

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 15.10.2019
CORAM
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.694 of 2019
and
C.M.P.No.2107 of 2019

The Oriental Insurance Company Limited,
Motor Third Party, Claims Hub,
Oriental House, 2nd Floor,
No.216, Prakasam Salai,
Broadway, Chennai - 600 001.

... Appellant/2nd Respondent

vs.

1.V.Sangeetha
2.V.Kevin Vasantharaj (minor)
3.V.Aiknas Viveetha (minor)
4.Karuppayee
5.Govindan
(Minor rep by mother & N.F., V.Sangeetha)

... Respondents 1 to 5/Claimants

6.Binu Varkey(Exparte)

..... 6th Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 03.09.2018 passed in MCOP.No.6910 of 2014 on the file of the Motor Accident Claims Tribunal, Chennai (III Court of Small Causes, Chennai).

For Appellant : Mr.R.Sivakumar

For Respondents 1 to 5 : Mr.N.Muthurajan

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the insurance company challenging the award dated 03.09.2018 passed by the Motor Accident Claims Tribunal (III Court of Small Causes, Chennai) in

MCOP.No.6910 of 2014.

Brief facts leading to the filing of this appeal:

2. A person by name Vedarajan died on 23.01.2014 as a result of an accident that took place on 21.01.2014 caused by a Motor Cycle bearing registration No.KL-37-A-4731 owned by the sixth respondent and insured with the Appellant/Insurance Company. The accident happened when the deceased was travelling as a pillion rider in the insured Motor Cycle which was proceeding from Tambaram to Guindy, along G.S.T. Road, South to North direction. D.Binu, the rider of the insured motor cycle lost control due to his rash and negligent driving and as a result of the same, the Motor cycle hit against the Central Median of the road which resulted in the deceased sustaining head injuries and multiple injuries all over his body and due to the said injuries, he died during the course of his treatment on 23.01.2014.

3. The dependents of the deceased who are the respondents 1 to 5 in this appeal preferred a claim before the Motor Accident Claims Tribunal (III Court of Small Causes, Chennai) in MCOP.No.6910 of 2014 against the sixth respondent as well as the Appellant-Insurance Company seeking a compensation of Rs.25,00,000/- for the death of Vedarajan.

4. The Motor Accident Claims Tribunal by its Award dated 03.09.2018 passed in MCOP.No.6910 of 2014 directed the Appellant-Insurance Company to pay the claimants a compensation of Rs.34,02,800/- together with interest at the rate of 7.5% per annum from the date of numbering of claim petition till the date of realisation and also awarded costs. Out of the total compensation of Rs.34,02,800/-, the Tribunal determined the compensation payable to the first respondent who is the wife of the deceased at Rs.11,02,800/-, to the second and third respondents who are the minor children of the deceased at Rs.10,00,000/- each and to the fourth and fifth respondents who are the mother and father of the deceased respectively at Rs.1,50,000/- each.

5. Aggrieved by the award dated 03.09.2018 passed by the Motor Accident Claims Tribunal in MCOP.No.1690 of 2014, the insurance company has filed this Appeal.

6. Heard Mr.R.Sivakumar, learned counsel appearing for the Appellant and Mr.N.Muthurajan, learned counsel appearing for the respondents 1 to 5. The sixth respondent has remained absent, despite service of notice on him.

Discussion:

7. The Appellant insurance company has challenged the award on the ground that the quantum of compensation awarded by the Tribunal is excessive and also on the ground that the Tribunal ought to have granted pay and recovery to the Appellant-Insurance company, since the rider of the insured motor cycle was not possessing a valid driving license, at the time of the accident. It is their case that the notional monthly income of the deceased fixed by the Tribunal at Rs.15,000/- is excessive and the driving license produced by the claimants is a forged and fabricated one. It is also their case that the compensation awarded by the Tribunal under various heads is excessive and not in accordance with the settled principles of law.

8. This court has perused and examined the impugned award as well as the materials and evidence available on record.

9. Before the Tribunal, the claimants have filed 19 documents which were marked as Ex.P1 to Ex.P19 and three witnessess were examined on their side who are (a) wife of the deceased -V.Sangeetha (PW1), (b) an eye-witness to the accident - A.Karunanithi (PW2) and (c) Co-worker of the deceased - G.Kannadasan (PW3). On the side of the Appellant- Insurance company, one witness was examined who is S.Babu their official and four documents were filed which were marked as Ex.R1 to Ex.R4.

10. FIR has been registered only against the rider of the insured motor cycle D.Binu. As seen from the FIR (Ex.P1), the rider of the insured motor cycle lost control due to his rash and negligent driving and as a result of the same, the Motor cycle hit against the Central Median of the road which resulted in the deceased sustaining head injuries and multiple injuries all over his body and due to the said injuries, he died during the course of his treatment on 23.01.2014. No contra evidence has been produced by the Appellant insurance company to disprove the contents of the FIR. Ony after considering all these factors, the Tribunal has rightly held that the rider of the insured motor cycle is solely responsible for the cause of the

accident due to his rash and negligent riding. We do not find any infirmity in the said finding of the Tribunal.

