IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved :03.11.2020
Pronounced on :11.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1692 of 2015
and
M.P.No.1 of 2015
and
Cross Objection No.41 of 2020

C.M.A.No.1692 of 2015:
M/s Bajaj Allianz General Insurance Company Limited,
No.25/26 Prince Towers, Ground Floor, College Road,
Nungambakkam, Chennai 6. .. Appellant/2nd Respondent

/versus/

1.S.Krishnaveni
W/o Sundaramoorthy

2.Minor S.Raja,
S/o Sundaramoorthy

3.Minor S.Ilakiya,
D/o Sundaramoorthy

4.Minor S.Pandiyarajan,
S/o Sundaramoorthy.

2 to 4 minors represented by their mother and next friend Mrs.S.Krishnaveni.
..Respondents 1 to 4/Petitioners

5.A.Rajamanickam ..5th Respondent/1st Respondent

6.A.Aravazhi ..6th Respondent/3rd Respondent

7.Royal Sundaram Allianz Insurance Co.Ltd.,
Sundaram Towers,
No.46, Whites Road, Chennai 600 014.
..7th Respondent/4th Respondent

Prayer in C.M.A.No.1692 of 2015: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 01.11.2014 passed in M.C.O.P.No.1642 of 2007 on the file of the Motor Accidents Claims Tribunal(Special Subordinate Judge), Cuddalore.

For Appellant :Mr.J.Michael Viswavasam
For Respondents:Mrs.Ramya V.Rao for R1 to R4
No appearance for R5 and R6
Mr.Harini for Mr.M.B.Raghavan for R7

Cross Objection No.41 of 2020:

1.S.Krishnaveni
W/o Sundaramoorthy

2.Minor S.Raja,
S/o Sundaramoorthy

3.Minor S.Ilakiya,
D/o Sundaramoorthy

4.Minor S.Pandiyarajan,
S/o Sundaramoorthy.

2 to 4 minors represented by their mother and next friend Mrs.S.Krishnaveni.

..Cross Objectors/Petitioners 1 to 4

/versus/

1.A.Rajamanickam ..1st Respondent/5th Respondent

2.M/s Bajaj Allianz General Insurance Company Limited,
No.25/26 Prince Towers, Ground Floor, College Road,
Nungambakkam, Chennai 6. ..2nd Respondent/Appellant

3.A.Aravazhi ..3rd Respondent/6th Respondent

4.Royal Sundaram Allianz Insurance Co.Ltd.,
Sundaram Towers,
No.46, Whites Road, Chennai 600 014.

..4th Respondent/7th Respondent

Prayer in Cross Objection No.41 of 2020: Cross Objection has been filed under Order 41, Rule 22 of C.P.C., against the judgment and decree dated 01.11.2014 passed in M.C.O.P.No.1642 of 2007 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Cuddalore.

For Cross Objectors:Mrs.Ramya V.Rao

For Respondents :Mr.M.Michael Visuvasam for R2
Mrs.Harini for Mr.M.B.Raghavan

for R4
No appearance for R1 and R3

COMMON JUDGMENT
(The case has been heard through Video Conferencing)

Against the award passed by the Motor Accident Claims Tribunal, Special Subordinate Judge, Cuddalore, in M.C.O.P.No.1642 of 2007, this Civil Miscellaneous Appeal is filed by the Bajaj Allianz General Insurance Company contesting the liability. The claimants have filed a Cross Objection, not being satisfied with the quantum of compensation and sought for enhancement. Both the appeal and the Cross Objection is taken for consideration.

2.On 15.05.2007, while one Sundaramoorthy along with other load men were travelling in a goods van open type bearing Reg.No.TN 31 K 5220 sleeping on the load, he was thrown from the vehicle and fell on the road. At that time, a car bearing Reg.No.TN 50 D 4545 coming behind the van ran over the said Sundaramoorthy and caused his death. Claim petition was filed against the owner of the goods vehicle, in which the deceased travelled and its insurer and the owner of the car, which ran over the deceased and its insurer. A sum of Rs.15,00,000/- was sought as compensation by the wife and three minor children of the deceased Sundaramoorthy. As per the claimants, the deceased was 40 years old, earning Rs.10,000/- per month as vegetable merchant and he was only the bread winner of the family.

3.The 2nd respondent/Bajaj Allianz General Insurance Company, which has insured the goods vehicle bearing Reg.No. TN 31 K 5220 contested the claim on the ground that the deceased was travelling on the goods unauthorisedly. Due to his negligence, he has fallen from the moving vehicle. There is a violation of policy condition. Therefore, they are not liable to indemnify the owner of the goods vehicle. When the van is authorised to carry only two persons that too in the cabin, the First Information Report reveals that three persons were travelling on the top of the load and slept. The other co-passengers were not even aware that the deceased has fallen down from the moving vehicle. Till they reached Chidambaram, they did not notice missing of the deceased. Case has been registered only against the driver of the car bearing Reg.No. TN-50-D-4545. Therefore, the car owner who has caused the death of the deceased and its insurer alone are liable to compensate the loss.

