IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2495 of 2018

The Divisional Manager,
Reliance General Insurance Co. Ltd.,
Having Office at No.73,
First Floor, Officers Line,
Vellore. ... Appellant/2nd Respondent

vs.

1.Kokila
2.Minor. Pavithra
3.Minor. Kishore
(Minor respondents 2 & 3 are
represented by their mother and next friend Kokila)
4.Mageshwari ...Respondents 1 to 4/Petitioners
5.Thomaspaudose ...5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 04.01.2018 made in MCOP.No.200 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Vellore.

For Appellant : Mr.S.Arunkumar

For Respondents 1 & 4 : Mr.C.Prabakaran

JUDGMENT

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

This appeal has been filed by the Insurance company challenging the award dated 04.01.2018 passed by the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Vellore in MCOP.No.200 of 2015.

Brief facts leading to the filing of the instant appeal:

2. A person by name Balaji died on 15.11.2014 as a result of an accident caused by a van bearing registration No.TN18-J-

5779 owned by the fifth respondent and insured with the Appellant. The accident happened while the deceased was riding his Motor cycle bearing registration No.TN23-BH-7048 at Gudiyatham to Katpadi Road, Latheri Korai Karaiyidam when the insured van bearing registration No.TN18-J-5779 coming from the opposite direction dashed against the two wheeler causing grievous injuries on Balaji which resulted in his death.

3. The dependents of the deceased who are the respondents 1 to 4 in this appeal preferred a claim before the Motor Accident Claims Tribunal, Vellore in MCOP.No.200 of 2015 against the fifth respondent as well as the Appellant Insurance Company seeking a compensation of Rs.30,00,000/- for the death of Balaji.

4. By an award dated 04.01.2018 passed in MCOP.No.200 of 2015, the Motor Accident Claims Tribunal directed the Appellant to pay the claimants a sum of Rs.13,05,180/- as compensation together with interest at the rate of 7.5% per annum from the date of claim (i.e., on 12.01.2015) till the date of realisation. The Tribunal assessed the total compensation payable to the claimants at Rs.14,50,200/-. But however, reduced 10% out of the said sum, on account of contributory negligence of the deceased and after the said deduction, the Tribunal directed the Appellant to pay the claimants a sum of Rs.13,05,180/- together with interest and cost as stated above.

5. Aggrieved by the Award dated 04.01.2018 passed by the Motor Accident Claims Tribunal in MCOP.No.200 of 2015, the Insurance Company has filed this appeal.

6. Heard Mr.S.Arunkumar, learned counsel appearing for the Appellant, Insurance Company and Mr.C.Prabakaran, learned counsel appearing for the respondents 1 to 4.

Discussion:

7. The Appellant Insurance Company has challenged the impugned award on the ground that the entire negligence is only on the part of the deceased who according to them, was the cause of the accident due to his rash and negligent riding of his two wheeler. The Appellant has also challenged the award on the ground that the Tribunal has failed to take note of the fact that the driver of the insured vehicle (van) did not possess the requisite licence which has to be renewed every three years. Therefore, according to the Appellant, since the driver of the insured vehicle did not possess requisite licence, the Tribunal ought to have considered the evidence of RW1, RW2 as well as Ex.R1 and at least held that the Appellant is entitled to recover the award amount from the fifth respondent herein.

8. The Appellant has also challenged the quantum of compensation awarded by the Tribunal on the ground that the Tribunal has erroneously assessed the monthly income of the deceased at Rs.8,400/- without any proof and has also erroneously added 40% towards loss of future prospects. It is also the case of the Appellant that the Tribunal erred in granting Rs.1,00,000/- towards loss of love and affection which is excessive and not in accordance with settled principles of law.

