IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018

CORAM:

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

C.M.A. Nos.556 of 2014 and 1209 of 2017
and
M.P.No.1 of 2014

CMA.No.556 of 2014:

Royal Sundaram Alliance Insurance Co. Ltd.,
No.6, Lattice Bridge Road,
Adyar, Chennai - 20. ..Appellant/2nd Respondent

-vs-

1.U.Sivagami
2.N.Prabhakaran
3.N.Pradheeswaran
4.N.Radhabai
5.T.V.Bhaskaran ..Respondents/1to4 Claimants & 1st Respondent

CMA.No.1209 of 2017:

1.U.Sivagami
2.N.Prabhakaran
3.N.Pradheeswaran
4.N.Radhabai ..Appellants/Claimants

-vs-

1.T.V.Baskaran

2.Royal Sundaram Alliance Insurance Co. Ltd.,
No.6, 1st Floor, Lattice Bridge Road,
Adyar, Chennai - 20. ..Respondents/Respondents

PRAYER IN BOTH THE CMAs: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 15.03.2013 made in MCOP.No.1876 of 2010 on the file of the Motor Accident Claims Tribunal (Court of XVI Additional District Judge), Chennai.

For Appellants : Mr.S.Manohar in CMA.No.556/14
Mr.F.Terry Chellaraja in CMA.No.1209/17

For Respondents: Mr.F.Terry Chellaraja for R1 to 4 in CMA.No.556/14
Mr.D.Ravichander for R5 in CMA.No.556/14

Mr.D.Ravichander for R1 in CMA.No.1209/17
Mr.S.Manohar for R2 in CMA.No.1209/17

J U D G M E N T
[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

1. The challenge in these appeals is to the award of the Motor Accident Claims Tribunal, (XVI Additional District Judge), Chennai dated 15.03.2013 made in MCOP.No.1876 of 2010. The said claim petition was filed by the appellants in CMA.No.1209 of 2017 seeking compensation of Rs.25,00,000/- for the death of one Udayakumar, working as Assistant in the Tamil Nadu Electricity Board, in the motor accident that occurred on 16.08.2009.

2. According to the claimants, the deceased Udayakumar was walking along the Vazhudavur Road on the extreme left side of the road near Kannan Auto spare parts at Pondicherry, a lorry bearing registration No.TN-32-U-5679 belonging to the 1st respondent in the claim petition driven in a rash and negligent manner by its driver dashed against the deceased. As a result of the accident, the said Udayakumar suffered multiple grievous injures and died on the spot. Claiming that they had suffered both pecuniary loss as well as loss of comfort due to the death of the sole bread winner of the family, the claimants sought for a compensation of Rs.25,00,000/-.

3. The claim petition was resisted by the Insurance Company which is the appellant in CMA.No.556 of 2014 contending that the accident occurred due to the negligence of the deceased who was walking along the busy road without noticing the on coming vehicle. It was also submitted that the liability of the Insurance Company would arise only upon proof of existence of a valid insurance, driving license and other connected records. It was also contended that the age, avocation and income of the deceased as set out in the petition are all incorrect.

4. The Tribunal which examined the evidence on record, relying upon the evidence of PW2, Suresh who was an eye witness to the accident, as well as the FIR, Ex.P1 concluded that the accident occurred due to the rash and negligent driving of the lorry. During trial, the Insurance Company did not disputed the coverage. It was however found from the evidence of RW1, Sub-Inspector of Police that the vehicle was driven by Rajesh, Cleaner of the lorry who did not possess a valid driving license. The Insurance Company sought to deny its liability on the said ground.

5. The tribunal, however, concluded that since the deceased was a third party to the contract of insurance, the insurer cannot claim that the violation of policy condition

would absolve itself from the liability. Therefore, the Tribunal directed the Insurance Company to pay the compensation and granted liberty to recover the compensation from the owner of the vehicle.