4.The 4th respondent-Royal Sundaram Alliance Insurance Company Limited which has insured the third respondent car also denied its liability doubting the manner in which the accident occurred. Contending that the First Information Report was registered only against the goods van driver, it is the owner of the van and its insurer liable to pay compensation.

5.Before the Tribunal, the claimants marked 7 exhibits. On behalf of the 2nd respondent, the Insurance Policy and the judgment passed in C.C.No.166 of 2007 by the District Munsif-cum-Judicial Magistrate, Parankipettai were marked as Exs.R1 and R2 respectively. Two witnesses were examined on behalf of the claimants and one witness was examined on behalf of the 2nd respondent.

6.The Tribunal, on analysing the evidence, has held that the deceased fell down from the first respondent van. At that time, the third respondent car coming behind had hit the deceased. It is the negligence of the first respondent goods van driver and not the negligence of the third respondent car driver, who had hit the deceased unexpectedly. Therefore, exonerating the third respondent and its insurer, the tribunal fixed the liability on the first respondent/owner of the goods van and its insurer/ 2nd respondent. Fixing the monthly income of the deceased notionally at Rs.5,000/- after deducting 1/4th towards his personal expenditure and applying multiplier '15', taken note of the age of the deceased as 40 years, the Tribunal had awarded a sum of Rs.7,35,000/- as compensation.

7.In the appeal, the appellant/Bajaji Allianz General Insurance Company has contended that the deceased was travelling as an unauthorised passenger in the goods van. The death was caused only by the driver of the Chevrolet Tavera Car bearing Reg.No.TN 50 D 4545 owned by the 6th respondent herein which run over the deceased. When the criminal case was registered against both the vehicles drivers viz., Mr.Subbu the driver of the TATA Ace load van bearing Reg.No. TN 31 K 5220 and Mr.Senthil Kumar the driver of the Chevrolet Tavera car bearing Reg.No.TN 50D 4545, the Tribunal has erred in exonerating the owner of the car and its insurer, which has actually caused the death. The Tribunal, ignoring the negligence of the car driver and without determining the negligence contributed by him for causing the accident, had totally exonerated the car owner.

8.The learned counsel appearing for the appellant/Bajaj Alianz Insurance Company would further submit that the unauthorised passenger in the goods vehicle travelling on the goods instead of cabin is not entitled for compensation and the Insurance Company is not liable to indemnify the owner of the vehicle, who has permitted the unauthorised passenger to travel on the goods instead of cabin.

9.Relying upon the judgment in Royal Sundaram Alliance General Insurance Co. Ltd., Vs. P.Ayyakannu reported in [2012 (1) TN MAC 89 (DB)], the learned counsel would submit that the manner in which the deceased travelled in the goods vehicle and the manner in which the alleged accident took place does not warrant the Insurance Company to compensate the loss.

10.Per contra, the learned counsel appearing for the claimants, who have filed the cross objection would submit that the award of the Tribunal has to be enhanced fixing the earning capacity of the deceased as at least Rs.7,000/- per month with addition of 40% towards future prospects. The compensation of Rs.10,000/- towards loss of consortium and Rs.10,000/- towards loss of love and affection are very meagre and it should be awarded as per the guidelines of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi reported in (2017) 16 SCC 680. The learned counsel appearing for the claimants would also submit that it is proved beyond the doubt that the deceased died in road accident. He travelled in the goods van as loadman and fell down due to the negligence of the van driver. At that time, he was ran over the driver of the 3rd respondent vehicle. Hence, all the respondents are jointly and severely liable for the cause of the death. Even if the Court fixes any contributory negligence on the part of the car driver, such distribution of contribution shall not prejudice the interest of the claimants.

11.Regarding the liability the clinching documents are the First Information Report and the Final Report, which are marked as Exs.P1 and P2. The First Information Report is given by the brother of the deceased on 16.05.2007 at 08.30 hours. The accident alleged to have been occurred on 15.05.2007 at 22.15 hours. From the First Information Report, it is seen that the informant along with his deceased brother Sundaramoorthy and one Arumugam with tapioca load were returning to Chidambaram from Cuddalore to unload tapioca at Chidambaram Market. They noticed missing of the deceased Sundaramoorthy only when they reached Chidambaram. They returned back in searching of the missing person. At Srinivasapuram near new Bridge, they heard that he was badly injured and therefore, he was taken to the Cuddalore General Hospital. The final report Ex.P3, after investigation has been laid against the driver of the Tata Ace van and the driver of the Chevrolet Tavera Car, who came behind the van and ran over the deceased Sundaramoorthy, in which his body got crushed. The post-mortem report also indicates that he has sustained multiple fracture including head injury. So, from these evidence, it is to be inferred that the death has caused due to fall from the moving vehicle and subsequent ran over by another motor vehicle. The death is due to the composite act of negligence. The Police has identified the two motor vehicles involved in the accident. Following the principle laid down in Khenyei v. New India Assurance Company Limited and others reported in (2015) 9 SCC 273, the liability has to be fastened on all the respondents jointly and severely since multiple vehicle had been involved and the percentage of negligence to be apportioned equally being a composite negligence beside the own negligence of the victim claimant who travelled on the top of the open goods van and slept. Therefore, at the first instance, the liability has to be jointly and severely fixed against both the vehicle owners namely, the 1st respondent/5th respondent herein and the third respondent/6th respondent herein along with the deceased who had equally contributed to the accident.

