not filed the Postmortem Report which would definitely show the presence of alcohol in the body of the deceased at the time of postmortem and the



same would be unimpeachable evidence to decide whether the deceased was under the influence of alcohol at the time of the accident or not. We are, therefore, constrained to accept the findings of the Tribunal on the question of negligence.

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13. On quantum, though Mr.C.Paranthaman, learned counsel would contend that the Tribunal should not have taken a monthly income at Rs.6,500/- it is in evidence that the deceased Rajesh was a lorry driver and he was qualified to be a lorry driver. Therefore, the income assessed by the Tribunal at Rs.6,500/- per month cannot be said to be on the higher side. In fact, the Tribunal has not granted any addition towards future prospects. If future prospectus added the award would be definitely higher than what has been granted by the Tribunal. Though, it could be said that award on the head loss of consortium and loss of love and affection are slightly on the higher side, we do not interfere with the award, inasmuch as the award as a whole appears to be just and reasonable.

14. Hence the Appeal is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

jv
To
The Motor Accidents Claims Tribunal,
Special District Judge,
Salem.

+ 1 cc to Mr.K.S. Jeyagenesan, Advocate Sr.61828
+ 1 cc to Mr. C. Paranthaman, Advocate Sr.61889

CMA.No.3456 of 2017
& CMP No.21942 of 2017

KGK(CO)
EU(07/12/2018)