

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOUSE

CMA No.2301 of 2012

and

M.P No.1 of 2012

The Oriental Insurance Co. Ltd.,
Rep. by its Branch Manager
6A, North Cotton Road
Tuticorin,
Tuticorin Taluk & District ... Appellant/4th Respondent

Vs.

1.Mani Ammal
2.Palani Ammal
3.Rajamaniammal
4.Ambika ...1 to 4 Respondents/ Petitioners
5.Manoharan
6.The New India Assurance Co. Ltd.,
Rep. by its Branch Manager,
Pudukottai
7.The Indian Tropical Agro
Products (P) Ltd.,
No.9, Victoria Street
Tuticorin
Tuticorin Taluk and District
...5 to 7 Respondents/1 to 3 Respondents
8.Raja
...8th Respondent/5th Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MACTOP No.809 of 2009 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Dharmapuri dated 18.7.2011.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.M.Selvam - R1 to R5 & R8

R6-Given up

R7- Exparte

O R D E R

(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the Insurance company challenging the award dated 18.07.2011 passed by the Motor Accident Claims Tribunal/Principal District Court at Dharmapuri in MCOP No.809 of 2009.

2. The Appellant/Insurance company has challenged the award on the following grounds:

a) The Tribunal under the impugned award has passed an award against the Appellant despite the categorical pleading made by the claimants in their claim petition filed in MCOP No.809 of 2009 that the cause of the accident was only the vehicle bearing Registration No.TN 49 A 4888 owned by the 5th respondent. In the case on hand, two vehicles were involved in the accident, one insured with the Appellant which is registered as TN 69 B 9200 and the other owned by the 5th respondent which is registered as TN 49 A 4888.

b) The quantum of compensation awarded by the Tribunal in favour of the claimants is excessive as the claimants are elder sisters of the deceased who was a bachelor at the time of the accident and they are not his dependents. The brother of the deceased was arrayed as one of the respondents in the claim petition, is also not a dependent of the deceased.

3. The claimants have filed 10 documents before the Tribunal which were marked as Ex.P1 to Ex.P10 and two witnesses were examined on their side, namely one of the sisters of the deceased - Maniammal as PW1 and an eye witness to the accident as PW2. On the side of the respondents in MCOP No.809 of 2009, four documents were filed which were marked as Ex.B1 to B4 and three witnesses were examined namely, RW1 to RW3.

4. Before the Tribunal, in a connected claim filed by another claimant involving the same accident in MCOP No.1072 of 2002, the Motor Accident Claims Tribunal (Additional District Court, Dindigul) has passed an award, granting compensation to the said claimant and has given a categorical finding that the Appellant/Insurance Company is liable to compensate the claim in view of the fact that the driver of the insured vehicle was alone responsible for the cause of the accident. The learned counsel for the Appellant is unable to inform this Court whether any appeal has been filed against the said finding passed in a connected claim involving the same accident. The award has been passed in connected MCOP No.1072 of 2002 on 22.09.2004 itself. If an appeal would have been filed as against the said award, by now the learned counsel for the Appellant would have been informed of the same. Since no such information has been received by him, it can be inferred that the award dated 22.09.2004 passed in the connected claim in MCOP No.1072 of 2002 has attained finality.

that in the claim petition, the claimants in MCOP No.809 of 2009 which is the subject matter of this appeal have categorically pleaded that the entire negligence is only on the part of the driver of the vehicle bearing Registration No.TN 49 A 4888 and not the vehicle bearing No.TN 69 B 9200 insured with the Appellant. According to the Appellant, despite the said categorical pleading and the oral evidence adduced by the claimants before the Tribunal and contrary to the same, the Tribunal has passed the impugned award erroneously giving a finding that there is contributory negligence of 90% on the part of the driver of the vehicle bearing Registration No.TN 69 B 9200 insured with the Appellant and 10% on the part of the vehicle bearing Registration No.TN 49 A 4888.

