IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.622 of 2013

The Divisional Manager,
National Insurance Company Limited,
Puducherry. ... Appellant/7th respondent

..vs..

1.N.Jayalakshmi
2.N.Bhuvaneswari
3.N.Rajeswari
4.N.Banumathi
5.N.Raja Saravanan ...Respondents 1 to 5/Claimants

6.K.Rajavel
7.The United India Insurance Company Ltd.,
No.13-A, Nethaji Road,
Manjakuppam, Cuddalore.
D.Arumugam (Died)
8.A.Sivasubramanian
9.A.Arunmozhi
10.A.Chittibabu ... Respondents 6 to 10/
Respondents 1,2,4 to 6

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 03.08.2012 made in MCOP.No.337 of 2007 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore.

For Appellants : Mr.R.Ravichandran
For Respondents : R2 to R5, N.A.
Mr.S.Arunkumar for R-7
R6, 8 to 10- exparte

JUDGMENT

Aggrieved over the findings of the Tribunal dated 03.08.2012 made in MCOP.No.337 of 2007 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore, the present appeal has been filed by the 7th respondent-Insurance Company for setting aside the award passed by the Tribunal.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 30.07.2006 at about 1.45 hours, while the deceased was travelling in a car bearing Registration No.TN-46-A-7777, near Melmampattu bus stop, the first respondent's Tanker Lorry bearing Registration No.TN-07-F-3411, came at high speed, in the opposite direction and dashed against the car in which the deceased was travelling causing him multiple injuries resulting in his death subsequently. The accident occurred only due to the negligent driving by the first respondent's Tanker Lorry driver. The deceased was aged about 61 years and by doing Real Estate business was earning a sum of Rs.3,300/- per month. The petitioners who are the wife and children of the deceased were dependents on the earnings of the deceased. Due to the sudden demise of the deceased, the petitioners have lost the bread winner of the family. Thus, the petitioners sought for a sum of Rs.15,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim petition, the 7th respondent Insurance company by filing counter contends that the third respondent's vehicle bearing Registration No.TN-46-A-7777 was not involved in the accident. The said vehicle was not insured with the 7th respondent. The driver of the vehicle do not possess valid driving licence and there was no F.C. or permit for the said vehicle. The petition is not maintainable as the accident does not occur in the manner alleged by the petitioners. The claim of the petitioners about the age, avocation and income of the deceased is denied and disputed. Thus, the 7th respondent sought for dismissal of the petition.

5. Before the Tribunal, joint trail in MCOP.No.2391 of 2006 and MCOP.No.337 of 2007 was conducted and on the side of the petitioners P.W.1 to P.W.4 were examined and documents Ex.P1 to Ex.P10 were produced. On the side of the respondents, R.W.1 and R.W.2 were examined while documents Ex.R1 to R5 were marked.

6. The Tribunal, on the careful analysis of evidence, found the negligence of both the vehicle drivers resulted in the accident and fixed the equal negligence on the drivers of the first respondent Tanker Lorry as well as the car in which the deceased travelled and passed an Award for a sum of Rs.2,72,900/- payable by the 2nd and 7th respondents to the petitioners at 50% each. Aggrieved over the said findings of the Tribunal, the 7th respondent-Insurance Company has come forward with this present appeal.

7. I have heard the learned counsel appearing for the appellant/7th respondent-insurance company and the learned counsel appearing for the respondents 1 to 5/claimants and perused the materials available on record.

8. The learned counsel appearing for the appellant/7th respondent Insurance Company contends that the Tribunal erred in holding that the driver of the car bearing Registration No.TN-46-A-7777 belonging to the respondents 3 to 6 was also responsible for the accident. The police have charge sheeted the driver of the Tanker Lorry bearing Registration No.TN-07-F-3411 only as the cause for the accident, but, the Tribunal failed to consider the same. Further, the eye witness to the occurrence P.W.3 also stated that the driver of the Tanker Lorry bearing Registration No.TN-07-F-3411 alone is responsible for the accident. In Ex.P1 First Information Report, no negligence is alleged against the driver of the car bearing Registration No.TN-46-A-7777. This, the Tribunal failed to consider properly. As the car in which the deceased was travelling bearing Registration No.TN-46-A-7777 was proceeding on the extreme left side of the road, it is only the Tanker Lorry bearing Registration No.TN-07-F-3411 which came on the wrong side of the road and dashed against the car in which the deceased was travelling. It is contended that as the driver of the Tanker Lorry belonging to the first respondent and insured with the second respondent alone is responsible for the accident, the respondents 1 and 2 are liable to pay compensation. Thus, the appellant sought for setting aside the award passed by the Tribunal by allowing the appeal.

9. Per contra, the learned counsel appearing for the respondents 1 to 5/petitioners/claimants contended that the Tribunal has correctly arrived at the conclusion by holding that both the vehicles drivers are responsible for the accident and passed just and fair award which needs no interference. Thus, the respondents 1 to 5/claimants sought for dismissal of the appeal.