12.As far as the insurer of the goods van, who is the appellant before this Court, it is vehemently contended that being the unauthorised passenger in the goods vehicle travelling on the goods instead of cabin, the Insurance Company is not liable to pay any compensation.

13.The perusal of the Insurance policy issued by the appellant herein, which is marked as Ex.P6 indicates that the Tata Mini Truck with three seat capacity premium has been collected for own damages and the third party liability besides personal accident cover for owner-driver and the limited liability for operation maintenance for two persons. In the said circumstances, having collected additional premium, though the deceased had not travelled in the cabin, but as a load man, he was allowed to travel in the goods vehicle. The accident had occurred, after he fell down from the moving goods van, therefore, this Court is of the view that the deceased has contributed for the accident by travelling in the open van on the top of the goods and slept without being vigilant. The driver of the goods van has negligently and rashly driven the vehicle in such a manner that he has not even noticed that the person travelling on the top of the goods had fallen down from the moving vehicle. The driver of the car had negligently ran over Sundaramoorthy, who fell down from the moving vehicle. The nature of the accident as proved through the evidence indicates that all the three persons had equally contributed. Hence, the award has to be apportioned among all three equally.

14.Regarding the quantum of the compensation, the cross objection is filed on the ground that future prospects of the deceased is not taken into consideration and the compensation given for loss of consortium and love and affection are meagre. In view of the Pranay Sethi case, the quantum of compensation is computed as below:-

Sl. No.	Compensation granted under various Heads	Award passed by the Tribunal (Rs.	Award passed by this Court (Rs.)	Confirmed / Enhanced/ Reduced/ Awarded
1.	Loss of income	6,75,000-00 (5000 – ¼ x12x15)	9,45,000-00 (5000-00 +40% =7000-00 -1/4th =5250x12x15)	Enhanced
2.	Funeral expenses	10,000-00	15,000-00	Enhanced
3.	Loss of consortium to the 1st claimant (wife)	10,000-00	40,000-00	Enhanced
4.	Loss of love and affection to claimants 2 to 4	40,000-00	1,20,000-00	Enhanced
5.	Loss of estate	-----	15,000-00	Awarded
	Total	7,35,000-00	11,35,000-00	Enhanced

15.For his own negligence, 1/3rd of the compensation i.e. Rs.3,78,333/-(Rs.11,35,000/- - 1/3rd) is deducted. Therefore, a sum of Rs.7,56,666/- with interest at the rate of 7.5% p.a., from the date of petition till the date of realisation shall be equally paid by the respondent 2/appellant herein and 4 respondent/7th respondent herein viz., Bajaj Allianz General Insurance Company Limited and Royal Sundaram Alliance Insurance Company Limited respectively. Since there is a policy violation by the van owner, the first respondent/5th respondent herein, the compensation paid by the 2nd respondent/appellant to the claimants shall be recovered from the first respondent/5th respondent, as per the principle laid down in Nanjappa v. State of Karnataka. The award amount along with the interest at the rate of 7.5% p.a. from the date of petition till the date of deposit shall be equally apportioned by claimants 1 to 4. The 4th respondent/7th respondent herein shall each pay a sum of Rs.3,78,333/- with interest at the rate of 7.5% p.a, from the date of petition till the date of deposit. On such deposit, the claimants shall apportioned the modified award amount, equally with proportionate interest. Since by this time the minor claimants have already attained major, this Court takes judicial notice of this fact and directs the Tribunal to permit claimants 2 to 4 to withdraw the amount without an application to formally declare claimants 2 to 4 as major.

16.In the result, this Civil Miscellaneous Appeal and the Cross Objection are partly allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:
1. Motor Accident Claims Tribunal,
Special Subordinate Court,Cuddalore.

2.The Section Officer
VR Section
High Court, Madras 104.

+1 CC to M/s.J. Michael Viswasam, Advocate sr 36596.

C.M.A.No.1692 of 2015
and
M.P.No.1 of 2015
and
Cross Obj.No.41 of 2020

CNR(CO)
SP(27/11/2020)