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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 25.03.2019

Judgment Delivered on : 11.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.871 of 2011

and

M.P.No.1 of 2011

M/s.Royal Sundaram Alliance Insurance Co.Ltd.,
46, Whites Road,
Chennai-2

...Appellant/2nd Respondent

Vs.

1.Lakshmi

2.Minor Pethana Pandiyan

3.Minor Agalya

4.Minor Mareeswari

5.Pethanan

6.Pappal

..Respondents 1 to 6/Petitioner

(Minors represented by mother
and next Guardian Lakshmi)

7.Rathamani

(Ex-parte in the Lower Court) ..7th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 12.11.2008, in M.C.O.P.No. 1205 of 2005, on the file of the Motor Accidents Claims Tribunal, (Additional District Judge, FTC No.4), Coimbatore.

For Appellant :Mrs.R.Sreevidhya

For R1toR4 : Mr.B.Vishnu Chelliya
for M/s.Ajmal Associates

For R5&R6 : Not ready in notice (Tapal returned)

For R7 : Exparte before the Tribunal

JUDGMENT

The second respondent / Insurance Company before the Tribunal is the appellant herein, challenging the award passed in M.C.O.P.No.1205 of 2005 on the ground of liability and quantum.



2. The respondents 1 to 6 herein filed a claim petition as legal heirs of the deceased Pandiyan alleging that on 11.10.2005 at about 16.30 hours, the deceased was travelling in the two wheeler bearing Registration No.TN-39-X-5920 which was driven in a rash and negligent manner and the rider turned the vehicle and the deceased was thrown away and he sustained injuries and was taken to Government Hospital, Palladam and later to C.M.C Hospital, Coimbatore where he died due to the injuries. A Post-Mortem was conducted at the Government Hospital.

3. The accident was due to the rash and negligent driving of the driver of the two wheeler in the course of the employment under first respondent before the Tribunal.

4. The appellant/Insurance Company filed a counter statement before the Tribunal alleging that the deceased himself was the rider the two wheeler and he fell down from the two wheeler and he being the tort-feasor, cannot maintain the claim petition and also stated that in view of the suspicion, they have also given a complaint before the CBCID for further investigation as to the registration of the F.I.R.

5. Before the Tribunal, the widow of the deceased was examined as P.W.1 and occurrence witness was examined as P.W.2 and another independent witness was examined as P.W.3. Exhibits P1 to P4 were marked on the side of claimants. On behalf of the Insurance Company, R.W.1 Assistant from the Insurance Company was examined and Doctor who had issued Exhibit R4 - Accident Register copy was examined as R.W.2.

6. On consideration of both oral and documentary evidence, the Tribunal has come to the conclusion that the two wheeler which met with an accident, was driven by P.W.2 Rajapandi and the police have registered Exhibit P1-F.I.R against him and criminal case is pending before the concerned Magistrate Court. The Tribunal also held that in view of the policy, Exhibit R1 on the date of the accident, there is a valid policy coverage for the two wheeler and hence, the owner and the Insurance Company are jointly and severally liable to pay the compensation and accordingly, awarded a sum of Rs.4,63,300/- and hence, the appeal is filed by the Insurance Company.

7. Heard both sides and perused the records.

8. The learned counsel for the appellant/Insurance Company would submit that as there was a suspicion with regard to the coming into the existence of Ex.P1 -F.I.R, the Insurance Company has lodged a complaint with the CBCID



alleging that the deceased Pandi alias Pandiyan has driven the two wheeler, which is insured with the appellant/Insurance Company and he lost control and dashed against the culvert and sustained injury and died and in order to secure compensation, a false complaint was lodged as if the two wheeler was driven by P.W.2 Rajapandi and hence, the appellant/Insurance Company had lodged a complaint before the C.B.C.I.D for fresh investigation in the matter.

