IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HON'BLE MR. JUSTICE R. SUBBIAH
and
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. No.817 of 2012 & M.P. No.1 of 2012

National Insurance Company Ltd.
C/o Motor Third Party Claims Office
No.751, Anna Salai
Chennai 600 006 ..Appellant/2nd Respondent

vs.

1 Dhanakotti

2 Selvakumar

3 Sahaya Sunitha Rani (Minor)

(R3 represented by her mother & natural guardian Dhanakotti)

4 Uthira Mary

5 M. Syed Sulaiman ..1st Respondent

6 A.Jalal ..3rd Respondent/Respondents

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and decree dated 30.03.2011 passed in M.C.O.P. No.2782 of 2003 on the file of the II Court of Small Causes, Chennai (Motor Accident Claims Tribunal), Chennai.

For appellant Mr. M. Krishnamoorthy
For RR 1 to 4 Mr. T.G. Balachandran



JUDGMENT
(Delivered by R. SUBBIAH, J.)

The second respondent in M.C.O.P. No.2782 of 2003, viz., National Insurance Company Ltd. (for brevity "the Insurance Company"), feeling aggrieved by the judgment and decree dated 30.03.2011 passed by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai (for brevity "the Tribunal") in the said claim petition, has preferred the instant Civil Miscellaneous Appeal, questioning the liability mulcted on them and also the amount of compensation awarded by the Tribunal.

2 For the sake of convenience, the parties are referred to as per their rank in the instant Civil Miscellaneous Appeal.

3 Shorn of the minute details, the facts germane and necessary leading to the filing of this Civil Miscellaneous Appeal are as under:

3.1 On 02.05.2003, about 16.30 hours, when one Vailankanni, who was employed in Chennai Port Trust, was proceeding in his tri-motorcycle bearing Registration No.TN 09 AA 7638 at Usman Road, near Canara Bank, Panagal Park, T. Nagar, Chennai, from South to North, an Ambassador car bearing Registration No. TSD 3870, which was driven in a rash and negligent manner, dashed against the tri-motor cycle driven by Vailankanni, from behind, due to which, the said Vailankanni sustained grievous injuries and later succumbed to injuries. Hence, his wife, two minor children and parents filed a claim petition before the Tribunal seeking a total compensation of Rs.20 lakhs. Seemingly, after the filing of the claim petition, the father of the deceased had breathed his last.

3.2 The appellant Insurance Company filed a counter statement before the Tribunal contending that the claim of the claimants is false, inasmuch as the car in question has been wrongly implicated in the case only with a mala fide intention of getting compensation from them and that the said car was not at all involved in the accident. It was further contended that even prior to the accident, the car was transferred by the owner, viz., Syed Sulaiman, to Jalal, the subsequent purchaser and that this fact was not intimated to the Insurance Company and on this score too, the appellant Insurance Company is not liable to pay compensation and further, the compensation claimed is also very much exorbitant.

3.3 On the side of the respondents/claimants, the wife of the deceased, viz., the first claimant, was examined as P.W.1 and one Ganesh Babu, an eye witness to the accident was examined as P.W.2 and Exs.P.1 to P.8 were marked. On the side of the respondents, R.Ws.1 and 2 were examined and Exs.R.1 to R.4 were marked.



3.4 On appraisal of the oral and documentary evidence, the Tribunal, by negating the stand taken by the appellant Insurance Company and holding that the driver of the car bearing Regn. No.TSD 3870 insured with the appellant Insurance Company, who, by his rash and negligent driving, was responsible for the accident in question and the consequential demise of the deceased, awarded a total compensation of Rs.18,10,000/- with interest at the rate of 7.5% per annum, the break of the said compensation being Rs.17,55,000/- towards pecuniary loss, Rs.40,000/- towards loss of love and affection, Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses.

3.5 Aggrieved by the mulcting of liability on them and also the quantum of compensation awarded by the Tribunal, the Insurance Company has preferred the present Civil Miscellaneous Appeal.

4 This Court gave its anxious consideration to the rival submissions and also perused the materials available on record.

5 Albeit it is the submission of the learned counsel for the appellant Insurance Company that the car bearing Regn. No. TSD 3870 insured with them was falsely implicated in the case only with an intent to claim compensation, no oral or documentary evidence was let in to fortify this stand. It is trite that a mere pleading is not tantamount to evidence, unless the same is substantiated in the manner known to law. In the case at hand, it is evident that the appellant Insurance Company has not even given any complaint to the police stating that a false claim has been made by the respondents/claimants only with an intent to seek compensation through unfair means. On the contrary, on the side of the respondents/claimants, Ganesh Babu, P.W.2, an eye-witness to the accident, has clearly spoken about the manner of accident and even in his cross-examination, no favourable reply to the defence of the appellant Insurance Company was elicited. In such perspective of the matter, this Court is not inclined to countenance the stand taken by the appellant Insurance Company that a false claim has been made by the respondents/claimants by implicating the car bearing Registration No.TSD 3870 insured with them.