6. On the quantum, the Tribunal found that the deceased was working as Administrative Assistant in the Tamil Nadu Electricity Board on a monthly salary of Rs.19,597/-. It also concluded that the deceased was aged about 51 years at the time of the accident. Considering the evidence of PW3, who had deposed that the deceased would have earned up to Rs.27,323/- if he had been alive and the admission of PW1 that she is in receipt of a pension of Rs.12,000/- per month, the Tribunal took the monthly income of the deceased at Rs.19,000/- for the purpose of arriving at the just compensation and after deducting 1/3rd towards personal expenses, the Tribunal arrived at a total loss of dependency at Rs.16,72,000/-. The Tribunal had granted a sum of Rs.1,20,000/- as a lump sum compensation for loss of love and affection as well as consortium. The Tribunal awarded a sum of Rs.8,000/- towards funeral expenses and the total award thus worked out to Rs.18,00,000/-. Aggrieved, the Insurance Company has come forward with CMA.No.556 of 2014 challenging the quantum of compensation, as well as its liability. The claimants seek enhancement in CMA.No.1209 of 2017.

7. We have heard Mr.S.Manohar, learned counsel appearing for the appellant/ Insurance Company in CMA.No.556 of 2014 and the 2nd respondent in CMA.No.1209 of 2017, Mr.F.Terry Chellaraja, learned counsel appearing for the respondents 1 to 4 in CMA.No.556 of 2014 who are appellants in CMA.No.1209 of 2017 and Mr.D.Ravichander, learned counsel for the 1st respondent in CMA.No.1209 of 2017 and 5th respondent in CMA.No.556 of 2014 viz., the owner of the lorry.

8. Mr.S.Manohar, learned counsel appearing for the Insurance Company would contend that the Tribunal should have adopted split multiplier, considering the fact that the deceased had only seven years of service. He would also contend that the Tribunal should have deducted the pension received, from the total loss of dependency. He would further contend that the fact that the lorry was driven by the person without license would absolve the Insurance Company of its liability.

9. Per contra, Mr.F.Terry Chellaraja, learned counsel appearing for the respondents/ claimants would submit that the fact that the lorry was driven by a person without a valid driving license would not absolve the Insurance Company of its liability to pay compensation to a third party and the

Tribunal has rightly held that the Insurance Company is entitled to recover the compensation paid from the owner of the lorry.

10. He would also point out that the Tribunal has not added any amount towards future prospects. Though the Tribunal has found that the deceased was earning about Rs.19,597/- at the time of the accident, it has only taken Rs.19,000/- for the purposes of calculation of the just compensation. He would therefore submit that the deceased being a permanent employee in the Tamil Nadu Electricity Board, the Tribunal should have adopted atleast 30% towards future prospects as suggested in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331.

11. We have considered the rival submissions. Insofar as the absence of license for the driver of the lorry is concerned, the law is well settled that the Insurance Company cannot avoid its liability as against the third party for a breach of policy condition and the Tribunal has rightly applied the law and granted the right of recovery to the Insurance Company. We therefore find no merits in the contentions of the Insurance Company regarding the breach of policy condition.

12. On quantum, the Tribunal has considered the present salary and the possible future increase as well as the pension that is being paid to the widow and had come to the conclusion that adoption of Rs.19,000/- as monthly income would be just and proper. We find that there won't be much difference in the ultimate compensation arrived at by the Tribunal even if we are to adopt 30% increase towards future prospects and deduct a percentage towards the pension received. We are therefore of the opinion that the compensation awarded by the Tribunal under the head of loss of dependency is just and reasonable. Though, it is contended that the amounts awarded towards loss of love and affection and consortium as well as funeral expenses is very low, we have already found that the over all compensation is just and reasonable and does not call for any interference at our hands.

13. Though, Mr.F.Terry Chellaraja would plead that a percentage of income should have been added towards future prospects, we agree that the Tribunal's reasoning that since the pension is not taken into account it is not adding any amount towards future prospects. We therefore conclude that the award of the Tribunal does not call for any interference at our hands.

14. Hence, the appeals fails and the same are accordingly dismissed. However, there will be no order as to costs. The Insurance Company is directed to deposit the award amount less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants will be entitled to withdraw the amount deposited as per the apportionment made by the Tribunal. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Motor Accident Claims Tribunal,
Court of XVI Additional District Judge,
Chennai.

2. The Record Keeper, VR Section, High Court, Madras.

+ 2 ccs to Mr. M. Malr, Advocate Sr.61688, 61690
+ 1 cc to Mr. D. Ravichander, Advocate Sr.61508
+ 1 cc to Mr.S. Manohar, Advocate Sr.61465

CMA.Nos.556 of 2014 and 1209 of 2017

SSI(CO)
EU(30/10/2018)