BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 18.03.2019

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA(MD)No.1030 of 2016
and
C.M.P(MD).Nos.9274 of 2016 & 11785 of 2018

M/s.ICICI Lombard General Insurance Co.,Ltd.,
No.7, First Floor, Loyolo Technical Institute
Arignar Anna Road, Madurai 16. ...Appellant/Respondent-3

vs.

1.Vasantha ...1st Respondent/Petitioner

2.Sekar
3.Radhakrishnan ...Respondents 2 and 3/Respondents 1 & 2

PRAYER:Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the fair and decreetal order dated 23.04.2013 made in MCOP.No.28 of 2012 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Nagercoil, Kanyakumari District.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 : Mr.K.P.Narayanakumar
For R2 & R3 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the fair and decreetal order dated 23.04.2013 made in M.C.O.P.No.28 of 2012 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Nagercoil, Kanyakumari District.

2.The brief facts of the case are as follows:

The 1st respondent/claimant is the mother of the deceased. The 1st respondent/claimant's husband died some years back and the deceased took care of the 1st respondent/claimant. On 14.06.2011, the deceased hired the auto rickshaw bearing registration TN-74-S-5645 for the trip to Valliyoor Murugan Temple and returning through the bye pass road at South Valliyoor, the 2nd respondent herein drove the vehicle in a rash and negligent manner without following the traffic rules over-turned in the road and caused multiple injuries to the deceased and the deceased was removed to the Thiraviam Orthopredic Hospital, Nagercoil and subsequently admitted at Ananthapuri Hospital, Thiruvananthapuram where he died on 19.06.2011. The deceased is the only son of the 1st respondent herein/claimant and she got a great loss due to the death of her deceased son. The 1st respondent/claimant is the only dependent of the deceased and she is entitled for compensation. Hence, she filed a claim petition in M.C.O.P.No.28 of 2012 before the learned Motor Accident Claims Tribunal, Nagercoil for claiming a compensation of Rs.14,70,000/-.

3.The Appellant/Insurance Company in their counter had denied the mode of accident and the case was registered against the driver of the unknown lorry, this fact was totally suppressed by the 1st respondent herein/claimant. Further he contended that the compensation claimed by the 1st respondent/claimant is very excessive, hence cannot be allowed. The 1st respondent /claimant has not filed any document to substantiate her claim, so the petition is not maintainable. The learned counsel for the appellant/Insurance Company further contended that the claimant has to prove that the 2nd respondent herein/1st respondent is having valid and current driving license to drive the specified category of vehicle involved in the accident and the Vehicle registration No.TN-74-S5645 is insured and having current and effective policy at the time of accident and other records are current and intact at the time of accident. Hence, the Appellant/Insurance Company is not liable to pay the compensation.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and the respondents and also appreciating the evidence on record, has directed the appellant/Insurance Company to pay a compensation of Rs.16,13,850/- along with interest at 7.5% per annum from the date of filing of the claim petition till the date of realisation and also directed the appellant/Insurance Company to recover the same from the 3rd respondent herein, who is the owner of the vehicle. Aggrieved against the said order, the Appellant/ Insurance Company has preferred this Civil Miscellaneous Appeal.

5.In the grounds of appeal, the learned counsel for the appellant/Insurance Company stated that the judgement of the larger Bench of the Hon'ble Supreme Court of India rendered ***in United India Insurance Co., Ltd., Vs.Sheela Dutta & others (Civil Appeal Nos.6026 & 6027 of 2007 dated 13.10.2011) reported in 2011 ACJ 2729,*** there is no necessity for the insurer to pray for and obtain the leave under Section 170 of the Motor Vehicle Act, as the Insurance Company has been made a party in the original petition from the inception. The learned counsel further stated that the accident in question took place on account a collision of unidentified vehicle against the vehicle owned by the 1st respondent in the claim petition and hence, the Tribunal ought to have found that there is no negligence on the part of the driver of the vehicle owned by the 1st respondent in the claim petition. The criminal case laid against the driver of the auto-rickshaw has been referred as a Mistake of Fact, since an unidentified vehicle was caused the accident by hitting an auto rickshaw and the same was not traced out and the findings of the Tribunal per contra relating to the negligence on the part of the driver of the vehicle are incorrect and false. The learned counsel for the appellant further stated that the auto rickshaw was not permitted to be plied in the place of occurrence and on account of such a violation which fundamental and basic, the Tribunal ought to have absolved the liability of the appellant/3rd respondent from indemnifying the owner of the vehicle. Even the quantum of compensation granted by the Tribunal is excessive, since the Tribunal ought to have taken into account the age of the mother of the deceased who is the sole claimant in view of the fact that the age of the claimant is higher than the age of the deceased. Hence, the learned counsel for the petitioner prays to set aside the order passed by the Tribunal.

