

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2001 of 2014
and
M.P.No.1 of 2014

Bajaj Alliance General Insurance Company Limited,
No.25/26, Prince Towers,
4th Floor, College Road,
Nungambakkam,
Chennai - 600 006. ... Appellant/2nd Respondent

Vs.

1.S.Girija ... 1st Respondent/Petitioner
2.G.Janakiraman ... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.08.2013 made in M.C.O.P.No.2772 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellant : Mr.S.Arunkumar
For R1 : Mr.K.Varadha Kamaraj
For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 03.08.2013 made in M.C.O.P.No.2772 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellant is the 2nd respondent in M.C.O.P.No.2772 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Court, Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of her husband, viz., Sundaramoorthy, who died in the accident that took place on 29.04.2007.

3.According to 1st respondent, on 29.04.2007 at about 15.30 hours, while the deceased was riding in his motorcycle from East to West direction on Bangalore highway, Nazharathpet, near

opposite to V.L.Enterprises Pipe, the driver of the car belonging to the 2nd respondent drove the same in a rash and negligent manner and dashed on the front side of the motorcycle in which the deceased was riding and caused the accident. In the accident, the said Sundaramoorthy sustained grievous head injuries and died on the way to hospital. At the time of accident, the deceased was aged 38 years and was doing Cleaning Work in Hundai Company, Irunkattukottai and was earning a sum of Rs.6,000/- per month. Therefore the 1st respondent, being the wife of the deceased filed claim petition claiming a sum of Rs.6,00,000/- as compensation against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the car respectively.

4.The 2nd respondent-owner of the car filed counter statement and denied various averments made by the 1st respondent. The 2nd respondent denied the manner of accident. According to the 2nd respondent, the deceased only rode his motorcycle in a rash and negligent manner and dashed against the car and invited the accident. After the accident, the driver of the 2nd respondent's car took the deceased to the nearby hospital for first aid treatment and found that the deceased had consumed alcohol at the time of accident. Therefore, the deceased was solely responsible for the accident. There was no negligence on the part of the driver of the car belonging to the 2nd respondent. The driver of the car belonging to the 2nd respondent was possessing valid driving license and also the car was insured with the appellant-Insurance Company. The 1st respondent has to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of claim petition as against the 2nd respondent.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent. The appellant-Insurance Company denied the manner of accident and stated that the claim petition filed under Section 163 A of the Motor Vehicles Act is not maintainable. The 2nd respondent-owner of the car has to produce the original insurance policy before the Tribunal. The Poonamallee Police Station failed to forward the documents to the appellant-Insurance Company within 30 days from the date of accident. The accident has occurred only due to rash and negligent riding by the deceased and the accident has not occurred due to negligence on the part of the driver of the car belonging to the 2nd respondent. The deceased was under the influence of alcohol at the time of accident and hence, the appellant-Insurance Company is not liable to pay any compensation to the 1st respondent. The 1st respondent has to prove the age, avocation and income of the deceased by producing

valid documents. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of claim petition as against the appellant-Insurance Company.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and eyewitness Dasarathan was examined as P.W.2 and 13 documents were marked as Exs.P1 to P13. On behalf of the 2nd respondent and appellant-Insurance Company, the driver of the car, Chakrapani was examined as R.W.1 and one Varsha, Legal Assistant of the appellant-Insurance Company was examined as R.W.2 and no documentary evidence was let in.

7.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 car belonging to the 2nd respondent and directed the respondents, being the owner and insurer of the car to jointly and severally pay a sum of Rs.4,09,500/- as compensation to the 1st respondent.

8.Challenging the said award dated 03.08.2013 made in M.C.O.P.No.2772 of 2008, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the claim petition filed by the 1st respondent under Section 163(A) of the Motor Vehicles Act, 1988, is not maintainable as the deceased himself was a tortfeasor. The presence of P.W.2, the alleged eye-witness was not proved. Based on Ex.P3/rough sketch, the Tribunal ought to have dismissed the claim petition against the appellant-Insurance Company. The Tribunal erred in accepting the evidence of P.W.2 wherein he has stated that the driver of the car stopped the car suddenly and took reverse immediately. The reason given by the Tribunal for not accepting the evidence of R.W.1 is erroneous. The 1st respondent claimed that the deceased was earning more than Rs.40,000/- per annum and hence claim petition filed by the 1st respondent under Section 163(A) of Motor Vehicles Act, 1988 is not maintainable. The Tribunal ought to have accepted the contents of copy of the Accident Register and dismissed the claim petition. The Tribunal ought to have awarded compensation only under no fault liability and prayed for setting aside the award of the Tribunal.

10.Mr.K.Varadha Kamaraj, learned counsel appearing for the 1st respondent made submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for

the 1st respondent and perused the entire materials on record.

12. From the materials on record, it is seen that the 1st respondent has filed claim petition under Section 163(A) of Motor Vehicles Act, 1988. When claim petition is filed under Section 163(A), the claimant need not plead and prove the negligence on the part of the opposite party. In the present case, the Tribunal has conducted full fledged trial as though the claim petition was filed under Section 166 of Motor Vehicles Act, 1988. Before the Tribunal, the 1st respondent examined P.W.2/eyewitness who deposed that R.W.1, the driver of the car suddenly stopped the car and reversed the car and responsible for the accident. To disprove the evidence of P.W.2, the appellant-Insurance Company examined the driver of the car as R.W.1, who deposed that he was driving the car at moderate speed and deceased, who was in a drunken mood, dashed on the backside of the car. The Tribunal considering the evidence of P.W.2, who is an independent witness, accepted the evidence of P.W.2, held that accident has occurred only due to rash and negligent driving by the driver of the car, R.W.1.

13. As far as contents of Accident Register copy is concerned, it is the contention of the appellant-Insurance Company before the Tribunal that deceased was in a drunken mood at the time of accident and he was responsible for the accident. The Tribunal on verification of medical records and Postmortem report found that except mentioning the odour of alcohol, no test was conducted and in the Postmortem report, it was mentioned that abdomen of the deceased was empty. Therefore, it is clear that appellant-Insurance Company failed to prove that deceased was in a drunken mood at the time of accident and was responsible for the accident.

14. As far as income of the deceased is concerned, the 1st respondent claimed that deceased was working as a Cleaner in Hundai Company, Irunkattukottai and was earning a sum of Rs.6,000/- per month. The 1st respondent marked Ex.P8/payslip of the deceased, which shows that deceased was earning a sum of Rs.4,684/- per month. The 1st respondent failed to prove the salary certificate as per law. Therefore, the Tribunal did not accept Ex.P8/payslip of the deceased and arrived compensation at Rs.6,00,000/- as per II Schedule. Considering the age of the deceased and after deducting 1/3rd towards personal expenses, granted a sum of Rs.4,00,000/- towards loss of dependency. There is no error in the method adopted by the Tribunal and amount awarded by the Tribunal for loss of dependency. The Tribunal considering entire materials on record, has awarded a sum of Rs.4,09,500/- as compensation to the 1st respondent, which is just and reasonable.

15.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.4,09,500/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The 2nd respondent and the appellant-Insurance Company are jointly and severally directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, 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.2772 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Court, Chennai. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

C.M.A.No.2001 of 2014

KJ(CO)
GN(21/04/2021)

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