

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 2824 of 2018

M/s.Reliance General Insurance Company Limited,
The Branch Office,
2nd Floor, Kanagu Towers,
15-A, Thillai Nagar Main Road,
11th Cross, Trichy District. ... Appellant/2nd Respondent

Vs.

1.Kaliyammal

2.Manickam ...1st & 2nd Respondent/Claimants

3.Duraisamy ...3rd Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in MCOP No. 1818 of 2013, dated 19.02.2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.N.Vijayaraghavan
for M/s.M.B.Gopalan Associates

For Respondents : Mr.C.Kulanthaivel for R1,R2

JUDGMENT
(Delivered by M.M.Sundresh,J.)

This appeal has been preferred by the appellant, who has been arrayed as the second respondent before the Claims Tribunal, challenging the award passed in MCOP No.1818 of 2013, by which respondents 1 and 2, who are parents of the deceased, were granted a sum of Rs.25,69,800/- along with costs.

2. The appellant is the Insurance Company, namely, the insurer of the third respondent, who is the owner. The case of respondents 1 and 2 is that the vehicle bearing Registration No. TN 28 R 6639 was driven in a rash and negligent manner and dashed against the deceased causing a fatal injury to the deceased, who was travelling in a two-wheeler bearing Registration No. TN 52 B 1731. The parents of the deceased viz., Respondents 1 and 2 made a claim for a sum of Rs.35,00,000/-. Exs. P1 to P13 have been marked and P.Ws.1 to 4 were examined. The Tribunal also took into consideration Exs.P6 and P7 filed by the appellant apart from Exs.X1 to X5.

3. Before the Tribunal, the appellant has contended that the vehicle insured with it was not involved in the accident. On the quantum also, it is submitted that the amount as claimed by respondents 1 and 2 is excessive.

4. On the first issue, the Tribunal placing reliance upon Ex.P4, which is the report of the Motor Vehicle Inspector coupled with signature found under Ex.P6, which is the statement given by the Driver of the vehicle, held that the negligence is on the part of the lorry driven by him.

5. Insofar as the quantum is concerned, the Tribunal took into consideration Ex.X3, which is the School Certificate indicating the date of birth of the deceased as 03.05.1985 and, therefore, held that the deceased had completed 28 years at the time of accident. Ex.X1 coupled with P.W.4 has been taken into consideration for fixing the income of the deceased. As the deceased was not married at the relevant point of time, 50% deduction was made while adopting the multiplier '17' as per the judgment of Apex Court in National Insurance Company Ltd. v. Pranay Sethi, reported in (2017) 16 SCC 680. Accordingly, a sum of Rs.25,69,800/- has been awarded along with the costs.

6. Learned counsel appearing for the appellant submits that both the driver and the owner of the vehicle denied the occurrence. Even the V.A.O has stated that something more has been written than what has occurred. The Tribunal ought not to have relied upon Ex.P4 alone. Therefore, the negligence as fixed by the Tribunal is not legally sustainable.

7. On the question of quantum, the learned counsel for the appellant submitted that the multiplier adopted is very high and the fact that respondents 1 and 2 are the aged parents has not been taken into consideration.

8. The learned counsel appearing for the claimants/respondents 1 and 2 submitted that the Tribunal took into consideration all the relevant materials. Both the contentions sought to be raised by the appellant have been considered at length by the Tribunal and the same does not warrant any interference.

9. We do not find any error in the award passed by the Tribunal. On the question of negligence, the Tribunal did take into consideration Ex.P4, which document is not denied or disputed. This document is the creation of the Motor Vehicle Inspector, who is the public authority. It has been clearly found that the lorry bearing Registration No.TN 28 R 6639 had its right end of the front bumper dented and blood mark was found in the front of right side tyre end and mudguard inside. Though there is denial by the lorry driver and the owner, that by itself cannot be a ground to discredit the case of respondents 1 and 2. Ex.P6 has indeed been signed by the driver of the vehicle. Like Ex.P4, Ex.P6 is also not found to be untrue. Therefore, the Tribunal rightly held that negligence has to be fixed upon the appellant, being the insurer of the vehicle.

10. For fixing the income and age of the deceased, reliance has been made on Ex.X3 and Ex.X1. Such an exercise has been done correctly, in our considered view. For fixing the income and age of the deceased, the Tribunal has deducted 50% towards the personal expenses, as he was not admittedly married. Therefore, the multiplier '17' as per the dictum laid down in Pranay Sethi (supra) has been taken into consideration.

11. Thus, we do not find any error warranting interference and the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected CMP No. 21657 of 2018 is closed.

12. The appellant insurance company is directed to deposit the amount awarded by the Tribunal along with accrued interest, less the amount, if any already deposited, to the credit of M.C.O.P.No.1818 of 2013 on the file of the Motor Accident Claims Tribunal (Special District Court), Salem, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants/respondents 1 and 2 are entitled to withdraw the entire amount deposited.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Special District Court,
Salem.

Copy to

The Record Keeper,
V.R. Section, High Court, Madras.

+1 CC to Mr.M.B. Gopalan Associates sr 100915

+1 CC to Mr.C.Kulanthaivel, Advocate sr 100325.

C.M.A.No.2824 of 2018

RSV(CO)
SP(23/07/2020)