



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.08.2020

Pronounced on: 07.08.2020

WEB COPY

Coram::

The Honourable Dr. Justice G. Jayachandran

C.M.A.No.701 of 2016

M/s. ICICI Lombard General,
Insurance Company Ltd.,
Chottabhai Centre,
No.140, II and III Floor,
Nungambakkam High Road,
Chennai - 600 034.

...Appellant/2nd Respondent

/versus/

1. L.M. Anandan,
S/o. Late Munusamy Naidu,
Padipudhunagar,
Anna Nagar (West),
Chennai - 600 101.

... 1st Respondent/Claimant

2. D. Kalaiyarasai,
No.1/111, Mariamman Koil,
Street, Pozhichalur,
Chennai - 600 074.

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 14.08.2012 made in M.C.O.P.No.32 of 2009 on the file of the Motor Accident Claims Tribunal (XV Additional Judge) at Chennai.

For Appellant : Mrs. R. Sree Vidhya

For R1 : Mr. Varadha Kamaraj,
for V. Mohan Chandany

For R2 : exparte

J U D G M E N T

(The case has been heard through video conference)

The appellant is the Insurance company. The Appeal is directed against the award of the Motor Accident Claims Tribunal, Chennai, ordering compensation of Rs.3,12,000/- to the brother of the accident victim, who died unmarried in the road accident at the age of 52 years.



2. As per the claim petition, the deceased Mr.L.M.Sundar Rajan, on 08/09/2008 at about 9.00 hrs, was proceeding towards Kannakamma Chatram on the Chennai - Thiruthani Highways, as a pillion rider in the motor cycle bearing registration No.TN-09-F-4155. 4 km to Thiruthani, the motor cycle was hit by a Scorpio car bearing registration No.TN-22-PA-5061. Mr.Sundar Rajan was taken to the Government Hospital, Thiruthani, but succumbed to the injuries on the same day. Mr.Sundar Rajan was a coolie earning about Rs.300/- per day. He died unmarried. His brother was dependant on him. He filed the claim petition for Rs.8,00,000/- against the owner of the Scorpio vehicle and the insurer of the said vehicle.

3. The Insurance Company contested the claim on the ground that the Application is bad for non joinder of necessary parties viz., the insured and the Insurance Company of the motor cycle bearing registration No.TN 09 F 4155 in which the road accident victim was travelling as pillion rider. The claimant, who is the brother of the deceased is not the legal heir of the deceased. The claimant is neither the dependant of the deceased. Hence, he is not entitled for any compensation for the death of Mr.Sundar Rajan. The driver of the Scorpio car was not holding a valid driving license, hence the insurance company is not liable to pay any compensation to the claimant.

4. The Tribunal, after considering the FIR (Ex.P-1) and the evidence of P.W-1 the eye witness to the accident, held that the accident has occurred due to the negligence of the Scorpio car driver. He has been prosecuted for causing death by the rash and negligent driving. Therefore, the owner of the Scorpio car and the Insurer of that vehicle alone are the necessary parties. The deceased died at the age of 52 years. So, multiplier 11 has been taken for calculating the loss of income. In the absence of proof for income, notional income of Rs.4,500/- has to taken as multiplicand. 50% of the income has been deducted towards personal expenses since the deceased died unmarried. The claimant being the brother of the unmarried decease, based on the legal heir certificate Ex.P-5, the Tribunal held him as the dependant of the deceased motor accident victim and awarded.

Towards loss of dependency	(4,500 x $\frac{1}{2}$ x 12 x 11) = Rs.2,97,000/-
Towards funeral expenses	Rs.5,000/-
Towards loss of love and affection	Rs.10,000/-
TOTAL	Rs.3,12,000/- . (Rupees Three Lakhs Twelve thousand only)

5. In this Appeal, the 1st appellant/Insurance Company content that this is not a case fit to apply multiplier. The



claimant has not placed any evidence to prove that he was dependant of his unmarried 52 years old brother. At the most, the claimant is entitled for compensation only under the 'No Fault Liability'. Therefore, the award has to be scaled down.

6. When the criminal case against the Scorpio car driver and the eye witness (PW-1) has spoken about the rash and negligent driving of the Scorpio car driver, this Court finds no material to doubt the cause for the accident and who the person at default. The materials available, point the negligence on the part of the offending car and no contra evidence is placed by the Insurance company. The plea of the Appellant/Insurance company that the victim contributed for the accident or the non impleading of the victims vehicle owner and its insurer does not hold any water. The entitlement of the claimant to file petition for compensation as dependant of the accident victim, though doubted and questioned by the insurance company, they have not produced any evidence contra to the evidence of the claimant that he was depending on the deceased brother. The legal heir certificate Ex.P-5 shows the name of the claimant as the sole legal heir of the deceased L.M.Sundar Rajan. Being the blood brother, he is the second class heir of the Hindu male died without any first class heir. The Appellant has not produced any document to prove that the claimant was living separately and had no dependency on the deceased brother. In the absence of evidence to the contrary, the probability goes in favour of the claimant.

7. For the reasons stated above, this Court finds no ground to interfere the award of the Tribunal. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. It is informed across the bar that the entire award amount was deposited prior to filing of the appeal and the respondent has already withdrawn the entire money. Therefore, no order as to payment of the award or its withdrawal is necessary in this Appeal.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(XV Additional Judge) at Chennai.

Copy To

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

C.M.A.No.701 of 2016

VSN II(CO)
GN(11/08/2021)