6.On perusal of the complaint, it is observed that when the 2nd respondent herein, who is the driver of the 3rd respondent was driving the auto and at that time an unidentified lorry dashed against the back side of the said auto, due to the said impact, the accident was occurred. The criminal proceedings were also initiated and the said lorry was not traced out by the police and hence, referred the case as 'mistake of fact' . But P.W 2 has deposed before the Court that the said accident was occurred only to the rash and negligent driving on the part of the driver of the auto and the said auto was capsized from the height of 4 feet fell in a pit and the Tribunal has also observed the same. The other findings by the Tribunal are that if any vehicle is hit at the back side of the auto, then the damage would be at the back side. Whereas Ex.P3, the Motor Vehicle Inspector's Report shows that the various parts of the said auto was damaged. Considering the fact that the two more persons have also got injured and the damage caused on the vehicle also proved the fact that the said accident was occurred only due to the rash and negligent on the part of the 2nd respondent herein. Per contra, the appellant/Insurance Company has contended that by filing Exhibit R2-copy of the permit, in which the 2nd respondent has to drive the vehicle only within a limit of Kanyakumari District, but the 2nd respondent has driven the said vehicle in the place of Valliyoor. In support of his contention, the appellant/Insurance Company has relied upon the Judgment of the Hon'ble Supreme Court reported ***in (2018) 7 SCC 558 (Amrit Paul Singh and another Vs. Tata Aid General Insurance Company Limited and others).*** Hence, the learned counsel for the appellant contended that since the violation of the policy, the appellant/Insurance Company is not liable to pay the compensation. The Tribunal has observed all these aspects and also observed the fact that the deceased was only 24 years on the date of accident. On perusal of oral and documentary evidence, the Tribunal fixed the monthly income of the deceased at Rs.10,000/-.

7.Per contra, the learned counsel for the appellant vehemently contended that the award was passed by the Tribunal on 10.05.2013 and in the absence of any income proof, the Tribunal has awarded a sum of Rs.10,000/- p.m as income of the deceased is very much on the higher side and the monthly income of the deceased has to be taken as Rs.6,500/- per month in view of the decision of the Hon'ble Supreme Court in case of ***National Insurance Co., Ltd., Vs.Pranay Sethi and others reported in 2017(16) SCC 680.***

8.In view of the contention raised by the appellant/Insurance Company and also on perusal of the records, it is observed that there is no document to prove that the monthly income of the deceased is Rs.10,000/- and the Tribunal has taken at Rs.10,000/- p.m is very excessive and hence, the income of the deceased is fixed at Rs.6,500/- per month. The other heads awarded by the Tribunal namely are very much reasonable and there is no modification with regard to other heads.

9.I have heard the rival submissions made by both counsel.

10.On perusal of the oral and documentary evidence and also the submissions made by both counsel, this Court fixes the monthly income of the deceased as Rs.6,500/- and applies the multiplier '18'. After arriving at such conclusion, the compensation payable to the claimant is reworked as under :

Monthly income	: Rs.6500/-
After deducting 1/3th towards personal living expenses of the deceased and the monthly income comes to	: Rs.4,333/-
The total loss of income of the deceased comes to	:Rs.4,333X12X18 **Rs.9,35,928/-**

11.Hence, the loss of income reduced from Rs.14,40,000/- to Rs.9,35,928/-. Regarding other heads, there is no modification and the same is confirmed.

12.In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the tribunal is reduced from Rs.16,13,850/- to Rs.11,09,778/- (loss of income - Rs.9,35,928/- + Medical Expenses Rs.1,33,850 + loss of estate- Rs.10,000/- + loss of love and affection - Rs.25,000/- + funeral expenses - Rs.5,000/-). The appellant/Insurance Company is directed to deposit a sum of Rs.11,09,778/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited if any and the appellant/Insurance Company is directed to recover the said amount from the 3rd respondent herein, the owner of the vehicle. On such deposit, the 1st respondent herein/claimant is permitted to withdraw the entire award amount along with interest, without filing any formal petition before the Tribunal. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

msa

To
The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal((Chief Judicial Magistrate Court)
Nagercoil, Kanyakumari District.

Copy to:
The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai. 2Copies.

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-54838[F] dated 19/03/2019)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-54854[F] dated 19/03/2019)

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