6. There cannot be two contradictory findings given by two different Tribunals. Admittedly, the award dated 22.09.2004 passed in MCOP No.1072 of 2002 by the learned Additional District Judge, Dindigul which was marked as Ex.B2 before the Tribunal is in respect of another claim involving the same accident. The award dated 22.9.2004 passed in MCOP No.1072 of 2002 was marked as Ex.B2 before the Tribunal. The Tribunal cannot give a contrary finding to the finding given under the award dated 22.09.2004 passed in MCOP No.1072 of 2002. However, the Tribunal without any reason has given a finding which contradicts the finding given under the award dated 22.09.2004 passed in MCOP No.1072 of 2002. The award dated 22.09.2004 passed in MCOP No.1072 of 2002 is earlier in point of time to the impugned award which is dated 18.07.2011. Eventhough the award passed in the connected claim was filed as an exhibit and marked as Ex.B2, the Tribujnal has by total non application of mind ignored the same without giving any proper reason under the impugned award. Three is total non application of mind on the part of the Tribunal under the impugned award. The provisions of Motor Vehicles Act awarding compensation to the accident victims are benevolent provisions. Stricto sensu, the pleadings cannot be considered as the only material to adjudicate the claims before the Motor Accident Claims Tribunal. Only on preponderance of probabilities, based on the evidence available on record, the Motor Accident Claims Tribunal adjudicates any claim. In some cases, the claimants would have claimed a lesser amount in their claim petitions. But, the Tribunal can award higher compensation, if there is sufficient material in evidence available for awarding higher compensation. Similarly, when there is conclusive evidence to show that the insured vehicle is liable for the cause of the accident, contrary to the pleading, the Tribunal can fix the liability on the insurance company. Ultimately, the tortfeaser is proved only based on the evidence avaiable on record.

7. In the case on hand, the FIR (Ex.A1) has been registered only against the driver of the vehicle insured with the Appellant. In the connected award dated 22.09.2004,

passed in MCOP NO.1072 of 2002, the Tribunal has also held that the driver of the vehicle insured with the Appellant was alone responsible for the cause of the accident. The Award dated 22.09.2004 passed in MCOP No.1072 of 2002 (marked as Ex.B2) before the Tribunal having attained finality, the ground raised by the same insurance company questioning their liability in respect of the another claim involving the same accident is unsustainable.

8. For the forgoing reasons, the first contention raised by the Appellant in this appeal questioning its liability does not deserve any merit.

9. The second contention raised by the Appellant with regard to the quantum of compensation awarded by the Tribunal also does not deserve any merit for the following reasons:

a) This Court has perused and examined the award as well as the materials and evidence available on record. Admittedly, the deceased Stalin was a bachelor, aged 23 years and was employed as Field Assistant with Indian Tropical Agro Products (P) Ltd., No.9, Victoria Street, Tuticorin at the time of the accident. In the claim petition filed by the claimants, they had pleaded that the deceased Stalin was earning Rs.3,000/- per month at the time of the accident. The Tribunal has observed in para 17 of the impugned award that the Managing Director of Indian Tropical Agro Products (P) Ltd., Tuticorin, the 3rd respondent in the claim petition and the employer of the deceased has issued a certificate that the deceased was earning Rs.2,400/- per month at the time of the accident. Relying upon the said certificate, the Tribunal has fixed the monthly income of the deceased at the time of the accident as Rs.2,400/-. Admittedly, the deceased was a bachelor at the time of the accident. The Tribunal ought to have deducted 50% towards personal expenses of the deceased, but has erroneously deducted only 1/4th towards his personal expenses. However, the Tribunal has failed to award any compensation towards loss of future prospects to the claimants which they are legally entitled to as per the settled law. The age of the deceased was 23 years at the time of the accident. However, the Tribunal has erroneously applied 15 multiplier instead of 18 multiplier which is the settled practice. If at all the aforementioned factors were taken into consideration, the Tribunal ought to have passed a higher compensation but since the Claimants have not preferred any appeal and the impugned award has attained finality, there is no necessity for this Court to enhance the compensation in favour of the claimants. Taking an overall view, this Court is of the considered view that there is no scope for interference to the compensation awarded by the Tribunal. Therefore, the second contention raised by the Appellant also fails.

Conclusion:

10. For the foregoing reasons, there is no merit in this appeal. Accordingly, this appeal is dismissed. The Appellant/Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal after deducting the amount already deposited, if any to the credit of MCOP.No.809 of 2009 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank accounts of the respective shares of the 1 to 4 respondents/claimants and 8th respondent/5th respondent (MCOP No.809 of 2009) through RTGS within a period of two weeks thereafter. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge,
Motor Accident Claims Tribunal
Dharmapuri

Copy to

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

+1cc to Mr.M.Selvam , Advocate SR.No. 28272

Cr1.O.P.No.2301 of 2012

and CMP No.1 of 2012

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A.SK(11.06.2021)

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