IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on 14.08.2019	Judgment pronounced on 06.09.2019

CORAM:
THE HON'BLE MRS JUSTICE S. RAMATHILAGAM

Civil Miscellaneous Appeal No.2725 of 2016
and
C.M.P.Nos.19692 of 2016 and 2340 of 2017

United India Insurance Co. Ltd.,
Branch Office - III
137-D, Cherry Road
Salem. .. Appellant/2nd Respondent

..vs..

1. Arul Ruban .. 1st Respondent/1st Petitioner
2. Emily Vimala Bai ..2nd Respondent/2nd Petitioner
3. Raghavan .. 3rd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 02.08.2016 made in MCOP No.1579 of 2012 on the file of the Motor Accident Claims Tribunal, (Special District Court), Salem.

For Appellant : M/s.I.Malar
For Respondents 1 & 2 : M/s.Y.Venkatesan
Respondent-3 : Left

J U D G M E N T

The appellant herein, who is the Insurance Company, contended that the Tribunal has committed grave error in awarding compensation to the claimants in the absence of any documentary evidence to show that the accident had not occurred due to the negligent act of the deceased in the vehicle bearing Registration No.TN-30-F-1481. The accident occurred only due to the deceased at his own fault, whereas the Tribunal had shifted the burden on the appellant herein by awarding sums under the various heads. Regarding quantum also, there is no evidence for the income of the deceased from a specific employment and the loss of income calculated by the Tribunal is without any basis, since there are no proof of documentary evidence. The Tribunal ought to have considered the structured formula as 'no fault liability' on the part of the deceased, whereas the Tribunal's award is unsustainable. The Tribunal ought to have considered that the deceased was penalised and chargesheeted and later, the charge was abated as per Ex.R4, and therefore, the award made by the Tribunal is unsustainable. The evidence of RW.1, who is an RTO Official, and documents Exs.R2 and R3 marked before the Tribunal are not properly considered and hence, the award made by the Tribunal without considering those aspects are unsustainable. Hence, the appellant sought for setting aside the judgment and decree of the Tribunal.

2. Heard both sides and perused the records.

3. On hearing both and on perusal of the records, it is observed that the deceased, who was aged about 18 years at the time of accident, met with the accident on 23.12.2006, while he was riding TVS Centra motorcycle along with one Aravind as pillion rider in Yercad-Salem main road and at that time, the said vehicle driven by the deceased, near Plantation Estate between 18-17 'V' bend, lost his control, dashed against the stone wall and caused accident. Due to the said accident, the deceased sustained grievous head injury and died on the spot. The petitioners are the parents of the deceased and claimed a sum of Rs.25,00,000/- as compensation by stating that the deceased would become a computer engineer and very successful man in the society and the petitioners have lost all kinds of comforts, help and happiness of their life when the petitioners' future life was fully depending upon the earning of the deceased. Hence, their financial status also become dark.

4. The respondent Insurance Company contended that the accident occurred only due to the deceased, who was driving the said vehicle without driving licence and without wearing helmet and driven the said vehicle in a rash and negligent manner and hit against the parapet wall and died due to the accident. Hence, he is the sole cause for the accident. The First Information Report was also registered against the deceased Alfred Manoj Kumar. Since the deceased being the tort-feasor, the petitioners are not entitled for the compensation. The other aspects regarding the right of the claimants claiming themselves as Legal Heirs and the claimants were also living separately without depending on the deceased, since the petitioner died as a bachelor, and age of the parents have to be taken for consideration while determining the compensation. Apart from that, the claim made by the claimants that the deceased was II year student and also earning Rs.4,500/- by way of part-time work were also denied by the respondent Insurance Company.

5. The Tribunal, after analysing the evidence and documents placed before the same, has given a finding that the vehicle bearing Registration No.TN-30-F-1481 TVS Centra was driven by the deceased Alfred Manoj Kumar himself and the

deceased has driving the said vehicle in a rash and negligent manner and caused the accident. The Tribunal has also awarded compensation by observing the fact that the deceased was 18 years old person and he was also unmarried at the time of accident and was taking his own, the monthly income at Rs.5,000/- and by applying multiplier to his age, the Tribunal awarded a sum of Rs.3,45,000/- under various heads, as follows:-

Loss of Future Earning	... Rs.2,70,000/-
Loss of Love & Affection	... Rs. 50,000/-
Funeral Expenses	... Rs. 25,000/-
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Total	... Rs.3,45,000/-
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6. Regarding the sum to be paid, the Tribunal has given a finding that since the said deceased Alfred Manoj Kumar driven the said vehicle without valid driving licence and met with the accident and died, the claimants/appellants preferred this claim application; and therefore, directed the Insurance Company/ second respondent therein to pay compensation and then to recover the same from the first respondent therein.