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

10. Before the Tribunal, the claimants have filed six documents which were marked as Ex.P1 to Ex.P6 and examined two witnesses viz., PW1-the first respondent and PW2-an eye-witness to the accident. On the other hand, the fifth respondent has filed one document viz., Ex.R1-xerox copy of the insurance policy and two witnesses were examined viz., RW1 and RW2. Ex.X1 and Ex.X2 are the third party exhibits.

11. The eye-witness (PW2) who was present at the time of the accident has corroborated the evidence of PW1 (the first respondent) by deposing that only due to the rash and negligent driving by the driver of the insured vehicle (van) bearing registration no.TN18-J-5779, the collision between the two vehicles happened which resulted in the death of Balaji. Ex.P1-FIR was also registered based on the complaint given by PW2, the eye-witness against the driver of the insured vehicle. The charge sheet has also been filed by the Latheri Police only against the driver of the insured vehicle. The driver of the insured vehicle was also not examined as witness by the insurance company. No contra evidence has been produced by the Appellant insurance company to disprove the contention of the claimants that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened. The Tribunal has considered all these aspects and only thereafter, has come to the conclusion that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened. The Tribunal has rightly deducted 10% towards contributory negligence of the deceased as he did not wear helmet at the time of the accident. We do not find any infirmity in the said finding.

12. Insofar as the other contention raised by the Appellant that the driver of the fifth respondent who was driving the insured vehicle at the time of the accident did not possess valid driving licence with badge endorsement is concerned, the Tribunal has rightly followed the decision of the

Hon'ble Supreme Court in the case of Mukund Dewangam vs. Oriental Insurance Co. Ltd., reported in 2017 (2) TN MAC 145 (SC) wherein the Supreme Court held the insurance company liable even if a holder of LMV licence fails to obtain specific endorsement to drive a transport vehicle and in the case on hand also the driver of the insured vehicle was holding the LMV licence on the date of the accident, but did not posses the badge to drive a transport vehicle. Hence, the Tribunal has rightly rejected the pay and recovery claim made by the Appellant insurance company.

13. The claimants have proved through Ex.P2-postmortem certificate that the deceased was aged 26 at the time of the accident. Even though the claimants had made a claim stating that the deceased was a car driver and earning a monthly income of Rs.12,000/- at the time of the accident, the Tribunal has rightly assessed the notional monthly income of the deceased at Rs.6,000/-, since no documentary evidence has been produced by the claimants to prove that the deceased was earning the monthly income of Rs.12,000/-. Excepting for producing the driving licence of the deceased (Ex.P6), no other documentary evidence has been produced by the claimants to substantiate their claim that the deceased was earning a monthly income of Rs.12,000/- at the time of the accident.

14. The Tribunal has rightly added 40% towards loss of future prospects of the deceased following 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 and the total monthly income which includes the loss of future prospects assessed by the Tribunal at Rs.8,400/- (6,000+2,400) is a correct assessment.

15. Considering the age of the deceased being 26 years at the time of the accident, the Tribunal has rightly applied the correct multiplier of 11 and the loss of dependency assessed by the Tribunal at Rs.12,85,200/- is a correct assessment.

16. The compensation of Rs.1,00,000/- towards loss of love and affection, Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.10,000/- towards Transport expenses and in all amounting to total compensation of Rs.14,50,000/- assessed by the Tribunal is a correct assessment and does not call for any interference in this appeal.

Conclusion:

17. For the foregoing reasons, the appeal is dismissed and the Appellant insurance Company is directed to deposit 90% of award amount as awarded by the Tribunal i.e, Rs.13,05,180/-

along with interest at the rate of 7.5% per annum and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.200 of 2015 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 share of the first and fourth respondents as per the ratio of apportionment made by the Tribunal through RTGS within a period of four week 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.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
I Additional District and Sessions Judge, Vellore

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

+1cc to M/s.C.Prabakaran, Advocate Sr.79264
+1cc to M/s.S.Arunkumar, Advocate Sr.79249

C.M.A.No.2495 of 2018

sj[co]
srg 16/04/2020