

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2431 of 2011
and
M.P. No. 1 of 2011

The United India Insurance Co. Ltd.,
No.34, Greams Road,
Chennai 600 006.Appellant/4th Respondent

Vs.

1.Devaki
2.N. Sivarani
3.Krishnammal1 to 3 Respondents/Petitioners

4.V.K. Subburaj
5.The New India Assurance Co. Ltd.,
No. 45, Moore Street,
Chennai 600 001.
6.N. Santha
(The respondents 4 & 6 remained
exparte before the Tribunal.)Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 15.07.2010, made in M.C.O.P. No. 4501 of 2006, on the file of the Chief Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. R. Ravichandran
For Respondents : Mr. F. Terry Chellaraja
for M/s. M. Malar (For R1 & R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 15.07.2010, made in M.C.O.P. No. 4501 of 2006, on the file of the Chief Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the 4th respondent in M.C.O.P. No. 4501 of 2006, on the file of the Chief Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. The respondents 1 to 3 along with one N. Venkateswari/2nd claimant filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Narayanasamy, who died in the accident that took place on 11.03.2006. Pending proceedings of the claim petition, the said N. Venkateswari/2nd claimant died.

3.According to the respondents 1 to 3, on the date of accident viz., 11.03.2006, when the deceased was traveling in the Omni Car bearing Registration No. TN-02-R-3168 belonging to 4th respondent which was proceeding in the Thoothukudi-Madurai High road from Chennai to Thoothukudi, near Kudangipatti, a Van bearing Registration No. TN-02-A-2059 belonging to the 6th respondent, driven by its driver in a rash and negligent manner, endangering the public safety, came in the opposite direction and dashed against the Omni Car and caused the accident. The deceased succumbed to injuries on the way to Hospital and the respondents 1 to 3 who are the dependants of the deceased, filed the present claim petition claiming compensation against the respondents 4 to 6 as well as the appellant.

4.The respondents 4 and 6 remained exparte before the Tribunal.

5.The 5th respondent - Insurance Company filed counter statement and denied various averments made by the respondents 1 to 3 in the claim petition. According to the 5th respondent, the Omni Car was not insured with them at the time of accident and the driver of the Omni Car did not possess valid driving license to ply the vehicle. The 5th respondent denied the age, avocation and income of the deceased and the respondents 1 to 3 have to prove the same for claiming compensation. The total compensation claimed by the respondents 1 to 3 is excessive and prayed for dismissal of the claim petition.

6.The appellant-Insurance Company filed counter statement and denied various averments made by the respondents 1 to 3 in the claim petition. According to the appellant, the Van was not insured with them at the time of accident and the driver of the Van did not possess valid driving license to ply the vehicle. In any event, the respondents 1 to 3 have to prove that the accident occurred only due to negligent driving by the driver of the Van, age, avocation and income of the deceased, to claim the compensation. The total compensation claimed by the respondents 1 to 3 is excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined herself as P.W.1, examined one eye-witness as P.W.2 and marked 18 documents as Exs.P1 to P18. The appellant did not let in any oral and documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Van belonging to the 6th respondent and directed the appellant-Insurance Company, as insurer of the 6th respondent vehicle to pay a sum of Rs.7,60,000/- as compensation to the respondents 1 to 3. The Tribunal dismissed the claim petition as against the 2nd claimant, since she died pending proceedings of the claim petition. The Tribunal dismissed the claim petition as against the respondents 4 and 5.

9. Challenging the portion of the award fixing entire liability on the appellant as well as the quantum of compensation granted by the Tribunal in the award dated 15.07.2010, made in M.C.O.P. No. 4501 of 2006, the appellant-Insurance Company has come out with the present appeal.