7. The appellant also vehemently contended that when it is found that there is bare negligence on the part of the deceased, who is also a tort-feasor, and the First Information Report was also registered against him, the Tribunal ought to have fixed contributory negligence on the part of the deceased, since he himself had caused the accident by his careless and negligent driving. The appellant also relied upon the case in CDJ 2017 MHC 4829 (Mary Immanuvel & Others ..vs.. Periyasamy & Others).

8. On the other hand, the case decided by 3 Judges Bench of the Hon'ble Supreme Court is relied on by the respondent that the insurer cannot raise defence of negligence on the part of the victim to counter claim under Section 163(A) and the order of the Tribunal was restored and the finding of the High Court that the claimants are not entitled for compensation is set aside (2018 (2) TMNAC 149 (SC) (Shivaji and another ..vs.. Divisional Manager, United India Insurance Co. Ltd., and others).

9. Another case was also relied on by the respondent that the claim cannot be defeated by the insurer/owner on the ground of negligence on the part of the victim or claimant. In the said case relied by the respondent (2018 (1) TANMAC 135 (Cholamandalam M.S.General Insurance Co. Ltd., Chennai ..vs.. Amutha and others), the Insurance Company has preferred the appeal questioning the award made by the Tribunal on the ground of maintainability of the claim. The ground was that the victim

was himself the tort-feasor. In the said case, the Judgment of the Hon'ble Supreme Court (United India Insurance Company ..vs.. Sunil Kumar and another, 2013(2) TMNAC 737 (SC)) was discussed that the claim under Section 163 (A) of the Act shall not be defeated by the Insurance Company or vehicle owner for the reason of any wrongful act, neglect or default of the victim and there is also an authoritative pronouncement that the Insurance Company cannot make such defence and hence, the Tribunal has directed the Insurance Company to pay compensation. Hence, in the said appeal relied by the respondent, based on the judgment made in (2018 (2) TMNAC 149 (SC) cited supra, the Insurance Company is liable to pay compensation. But when the evidence of the petitioner as well as respondent and the documentary evidence would reveal the fact that the deceased was not possessing driving licence at the time of accident was clearly proved and the order of the Tribunal directing the Insurance Company to pay the compensation and to recover the same is very much proper. The owner of the vehicle did not appear before the Court and hence, the Tribunal observed all these facts.

10. Regarding the sum determined by the Tribunal by taking the monthly income of the deceased at Rs.5,000/- considering the educational qualification that in future, he would earn a very handsome amount and also observing the fact that he is also taking part-time classes, determination of the Tribunal at Rs.5,000/- as monthly income is very much reasonable. The Tribunal also observed the fact that the deceased was aged 18 years and applied proper multiplier and awarded the said sum. The Tribunal has also awarded a sum of Rs.25,000/- for funeral expenses and for the parents the Tribunal has awarded Rs.25,000/- for loss of love and affection. The sum awarded by the Tribunal under the above heads by assessing the income and also the sum awarded under the head for loss of love and affection is very much reasonable and the said award does not require any modification and the observation of the Tribunal that the deceased did not possess valid driving licence at the time of accident and there is violation of policy condition, the order of the Tribunal directing the appellant Insurance Company to pay the same and recover from the owner of the vehicle is very much proper. Hence, the Civil Miscellaneous Appeal is dismissed. The judgment and decree, dated 02.08.2016 made in MCOP No.1579 of 2012 on the file of the Motor Accident Claims Tribunal, (Special District Court), Salem is hereby confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

11. The appellant / Insurance Company is directed to deposit the amount of compensation, interests and costs, as awarded by the Claims Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such

deposit being made, the Tribunal is directed to transfer the respective shares of the said sum to the Savings Bank Account of the claimants/respondents 1 and 2 herein, through RTGS.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

Mra

To

1. Motor Accident Claims Tribunal, (Special District Court), Salem.

2. The Section Officer, V.R.Section, Madras High Court, Chennai 104

+1cc to Mr.Y.Venkatesan, Advocate SR.No.77156

+1cc to Mr.T.Ravichandran, Advocate SR.No.77470

C.M.A.No.2725 of 2016
and
C.M.P.Nos.19692 of 2016
and 2340 of 2017

PM(CO)
GMY(24/10/2019)