11. The claimants before the Tribunal claimed that the deceased was an electrician and was doing part time work in M/s. Blue Nile Hotel, Pallavaram and earning a monthly income of Rs.25,000/-. The claimants have also filed the degree certificate of the deceased which was marked as Ex.P7 to prove that the deceased was a degree holder. The claimants have also filed the ITI wiremen certificate of the deceased which was marked as Ex.P19 to prove that the deceased was a qualified wiremen. The age of the deceased was 31 years at the time of the accident which has been proved by the claimants through postmortem report(Ex.P2). Even though the claimants through PW1 (the deceased wife) in her oral evidence has deposed that the deceased was earning a monthly income of Rs.25,000/- as an electrician by doing part time work at M/s.Blue Nile Hotel, Pallavaram, the Tribunal fixed the notional monthly income of the deceased at the time of the accident only at Rs.15,000/-. The accident happened in the year 2014 and considering the year of the accident, the fixation of notional monthly income of the deceased at Rs.15,000/- is correct. We do not find any infirmity in the assessment of notional monthly income of the deceased by the Tribunal.

12. The Tribunal has applied the correct multiplier of 16 in accordance with the the decision of the Hon'ble Supreme Court in the case of Sarla Verma and Others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC), as the deceased was 31 years at the time of the accident. The Tribunal has also rightly awarded 40% towards loss of Future Prospects in accordance with the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680. The deduction of 1/4th towards personal expenses of the deceased was also inaccordance with Sarla Verma Judgment of the Hon'ble Supreme Court referred to supra, as the dependents are four in number. The compensation awarded to the first respondent towards loss of consortium at Rs.40,000/- is also in accordance with Pranay Sethi Judgment of the Hon'ble Supreme Court referred to supra. The compensation awarded towards loss of love and affection to the second and third respondents at Rs.1,00,000/- each and to the fourth and fifth respondents who are the mother and father of the deceased respectively at Rs.25,000/- each is also in accordance with the settled principles of law. The compensation awarded towards medical expenses and funeral expenses is also in accordance with the settled principles of law as the medical expenses are supported by the medical bills (Ex.P4) and funeral expenses awarded at

Rs.15,000/- is in accordance with Pranay Sethi Judgment of the Hon'ble supreme Court referred to supra. We do not find any infirmity in the same.

13. It is a categorical stand of the Appellant insurance company that the rider of the insured motor cycle D.Binu did not possess a valid driving license at the time of the accident. The claimants have also not filed the driving license of D.Binu, the rider of the insured motor cycle, before the Tribunal. In support of their contention that the rider of the insured motor cycle did not possess a valid driving license, the Appellant insurance company has examined RW1 who is their senior assistant and they have also filed four documents viz., Ex.R1 to Ex.R4. R3 is the RTO letter which reveals that the rider of the insured motor cycle did not possess a valid driving license, at the time of the accident. However, before the Tribunal, the rider of the insured motor cycle who is also its owner, remained exparte and even in this appeal he has remained absent despite service of notice on him. We are of the considered view that when the owner of the insured motor cycle has not come forward to produce the driving license, despite receipt of notice in the claim petition, the Tribunal ought not to have absolutely exonerated the owner of the motor cycle. Instead, the Tribunal ought to have granted pay and recovery to the Appellant insurance company to enable them to recover the compensation amount paid to the claimants from the owner of the insured motor cycle, in case, the rider of the vehicle at the time of the accident was not possessing a valid driving license. Instead, the Tribunal has erroneously observed in the impugned award without any basis that there is every possibility for the sixth respondent to get driving license in some other RTO. Having remained exparte before the Tribunal, the owner of the insured motor cycle cannot be given the benefit of doubt by presuming that he may be holding a valid driving license issued by another RTO. The said finding of the Tribunal is erroneous and we are setting aside the same by holding that the Appellant insurance company is entitled to recover the compensation amount paid to the claimants from the sixth respondent, owner of the insured motor cycle, in case, the owner fails to establish that he was possessing a valid driving license at the time of the accident i.e., on 21.01.2014. Excepting for this finding given by us, the quantum of compensation awarded by the Tribunal as well as the finding regarding as to who is responsible for the cause of the accident, does not suffer from any infirmity and is based on only materials and evidence available on record.

Conclusion:

14. In the result, the Appeal is partly allowed and the rate of interest fixed by the Tribunal is confirmed. The Appellant insurance company is directed to deposit the entire award amount of Rs.34,02,800/- along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.6910 of 2014 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Appellant is permitted to recover the same from the sixth respondent, owner of the insured motor cycle and if the sixth respondent is able to establish that he was holding a valid driving license at the time of the accident, he shall be absolved of any liability otherwise the sixth respondent shall be liable to reimburse the compensation amount paid by the Appellant insurance company and the Tribunal is directed to transfer the respective share of award amount to the first, fourth and fifth respondents as per the order of the Tribunal through RTGS within a period of four weeks thereafter. Since the second and third respondents are minors, their respective share of award amount shall be deposited in an interest bearing fixed deposit in any Nationalized bank till they attain majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first respondent once in 6 months. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

- 1.The III Judge,
Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.

2.The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.R.Sivakumar, Advocate sr.85980
+1cc to Mr.N.Muthurajan, Advocate sr.86291

C.M.A.No.694 of 2019

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