10. Learned counsel appearing for the appellant contended that the Tribunal ought to have considered the fact that the Van belonging to the 6th respondent was stationary and the Omni Van belonging to the 4th respondent had hit the stationary vehicle and caused the accident. The Tribunal ought to have considered Ex.P1 - FIR, Ex.P2 - Rough Sketch and Ex.P3 - Charge Sheet to fix the negligence. The Tribunal erred in fixing entire negligence on the part of the appellant, without appreciating the oral and documentary evidence on record. The Tribunal failed to consider that the deceased was owning 3 Hotels and the same were not closed after the accident. The dependents of the deceased did not suffer any loss of total income and they suffered only the loss of service of the deceased to the family. In such case, the Tribunal erred in fixing a sum of Rs.1,00,000/- per annum as income of the deceased, without considering Exs.P8 to P11 - Income Tax Returns for the years 2002 - 2003 for Rs.62,946, 2003 - 2004 for Rs.63,700/-, 2004 - 2005 for Rs.3,484/- and 2005 - 2006 for Rs.40,255/-. In any event, the total compensation awarded by the Tribunal is excessive and prayed for reducing the compensation awarded by the Tribunal.

11. Learned counsel appearing for the respondents 1 & 2 made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant as well as the respondents 1 & 2 and perused the materials available on record.

13. From the materials on record, it is seen that the respondents 4 and 6 having denied the manner of accident in their respective counter statements, failed to state how the accident has occurred and failed to let in any oral and documentary evidence to prove their contention, whereas the respondents 1 to 3 have examined P.W.2 - eye witness to the occurrence of the accident and marked Ex.P1 - FIR, Ex.P2 - Rough Sketch, Ex.P3 - Charge Sheet, Ex.P4 - Post Mortem Certificate and Ex.P6 - Death Certificate. The Tribunal has considered the evidence of P.W.2 eye-witness who had deposed in his cross examination that though the Omni Van was going in the left side of the road in the mud portion, the Van belonging to the 6th respondent, driven by its driver in a rash and negligent manner, dashed against the Omni Van and caused the accident. The Tribunal on a perusal of the materials on record in proper perspective and in the absence of any contra evidence on the side of the appellant to disprove the contentions of the respondents 1 to 3, held that the accident has occurred only due to rash and negligent driving by the driver of the Van belonging to the 6th respondent. There is no error in the finding of the Tribunal, warranting interference by this Court.

14. As far as the quantum of compensation is concerned, it is seen from the materials on record that the respondents 1 to 3 have contended that the deceased was a Proprietor of Hotel Rajbhavan, Ambatur, Balaram Blue Metals, Mavilpatti, New Durga Bhavan and Welcome Srinivasa, Velacherry and was earning a sum of Rs.2,00,000/- per annum, but they have only produced the Income Tax Returns for the years 2002- 2003 to 2005- 2006, in which the annual income from the business was shown as Rs.62,946/-, Rs.63,700/-, Rs.3,484/- and Rs.40,255/-. The Tribunal observed that the income of the deceased was not a regular and permanent one and considering the age, income of the deceased and year of accident, fixed a sum of Rs.1,00,000/- per annum as income, which is proper. The deceased was aged 51 years at the time of accident and there were 3 dependants of the deceased. Hence, the Tribunal has rightly applied the multiplier '11' and after deducting 1/3rd towards personal expenses of the deceased, awarded compensation towards loss of income, which is not excessive. The total compensation granted by the Tribunal is just and reasonable and does not warrants any interference by this Court.

15. In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.7,60,000/- along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the compensation awarded by the Tribunal to the respondents 1 to 3, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 4501 of 2006. On such deposit, the respondents 1 to 3/claimants are

permitted to withdraw their respective share of the award amount along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. This appeal is dismissed as against the respondents 4 and 5. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CCC)

// True Copy //

Sub Assistant Registrar

gsa

To

1. The Section Officer,
V.R Section,
High Court, Madras.

2. The Chief Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

+1 CC to Mr.R.Ravichandran, Advocate SR 24363

+1 CC to Mrs.M.Malar, Advocate, SR 24403

C.M.A. No. 2431 of 2011
and M.P. No. 1 of 2011

PVS (CO)
PSI 19/12/2020

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