IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	13.08.2020
Pronounced On	23.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2365 of 2010
and
M.P.No.1 of 2010

(Through Video Conferencing)

The National Insurance Co. Ltd.,
Post box No.23, 88 - F,
Bye Pass Road, Dharmapuri. ... Appellant/2nd Respondent

Vs.

1.Shanthi

2.Theethan

3.Raji

4.Minor. Mohanapriya

5.Minor. Stella Mary

6.Minor. Sowmiya ... Respondents 1 to 6/Petitioners

7.R.Kumar ...7th Respondent/1st Respondent

(Respondents 4 to 6 represented by N.F. Mother Shanthi)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed in M.C.O.P.No.485 of 2004 dated 01.11.2006 on the file of the learned Motor Accident Claims Tribunal (Addl. District Judge) of Dharmapuri District.

For Appellant : Mr.J.Chandran

For R1 to R6 : Mr.V.Kumaravelan

For R7 : Not Ready in Notice

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J U D G M E N T

The Insurance Company is the appellant. It is aggrieved by the impugned Judgment and Decree dated 01.11.2006 passed by the Motor Accidents Claims Tribunal and Additional District Court, Dharmapuri in M.C.O.P.No.485 of 2004.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.6,69,000/- as compensation together with interest at 7.5% p.a. from date of filing of the claim petition till the date of deposit, to the 1st to 6th respondents.

3. In this appeal, the appellant Insurance Company has challenged the compensation awarded to the 1st to 6th respondents who were claimants before the Tribunal. They are wife, parents and children of the deceased Theerthagiri aged about 28 years. The minor children of the deceased were aged about 6 years, 3 years, 7 years respectively at the time of filing of the claim petition.

4. The deceased Theerthagiri was said to be an auditor and was purportedly earning a sum of Rs.15,000/- per month when he met with the fatal accident on 17.09.2003 at about 19.10 hrs. (07.10 p.m). In the claim petition, it was stated that the deceased was riding TVS 50 bearing registration No.TN-29-T-7793, when another TVS 50 bearing registration registration No.TN-29-T-4903 came from the opposite side driven in a rash and negligent manner and hit the TVS 50 of the deceased, as a result of the which, the deceased was thrown out from his TVS 50 and sustained multiple injuries including head injury and died on the spot.

5. Before the Tribunal, the claimants who are the 1st to 6th respondents herein estimated a compensation of Rs.60,45,000/- but restricted the same to Rs.15,00,000/-. The TVS 50 bearing registration No. TN-29-T-4903 was owned by the 7th respondent herein and was insured with the appellant Insurance company. The Tribunal after considering the evidence on record has awarded a sum of Rs.6,69,000/-as compensation to the 1st to 6th respondents/claimants.

6. In this appeal, it is the contention of the appellant Insurance Company that the compensation awarded by the Tribunal was excessive and unsustainable in law particularly in facts and circumstances of the case. It is submitted that there is delay in lodging of the Ex.A1 FIR on 18.09.2003

though the accident is said to have taken place on 17.09.2003 at about 07.10 p.m. It is submitted that in the Ex.A1. FIR, the number of the TVS 50 belonging to the 7th respondent insured with the appellant Insurance Company was not given. It is further submitted that the insured vehicle was also not in subject to the inspection by way of Motor Vehicle Inspector and that there was collusion between the claimants and the 7th respondent to wrongly fix the liability on the appellant Insurance Company.

7. It is further submitted that the Tribunal ought to have considered the admission of RW.4, who is an eyewitness to the accident and therefore, should have disallowed the claim. It is further submitted that the appellant Insurance Company has also sent a complaint to the DIG of CBCID to investigate fake nature of the claim and same was pending on the date of this appeal.

8. It is further submitted that as far as the calculation arrived by the Tribunal is concerned, the loss of income and the other conventional heads were exorbitant and therefore, prayed for setting aside the impugned Judgment and Decree passed by the Tribunal.

9. Per contra, the learned counsel appearing for the 1st to 6th respondents/claimants submitted that the impugned Judgment was well reasoned and requires no interference. He further submitted that if the decisions of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12 and in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680 and in Magma General Insurance Company Limited Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 OnLine SC 1546 are applied to this case, the compensation awarded by the Tribunal will have to be increased. It is further submitted that the delay of one day in filing the FIR cannot be fatal to claim petition.

10. I have considered the arguments advanced by the learned counsel for the appellant Insurance Company and the 1st to 6th respondents/claimants. I have also perused the evidences on record and impugned Judgment and Decree.

11. There was a hardly delay in filing of Ex.A1 FIR. The accident is said to have been taken place on 17.09.2013. The FIR was lodged on the following day. Thus, it cannot be said that there was a delay. Though there are some contradictions in the evidence of RW.4 Senthamilselvan who is said to be an eyewitness on the side of appellant Insurance Company, the admission of evidence of witness of the Senthamilselvan cannot be basis for negating the claim particularly in the light of the fact that the 7th respondent owner of the insured vehicle

has admitted the liability and had paid the fine for the negligent driving/riding and for causing the said accident vide Ex.R2 on the file of Kadathoor Police Station Crime No.432/2003.

12. It is the submission of the 1st to 6th respondents/claimants that it was open for the appellant Insurance Company to effectively disprove the case of the claimants. Mere filing of complaint with the CBCID is not sufficient to distance itself from the liability even if it is surmised that there was allegedly collusion between the 1st to 6th respondents/claimants and the 7th respondent owner of the insured vehicle. It was open for the appellant Insurance Company to effectively cross examine the witness of the 1st to 6th respondents/claimants to disprove the case of the 1st to 6th respondents/claimants.

13. As far as the decisions of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12 and in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680 and in Magma General Insurance Company Limited Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 OnLine SC 1546 are concerned, if they are applied, the compensation to be awarded would be on a slightly higher side. However, the 1st to 6th respondents/claimants have also not prayed for enhancement of compensation and are satisfied with the amount of compensation awarded vide impugned Judgment and Decree.

14. I therefore do not find any reasons to interfere with the impugned Judgment and Decree passed by the Tribunal. Therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

15. The appellant Insurance Company is directed to deposit the entire amount of compensation awarded by the Tribunal together with interest thereon and cost as directed by the Tribunal, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

16. On such deposit, the 1st to 3rd respondents/ 1st to 3rd claimants are permitted to withdraw their respective share together with interest thereon, less any amount already withdrawn, by filing suitable application. The 4th to 6th respondents were shown as minors in the cause title. They would have however attained the age of majority. Therefore, they are permitted to file appropriate application(s) for recording the age of majority before the Tribunal to withdraw their share of compensation.

17. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal
(Addl. District Judge),
Dharmapuri District.

C.M.A.No.2365 of 2010
and M.P.No.1 of 2010

NRJK(CO)
CB(27/01/2021)