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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2017

Pronounced on : 06.06.2018

CORAM :

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

CMA(MD)No.6 of 2016
and
CMP(MD)Nos.101 of 2016 & 2145 of 2017

National Insurance Company Limited,
Rep. through its Branch Manager,
Bodi-Moonar Salai,
Bodinaickanur Taluk,
Theni District.

... Appellant / 2nd respondent

Vs.

1.Selvam
2.Murugeswari
3.Minor Pradeep
(Minor third respondent rep.by his
father and natural guardian,
1st respondent)

...Respondents 1 to 3 /
Petitioners

4.Sreenivasan

...4th Respondent /
1st respondent

(4th Respondent exparte in Tribunal
Notice Dispensed with)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.110 of 2015, dated 28.07.2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Theni.

For Appellant

: Mr.J.S.Murali

<https://hcservices.court.gov.in/>

: Mr.Na.Palaniyandi for R1 to R3
R4/Dispensed with.

**JUDGMENT**

**(Judgement of the Court was delivered by
G.R.SWAMINATHAN, J.)**

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Heard the learned counsel on either side.

2.This appeal has been filed by the insurer questioning the award dated 28.07.2015 passed by the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Theni.

3.The deceased in this case is one Aravind. When he was riding a two wheeler bearing Registration No.TN 22 CL 1183, on 04.04.2014 at about 11.15 P.M on G.S.T Road, Chennai, the lorry insured with the appellant dashed against the two wheeler. In the resulting accident, the said Aravind died. Claiming compensation, his parents and younger brother filed MCOP.No.110 of 2015.

4.The claimants contended that the deceased was working as a Relationship Executive in a concern known as Genius Consultant Limited and was drawing a sum of Rs.20,056/-. The father of the deceased examined himself as PW.1 and the pillion rider of the two wheeler was examined as PW.2. One Jeya Prakash said to be working in the company in which the said Aravind was employed was examined as PW.3. Exs.P1 to P17 were marked. Through PW.3, three documents namely, Exs.X1 to X3, authorisation letter, service certificate, pay slip, respectively, were marked. The Tribunal awarded a sum of Rs.31,04,000/- as compensation. Contending that the Tribunal erroneously relied upon the documents marked through PW.3 Jeya Prakash and that excessive sum has been awarded as compensation, this appeal has been filed by the insurer.

5.It is not in dispute that the offending vehicle which caused the accident and the death of the said Aravind, was insured with the appellant. The Tribunal fastened the entire negligence on the driver of the offending vehicle, namely, Torus lorry. Crime No.248 of 2014 was registered against the driver of the lorry on the file of the Chrompet Police Station under Sections 279 and 304 A IPC. The occurrence sketch has been marked as Ex.P6. Final report Ex.P7 was also filed against the lorry driver. The Tribunal after considering the aforesaid documentary evidence as well as the service reports of the driver, came to the conclusion that the accident occurred only on account of the rash and negligent driving by the lorry



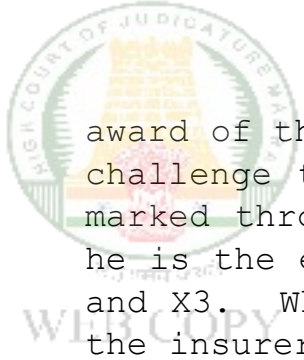
driver. The conclusion of the Tribunal is reinforced by the omission on the part of the appellants to examine the lorry driver in question. There is absolutely no rebuttal evidence. Therefore, this Court confirms the finding of the Tribunal that the entire negligence is liable to be fixed only on the lorry driver.

6.The next question for consideration is whether the Tribunal correctly quantified the compensation payable to the claimants. In the grounds of appeal, it has been pleaded that fake documents were marked before the Tribunal. The appellant has enclosed a copy of the investigation report and the correspondence exchanged between the insurance company and the employer of the deceased, namely, Genius Consultant Limited. The Tribunal passed its award on 28.07.2015 whereas the appellant reached out the employer of the deceased only on 26.10.2015. The investigation report dated 28.10.2015 confirms that the deceased Aravindan never worked in Solutions Integrated Marketing Services Private Limited. Ex.X3 is the pay slip and it mentions the client name Solutions Integrated Marketing Service Private Limited. The appellant however has not taken steps to adduce any additional evidence before this Court.

7.This Court went through the testimony of all the three witnesses examined on the side of the appellant. When Ex.P8 was sought to be marked, the same was objected to. It was specifically suggested during the cross examination of PW.1 that Ex.P8 Pay certificate was fabricated for the purpose of the case. Though PW.1 claimed that the deceased Aravind had undergone Polytechnic course, no document was marked. PW.2 was the pillion rider when the accident took place. He has not deposed anything about the employment details of the deceased. PW.3 Jeyaprakash claimed that he is working as a Programme Officer in Genius Consultant Limited. He claimed that the deceased worked in their concern from 20.05.2013 till 04.04.2014. Through him Ex.X2, Ex.X3 were marked. These documents were specifically challenged as false and fabricated by the insurer. Even though there was a serious challenge to the genuineness of these documents, the Court below has accepted the same as gospel truth. The Tribunal has fixed the monthly income of the deceased as Rs.20,000/- and quantified the compensation on that basis.

