IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2018

CORAM:

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

C.M.A. No.758 of 2018
and
C.M.P.No.6433 of 2018

United India Insurance Co.Ltd.,
No.134, Silingi Buildings, 4th Floor, Greams Road,
Chennai-600 006.

... Appellant/2nd Respondent

-vs-

1.Pachaimmal ... 1st & 2nd Respondents/Petitioners
2.Velu
3.Suresh ...3rd Respondents /1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 20.12.2017 made in M.C.O.P.No.6473 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai.

For Appellant : Mr.C.Paranthaman
For Respondents: Mr.K.Varadha Kamaraj for R1 & R2
R3 - No appearance

J U D G M E N T

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

The Insurance Company, which suffered an award for a sum of Rs.22,52,000/- towards compensation for the death of one Umeshkumar, who is aged about 27 years in MCOP.No.6473 of 2013 on the file of the Motor Accident Claims Tribunal, Chennai, is the appellant. The said claim petition was filed by the parents of the deceased seeking a sum of Rs.50,00,000/- as compensation for the death of their son.

2. According to the claimants, the deceased who is a computer technician, was working as a Java Developer in M/s.Softorix Technologies Pvt. Ltd., earning a sum of Rs.23,500/- per month. When the deceased was riding his Motorcycle bearing Registration No.TN-23-BA-7391, the Tipper Lorry, bearing Registration No.TN-04-D-9380, owned by the third respondent herein, which was driven in a rash and negligent manner by its driver dashed against the deceased. The deceased sustained grievous injuries and was admitted in Hospital. He died at the Government Kilpauk Medical College Hospital while undergoing treatment on the same day.

3. The claim petition was resisted by the Insurance Company contending that there was no negligence on the part of the driver of the lorry. The Insurance Company also sought to repudiate its liability on the ground that the vehicle viz., the Tipper Lorry did not have a valid fitness certificate on the date of the accident. It was also pleaded that the age and the income particulars of the deceased were not correct.

4. Considering the evidence on record and the fact that an FIR was also filed against the driver of the lorry, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the Tipper Lorry bearing Registration No.TN-04-D-9380. The Tribunal fastened the liability on the Insurance Company, on the premise that the Insurance Company has not proved that the Tipper Lorry did not have a valid fitness certificate on the date of the accident.

5. On the quantum, the Tribunal took the monthly income of the deceased at the rate of Rs.15,000/- per month and added 40% towards future prospects and arrived at the annual loss of dependency at Rs.2,52,000/-. Considering the fact that there were two dependents and the deceased was a bachelor, the Tribunal deducted 50% towards his personal expenses and arrived at the annual loss of dependency at Rs.1,26,000/-. Considering the age of the deceased, the Tribunal applied a multiplier of 17 and worked out the total loss of dependency at Rs.21,42,000/-. The Tribunal has granted a sum of Rs.80,000/- towards loss of love and affection and Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses and had arrived at a total compensation of Rs.22,52,000/-. It is this award which is questioned by the Insurance Company.

6. Though, various grounds have been taken in the Memorandum of Grounds of appeals, Mr.C.Paranthaman, learned Counsel appearing for the Insurance Company, would restrict his arguments to two points only, they are:

(i) The Tribunal fell in error in requiring the insurer to prove the absence of fitness certificate

(ii) The Tribunal, erred in awarding a sum of Rs.80,000/- towards loss of love and affection.

7. Relying upon the Judgment of the Division Bench of this Court in The Manager, United India Insurance Co. Ltd., Vs. Balakrishnan and others reported in 2013 (2) TN MAC 515 (DB), Mr.C.Parandhaman would contend that the Tribunal should have ordered pay and recovery. As regards the sum of Rs.80,000/- granted towards loss of love and affection, Mr.C.Parandhaman would rely upon the judgment of the larger Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 27.

8. Mr.Varadha Kamaraj, learned Counsel appearing for the respondents is unable to counter the submissions made by the learned Counsel for the appellant, Insurance Company.

9. From the evidence on record, it is seen that the fitness certificate had expired on 17.05.2012. The insured who was a party to the claim petition, chose to remain exparte. It is for the insured to show that the vehicle had a valid fitness certificate. Therefore, the Tribunal was not right in placing the burden of proving the negative on the Insurance company. In view of the Judgment of the Division Bench in 2013 (2) TN MAC 515 (DB) referred to supra, we find that the Tribunal ought to have ordered pay and recovery. The question of grant of compensation on the ground of love and affection is also covered by the decision of the judgment of larger Bench of the Hon'ble Supreme Court in Pranay sethi's case referred to supra. In view of the above, we are of the considered opinion that the award of the Tribunal should be modified as follows:

The Pecuniary loss fixed by the Tribunal at Rs.21,42,000/- is sustained. The award under other heads viz., loss of estate and funeral expenses is also sustained. The award of Rs.80,000/- towards loss of love and affection is set aside. The claimants will therefore, be entitled to a sum of Rs.21,72,000/- consisting a sum of Rs.21,42,000/- towards pecuniary loss, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

10. In view of the fact that the vehicle viz., the Tipper Lorry bearing registration No.TN-04-D-9380 did not have valid fitness certificate, the Insurance Company is entitled to pay the compensation and recover the same from the owner of the vehicle viz., the third respondent in this appeal. The third respondent though served has not chosen to appear either in person or through counsel. For the foregoing reasons, the award

of the Tribunal is modified as follows:

The claimants will be entitled to a sum of Rs.21,72,000/- as compensation with proportionate interests and costs as awarded by the Tribunal. The Insurance Company will be liable to pay the compensation to the claimants and recover the same from the third respondent, owner of the offending vehicle. The first respondent, being the mother of the deceased will be entitled to a sum of Rs.15,00,000/- and the second respondent, father of the deceased will be entitled to a sum of Rs.6,72,000/-. There will be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ay/dsa

To

The Motor Accident Claims Tribunal,
Special Sub Judge No.2,
Small Causes Court,
Chennai.

+2cc to Mr.C.Paranthaman, Advocate, S.R.No.56804
+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.57024

CMA No.758 of 2018

SJ(CO)
GN(25/10/2018)