9. The learned counsel for the claimants has made submissions in support of the award passed by the Tribunal.

10. Exhibit P1 is the F.I.R evidencing the accident and P.W.2 Rajapandi was examined by the claim petitioner as an occurrence witness. He had categorically deposed that on the fateful day, while he was riding the two wheeler, Pandi alias Pandiyan was seated as a pillion rider in the two wheeler and in order to avoid the van coming on the opposite direction, he tried to turn the vehicle on the left and due to the rain on that day and negligence on his part, the two wheeler has gone down from the main road (tar road) and the pillion rider who was seated behind him, fell down and sustained head injury. There is nothing in the cross-examination to discredit his evidence. Furthermore, the Tribunal has also held that there is no contra evidence to this aspect.

11. It remains to be stated that on behalf of the Insurance Company, R.W.2 Dr.Gandhi was examined who had issued Ex.R4 Accident Register copy and the Doctor has stated in the Accident Register that the injured has driven the vehicle.

12. On a close scanning and scrutiny of the evidence of the R.W.2 Dr.Gandhi, this Court finds that in the cross-examination, the Doctor has admitted that at the time of the admission of the injured, he does not know as to who had brought the injured to the hospital and he was busy in attending the patient and the injured was totally unconscious and was unable to speak. In view of the answer elicited from the cross-examination of R.W.2 Doctor, which goes to show that at the time of admission, the injured was totally unconscious and was unable to speak, this Court is of the considered view that the evidence of R.W.2 Doctor does not support the case of the Insurance Company and thus, a bare finding was given by the Tribunal as to the fact that Ex.P1-F.I.R came to the existence regarding the accident and P.W.2 alone is the rider of the two wheeler, while the deceased was a pillion rider and the said finding does not warrant any interference by this Court.



13. Furthermore, during the arguments of the learned counsel for the claimants, he has produced a certified copy of the judgment rendered by the learned Judicial Magistrate, Coimbatore in C.C.No.214 of 2011, whereby the crime No.39 of 2007 registered by the CBCID against A4/P.W.2 and L.R's of the deceased has ended in acquittal and it also assumes significance. Hence, in view of the admitted position that the criminal case stated to be lodged by the CBCID, Coimbatore based upon the complaint given by the appellant/Insurance Company, has ended in acquittal and also taking into consideration the above said finding, this Court is of the considered view that P.W.2 was the rider of the two wheeler, while the deceased was a pillion rider in the two wheeler and Exhibit P1 FIR copy was relied upon and also taking note of the nature of the policy Ex.R1 which seems to be that it is a package policy being so on the date of the accident, there is a valid policy coverage for the two wheeler including the pillion rider also.

14. Accordingly, this Court is of the considered view that both the owner as well as the insurer of the two wheeler are jointly and severally liable to pay the compensation and similar finding arrived at by the Tribunal is hereby confirmed.

15. On the point of quantum, after hearing both sides and after perusing the records, I find that the compensation awarded under different heads is just and reasonable and they cannot be termed as excessive. In this view of the matter, the said compensation is confirmed.

16. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The order passed by the Tribunal is upheld.

(iii) The appellant-Insurance Company is directed to deposit the entire amount awarded by the Tribunal together with costs and interest at the rate of 7.5% per annum and if not entirely deposited, the same be deposited after deducting the amount already deposited and the amount be deposited to the credit of M.C.O.P.No.1205 of 2005 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge-FTC No.4), Coimbatore within a period of eight weeks from the date of receipt of a copy of this order.

(iv) The claimants are permitted to withdraw the above amount, as apportioned by the Tribunal, in the manner known to



(v) As regards the share of the minor claimants, the same shall be deposited in any Nationalised Bank in an interest bearing Fixed Deposit scheme until they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother of the deceased.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
(Additional District Judge-FTC No.4), Coimbatore
2. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to M/s. Ajmal Associates, Advocate SR.No.58969

C.M.A.No.871 of 2011 and
M.P.No.1 of 2011

MR (CO)
GMY (19/11/2019)