8.It is well settled that when the deceased is a bachelor, 50% deduction must be made. This is more so because the deceased was residing at Chennai independently whereas his parents are based in Bodinayakanur. But, only one third deduction was made and the Court

<https://hcservicescourtservice.in/hcservices> the conclusion that he would have given a sum of Rs.13,333/- to his family. This Court is of the view that the



award of the Tribunal is vitiated, because, it did not deal with the challenge to genuineness of the documents. Exs.X1, X2 and X3 were marked through PW.3 Jeya Prakash. It is not the case of P.W3 that he is the employer. It is also not his case that he issued Exs.X2 and X3. When the authenticity of these documents was challenged by the insurer, the Tribunal ought to have called upon the claimants to prove the same. In this case, the Tribunal did not even refer to the stand of the insurer in this regard.

9.We are also troubled by the fact that the pillion rider one Ragumaran did not depose anything before the Tribunal with regard to the employment of the deceased. This Court went through the proof affidavit of PW.2. PW.2 has stated in his proof affidavit that he is employed in the Dreams Homes Property Developers Private Limited and had taken a room in Nanganallar. The deceased Aravind was staying with him. On 04.04.2014, both went out for having their dinner. Aravind rode the two wheeler and PW.2 sat in the pillion. It was around 11.15 PM on 04.04.2014, when the accident took place. PW.2 categorically deposed that the entire negligence was on the lorry driver and that therefore, the opposite parties in the MCOP should pay the compensation. Thus, the deposition of PW.2, who was the pillion rider and with whom the deceased was residing, did not utter one word about the employment details of the deceased. It is this that arouses our suspicion.

10.The appellant is a public sector insurance company. It has filed typed set of papers enclosing the e-mail correspondence and the investigation report. It can be seen therefrom that the deceased Aravind was not employed in Genius Consultant Limited as claimed by the claimants in their petition. The Tribunal has also not taken any steps to find out the genuineness of the documents relied upon by the claimants.

11.We are of the view that fraudulent claims will have to be dealt with seriously. We can take judicial notice of the fact that in accident cases there is a syndicate often at work. False documents are introduced. Sometimes even vehicles which are not involved in the accident are substituted for the purpose of fastening the liability on the insurers. The matters reached such a level that the Madras High Court had to order CBCID investigation.

12.We are therefore of the view that this appeal will have to be allowed and the matter is remitted to the file of the Tribunal which will undertake a fresh exercise as to the whether Exs.X1 to X3 are genuine documents and whether Ex.PW3, Jeyaprakash was actually authorized to depose in favour of the claimants by his



employer. But then, while trying to unearth the truth of the matter, we cannot lose sight of the humanitarian aspect. It is a fact that Aravind died in the accident in question. It is again beyond dispute that the accident was caused entirely by the negligence of the lorry driver. The appellant herein is the insurer. In fact, the appellant fairly admitted that their dispute only regarding a portion of the liability and that they have admitted their liability to the tune of Rs.8,00,000/-.

13.This Court while granting interim order of stay had directed that the appellant shall deposit 50% of the award amount. The said condition has also been complied with. Therefore, even while allowing this appeal and remitting the matter to the file of the Tribunal, we permit the claimants/respondents 1 and 2, to withdraw the admitted liability amount of Rs.8,00,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. This is because, the appellant insurance company have themselves admitted liability to this extent. The only question to be gone into by the Tribunal is whether the service certificate and pay slip said to have been issued in favour of the deceased Aravind by Genius Consultant Private Limited are true and genuine. If that is so, the Tribunal shall quantify the compensation payable to the claimants in accordance with law. If it turns out that the documents marked through PW.3 are fraudulent documents, proper steps shall be taken as per Section 340 of Cr.PC. The entire exercise shall be completed within a period of six months from the date of receipt of a copy of this order. As already pointed out, the deceased was a bachelor and deduction should have been 50% and not one third as erroneously done by the Tribunal.

14.With these observations and direction, this appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal, Theni.



2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to Mr.J.S.MURALI, Advocate in SR.No.67099
+1 CC to Mr.NA.PALANIYANDI, Advocate in SR.No.67077

SKM

RJ/SKN/RSK/SAR-2/18/07/2018 - 6P/6C

Judgment
CMA (MD) No. 6 of 2016
and
CMP (MD) Nos. 101 of 2016
& 2145 of 2017
06.06.2018