10. The respondents 1 to 5/petitioners/claimants further contends that the deceased Natarajan traveled in a Car bearing Registration No.TN-46-A-7777 and the same belongs to the third respondent Arumugam who died subsequently and his legal heirs are added as respondents 4 to 6. The said car was stated to be insured with the 7th respondent National Insurance Company Limited. While the said car was going on the extreme left side of the road near Melmampattu Bus Stop, the Tanker Lorry bearing Registration No.TN-07-F-3411 belonging to the first respondent and insured with the second respondent, namely, M/s.United India Insurance Company Limited, came in a rash and negligent manner, in the opposite direction, dashed against the car in which the

deceased was travelling resulting in the deceased suffering fatal injuries, which caused his death subsequently.

11. While resisting the claim of the petitioner, the 7th respondent, namely, M/s.National Insurance Company contends that the accident occurred only due to the rash and negligent driving by the driver of the first respondent Tanker Lorry bearing Registration No.TN-07-F-3411, which was insured with the second respondent United India Insurance Company Limited.

12. While opposing the claim of the petitioner, the second respondent Insurance Company contended that the driver of the first respondent Tanker Lorry was driving his vehicle at moderate speed and it was only the driver of the 3rd respondent Arumugam's car came at high speed and dashed against the Tanker Lorry resulting in the accident.

13. To prove the nature of accident, the petitioners examined the eye witness to the occurrence as P.W.3, while the first petitioner deposed as P.W.1. According to the eye witness P.W.3, the accident occurred only due to the negligence of the driver of the Tanker Lorry. The Tribunal after analyzing the evidence on record found that negligence of both the vehicle drivers resulted in the accident and fixed 50% negligence on each of them.

14. Admittedly, there is no dispute with regard to the date and time of the accident. The only contention of the 7th respondent/appellant is that the Tribunal has wrongly fixed 50% of negligence on the driver of the third respondent car and the same is to be set aside. The learned counsel appearing for the 7th respondent contended that only the first respondent's Tanker Lorry driver negligence caused for the accident and not the negligence of the third respondent's car driver. The investigating officer of the 2nd respondent Insurance Company who deposed as R.W.1 filed his investigation report as Ex.R4 and the rough plan of the occurrence spot was marked as Ex.R1 whereas P.W.2 who was the Investigating Officer of 7th respondent filed his investigation report as Ex.R3. He also produced copy of charge sheet laid by the police as Ex.R4. It is true that the Police registered Ex.P1 First Information Report against the driver of the first respondent vehicle and after completion of investigation laid Ex.R4 charge sheet against him. However, there is no independent acceptable evidence to prove the negligence on the part of the driver of either vehicle. As such the Tribunal after considering the evidence of P.W.1 and P.W.2 and also the contents of Ex.P1 First Information Report found both the vehicle drivers are equally responsible for the accident and the accident occurred due to composite negligence of both the drivers and fixed 50% negligence on each of them.

15. It is also pointed out that in another CMA.No.890 of 2013 and C.M.A.No.2109 of 2017 arising out of same accident, the Division Bench of this Court, by its order dated 14.09.2017, has confirmed the negligence fixed by the Tribunal at 50% each on both the drivers. In such circumstances, following the above said conclusion of the Division Bench of this Court in CMA.No.890 of 2013 and C.M.A.No.2109 of 2017 dated 14.09.2017, the conclusion of the Tribunal fixing the negligence on the drivers of the first respondent Tanker Lorry and the third respondent car at 50% each is hereby confirmed. As stated above, as the vehicles were insured with the 2nd respondent and 7th respondent, they are liable to pay compensation to the claimants and the findings of the Tribunal in that regard is also confirmed.

16. As far as the quantum of compensation awarded, the 7th respondent Insurance Company/appellant has not come forward to contest seriously except the multiplier applied by the Tribunal. The petitioners stated that the deceased was aged 61 years and he was earning a sum of Rs.3,300/- per month by doing Real Estate business. The Tribunal, on the basis of Ex.P7 postmortem certificate, fixed the age of the deceased as 65 years. The Tribunal accepting the contention of the petitioners, who filed the petition under Section 173-A of the Motor Vehicles Act, fixed the monthly income of the deceased at Rs.3,300/-, applied multiplier 7, as the deceased was aged 65 years. Further, as the number of dependents were 5, The Tribunal deducted 1/4th income towards the personal expenses of the deceased. Thus, the loss of income of the deceased was fixed at Rs.3,300/- x 12 = Rs.39,600/- and ¼ amount of Rs.9,900/- deducted towards the personal expenses of the deceased, the contribution to the family would be Rs.29,700 x 7 = Rs.2,07,900/-. The Tribunal awarded some amount under the conventional heads and totally awarded a sum of Rs.2,72,900/- as compensation. Considering the age of the petitioners and other attendant circumstances, this Court is of the considered view that the Tribunal arrived at a just and fair compensation and there is no ground made out to interfere with the same. The point is answered accordingly.

17. In the result, the Civil Miscellaneous Appeal is dismissed. The Award passed by the Tribunal dated 03.08.2012 made in MCOP.No.337 of 2007 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge,
(Motor Accident Claims Tribunal)
Cuddalore.

+1cc to Mr.R.Ravichandran, Advocate SR.No.32656
+1cc to Mr.A.N.Viswanatha Rao, Advocate Sr.No.33026
+1cc to Mr.S.Arunkumar, Advocate Sr.No.32669

TM(CO)
sm:2.7.2018

C.M.A.No.622 of 2013