6 Even the other stand of the appellant Insurance Company that prior to the accident, the car was transferred by the original owner (the sixth respondent) to a subsequent purchaser (the seventh respondent), but, this fact was not intimated to the appellant Insurance Company and hence, the appellant Insurance Company is not liable to make good the loss, does not cut much ice with this Court, for the reason that the original owner must be deemed to continue as the owner of the vehicle for the purpose of the Motor Vehicles Act, even though under the Civil law, he ceases to be the owner, after sale of vehicle, as has been held by the Supreme Court in Pushpa @ Leela and others vs. Shakuntala & Others [(2011 (1) TN MAC 10 (SC)], relied upon by the learned counsel for the respondents/claimants.

7 Ergo, this Court is of the considered view that both the grounds urged by the learned counsel for the appellant Insurance Company have no legs to stand and accordingly, this

Court confirms the finding of the Tribunal that the accident was caused only by the rash and negligent driving of the driver of the car bearing Registration No.TSD 3870 insured with the appellant Insurance Company.

8 Coming to quantum of compensation, it is the contention of the learned counsel for the appellant Insurance Company that since the deceased was aged about 40 years at the time of accident, the correct multiplier to be adopted is only 14 as per the judgment of the Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another [(2009) 6 SCC 121], whereas, the Tribunal has taken multiplier 15 and hence, the compensation of Rs.17,55,000/- awarded by the Tribunal under the heading "pecuniary loss" has to be reduced accordingly.

9 This Court finds substance and merit in the aforesaid submission of the learned counsel for the appellant Insurance Company. The Tribunal, based on Ex.P.8, salary certificate, rounding off the salary of the deceased as Rs.10,000/- per month and by adding Rs.3,000/- per month towards future prospects, determined the monthly income of the deceased as Rs.13,000/-. After deducting one-fourth being Rs.3,250/- towards personal expenses of the deceased, the contribution of the deceased to his family was fixed at Rs.9,750/- per month and to this extent, the Tribunal is correct in its approach. However, coming to application of multiplier, instead of applying multiplier 15 as has been done by the Tribunal, as rightly argued by the learned counsel for the appellant Insurance Company, by applying multiplier 14, which is the proper multiplier as per the judgment of the Supreme Court in Sarla Verma (supra), the pecuniary loss is worked out at Rs.16,38,000/- (Rs.9,750/- x 12 months x 14 multiplier) as against the sum of Rs.17,55,000/- awarded by the Tribunal.

10 Coming to the amount of Rs.40,000/- awarded by the Tribunal under the heading "loss of love and affection", the same is not sustainable in view of the recent law laid down by the Supreme Court in this regard and accordingly, the compensation of Rs.40,000/- awarded under the said heading is set aside and instead, the amount of Rs.10,000/- awarded by the Tribunal under the heading "loss of consortium" is enhanced to Rs.40,000/-. Since no amount has been awarded by the Tribunal under the heading "loss of estate", an amount of Rs.15,000/- is awarded under the said heading. Further, the compensation of Rs.5,000/- awarded under the heading "funeral expenses" is raised to Rs.15,000/-. Thus, the total compensation of Rs.18,10,000/- awarded by the Tribunal is reduced to Rs.17,08,000/- with interest at the rate of 7.5% per annum, as tabulated hereunder for the sake of clarity and better understanding.

| S.No. | Heading | Amount awarded by Tribunal (Rs.) | Amount awarded in C.M.A. (Rs.) |
|---|---|---|---|
| 1 | Pecuniary loss | 17,55,000 | 16,38,000 |
| 2 | Loss of love and affection | 40,000 | -- |
| 3 | Loss of consortium | 10,000 | 40,000 |
| 4 | Loss of estate | -- | 15,000 |
| 5 | Funeral expenses | 5,000 | 15,000 |
| | Total | 18,10,000 | 17,08,000 |

11 It is reported that the entire compensation awarded by the Tribunal has been deposited by the appellant Insurance Company. Hence, the respondents/claimants 1,2 and 4 are permitted to withdraw their respective shares of the compensation as per the apportionment made by the Tribunal. As for the share of the third respondent-minor claimant, the same is directed to be deposited in a nationalised bank for a period of three years in a cumulative fixed deposit till she attains majority and the first petitioner, being her mother and natural friend, is entitled to withdraw the accrued interest once in three months.

Resultantly, this Civil Miscellaneous Appeal stands partly allowed. Costs made easy. Connected M.P. is closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

cad
To

1. The II Judge of Small Causes
   (Motor Accident Claims Tribunal)
   Chennai

2. The Section officer
   VR Section, High Court, Madras.

+1 CC to Mr.M. Krishnamoorthy, Advocate sr 2842.
+1 CC to Mr.T.G. Balachandran, Advocate sr 2906.



CA(CO)
SP(12/02/2018)