

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2376 of 2012

and

M.P.No.1 of 2012

National Insurance Co. Ltd.,
751, Anna Salai, Chennai - 2.

...Appellant/2nd Respondent

..Vs..

1.A.Badurinssa

2.Foozia Sanober

3.Minor Mohammed Irbankhan

Minor rep. by his mother & guardian A.Badurinssa

4.G.Rahmankhan

..Respondents 1 to 4/Petitioners

5.A.Megalingam

...5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree made in MACTOP.No.126 of 2009 on the file of the Motor Accident Claims Tribunal (Fast Track court No.1, Additional District & Sessions Judge) at Poonamallee dated 27.06.2011.

For Appellant	: Mr.M.Krishnamoorthy
For Respondents 1 to 4	: No appearance
	R5- ex parte

J U D G M E N T

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

This appeal has been filed by the Appellant/Insurance Company challenging the award dated 27.06.2011 passed by the Tribunal in MCOP.No.126 of 2009.

Brief facts leading to the filing of this Appeal:

2. A person by name Abdullah Khan died on 25.01.2009 as a result of an accident caused by a Motor Cycle bearing registration No.TN05-L-0238 owned by the fifth respondent and

insured with the Appellant Insurance Company. The respondents 1 to 4 who are the legal representatives and also the dependents of the deceased Abdullah Khan have preferred a claim before the Motor Accident Claims Tribunal (Fast Track court No.1, Additional District & Sessions Judge) at Poonamallee in MCOP.No.126 of 2009 seeking compensation for the death of Abdullah Khan.

3. It is the case of the claimants that only due to the rash and negligent driving by the rider of the motor cycle bearing registration No.TN05-L-0238 which is owned by the fifth respondent and insured with the Appellant, the accident had happened. According to them, Abdullah Khan was a pedestrian and due to the rash and negligent driving of the motor cycle bearing registration No.TN05-L-0238, the said motor cycle hit against him which resulted in his death.

4. The Motor Accident Claims Tribunal after considering the materials available on record passed an award on 27.06.2011 in MCOP.No.126 of 2009 directing the Appellant to pay the respondents 1 to 4 a sum of Rs.6,90,000/- together with interest and costs and recover the same from the fifth respondent who is the owner of the vehicle on such payment.

5. Aggrieved by the same, the insurance company has come forward with this appeal.

6. Heard Mr.M.Krishnamoorthy, learned counsel for the Appellant. Though the notices have been served on the respondents 1 to 4, there is no representation on their side. The fifth respondent has remained ex parte before the Tribunal as well as before this Court.

7. It is the contention of the Appellant in this appeal that only due to the negligence of the deceased, the accident had happened and it is also their contention that the compensation awarded by the Tribunal is excessive. It is also the case of the Appellant/Insurance Company that the Tribunal has erroneously directed the Appellant to pay the award amount and recover the same from the owner of the vehicle. It is their case that the Tribunal ought to have completely exonerated the insurance company from any liability.

8. Before the Tribunal, the claimants have filed four documents which were marked as Ex.P1-FIR, Ex.P2-Post-mortem Certificate, Ex.P3-Legal heir Certificate and Ex.P4 - Accident register. On the side of the claimants, the wife of the deceased as well as Mr. Sarbhudeen eye-witness to the accident were examined as witnesses. On the side of the Appellant/Insurance Company, one witness was examined namely RW1 and 5 documents

were marked namely Ex.R1-Policy copy, Ex.R2-Notice, Ex.R3-Acknowledgement Card, Ex.R4 - Motor Claim form and Ex.R5- copy of charge sheet.

9. As seen from the FIR, which was marked as Ex.P1, it is clear that only due to rash and negligent driving by the rider of the Motor Cycle bearing registration No.TN05-L-0238, which is insured with the Appellant, the accident had happened. The deceased Abdullah Khan was a pedestrian and as seen from the FIR, due to the rash and negligent driving, the rider of the vehicle dashed against the pedestrian namely Abdullah Khan. No contra evidence has been produced by the Appellant/Insurance Company to disprove the contention of the claimants as well as the contents of the FIR. PW2 who was an eye-witness to the accident has also supported the case of the claimants and his statement falling with the contents of the FIR.

10. The Tribunal has rightly considered the evidence available on record and only thereafter has come to the conclusion that only due to the rash and negligent driving by the rider of the motor cycle which is insured with the appellant, the accident had happened which resulted in the death of Abdullah Khan.

11. The Tribunal has awarded a sum of Rs.6,90,000/- as compensation is detailed hereunder: (a) loss of dependency - Rs.6,30,000/-, (b) loss of consortium to the first respondent/claimant - Rs.10,000/-, (c) loss of love and affection for the claimants - Rs.40,000/-, Funeral Expenses - Rs.10,000/-, totally Rs.6,90,000/-.

12. At the time of the accident, the deceased was employed at Hussain bed mart and he was getting Rs.500/- per day. However, the claimants have not filed any document in support of their claim that the daily income of the deceased was Rs.500/-. But considering the fact that the accident having happened in the year 2009, a sum of Rs.200/- as daily wages of the deceased fixed by the Tribunal is reasonable, according to this Court. Eventhough, the claimants had claimed that the deceased was earning Rs.500/- per day, the Tribunal has fixed the daily wages of the deceased at Rs.200/- and has also assessed the monthly income only at Rs.5,000/- calculated on the basis that the deceased would have worked only for 25 days in a month. This Court does not find any irregularity or illegality in the fixation of monthly income of the deceased at Rs.5,000/- by the Tribunal.

13. The loss of dependency as calculated by the Tribunal at Rs.6,30,000/- is also very reasonable sum, considering the fact that no loss of future prospects was awarded to the claimants.

The award of Rs.10,000/- towards Loss of consortium, Rs.40,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses is also reasonable sum which does not call for any interference by this Court.

14. It is now settled law that in case of policy violation, the insurance company will have to necessarily pay the claimants and only thereafter recover the same from the insured. Applying the settled proposition of law, the Tribunal has rightly directed the Appellant/Insurance Company to pay the award amount and recover the same from the fifth respondent who is the owner of the vehicle. Therefore, the pay and recovery ordered by the Tribunal under the impugned award does not call for any interference by this Court.

Conclusion:

15. For the foregoing reasons, this court does not find any merit in this appeal. Accordingly, this appeal shall stand 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 to the credit of MCOP.No.126 of 2009 within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the fifth respondent who is the owner of the vehicle. On such deposit being made, the first, second and fourth respondents are permitted to withdraw their respective shares as per the ratio apportioned by the Tribunal by filing appropriate applications. Insofar as the minor respondent 3 is concerned, his share of award amount shall be deposited in any one of the Nationalised Banks till he attains majority and the first respondent/mother of the minor is permitted to withdraw the interest accrued once in six months. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

To

1.The Motor Accident Claims Tribunal
The Additional District and Sessions Judge,
Fast Track Court No.I, Poonamallee

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

C.M.A.No.2376 of 2012

GP(CO)
SP(20/04/2021)