BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.521 of 2009

National Insurance Company Limited,
Karur. : Appellant/2nd Respondent

Vs.

1.Nallu @ Nallusamy
2.Padmavathy
3.Gowri : Respondents 1 to 3/ Claimants

4.V.V.Palanisamy
(R4 Ex-parte in Tribunal, no relief claimed)
:4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the award and decree dated 05.09.2008 passed in M.C.O.P.No.17 of 2007 on the file of the Motor Accident Claims Tribunal, Sub-Court, Kulithalai.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R3 : Mr.V.Ilanchezian

JUDGMENT

This appeal has been preferred by the appellant/Insurance Company questioning the award passed by the Motor Accident Claims Tribunal, Sub-Court, Kulithalai in M.C.O.P.No.17 of 2007.

2. It is a case of fatal accident. The claimants are parents and sister of the deceased. According to the claimants, on 23.12.2006 at about 7.00 p.m., the deceased was riding a Bajaj CT-100 motorcycle bearing registration No.TN-48-A-9835 at a normal speed along with pillion rider from Trichy-Duraiyur. At that time, the bus owned by the first respondent insured with the appellant Insurance Company bearing Registration No.TN-47-L-4959 came in a high speed from opposite direction and hit against the motorcycle. In the impact, both the rider and the pillion rider

died on the spot. In this regard, a criminal case in Cr.No.146 of 2006 has been registered by the Pulivalam Police Station under Sections 279, 334 and 308 of IPC.

3. The claimants would further state that the deceased was 28 years old at the time of accident and he was a driver by profession. They also stated that he was working in a private company at Southi Arafia and his monthly earning was Rs.25,000/-. It is the further case of the claimants that the deceased died only due to the rash and negligent driving of the driver of the bus.

4. The claim petition was opposed by the appellant contending that the rider of the two-wheeler was responsible for the accident and the claim was exorbitant and excessive.

5. Before the Tribunal, both parties adduced oral and documentary evidence. The claimant examined P.Ws.2 & 4 as eye witnesses to the occurrence and marked Ex.P1-FIR to prove that the driver of the bus was responsible for the accident. On the otherhand, the appellant examined three witnesses and produced Ex.R2 to show that the accident had taken place in the middle of the road and when the deceased attempting to overtake the bus, he came to a wrong side and caused the accident.

6. The Tribunal after considering the oral and documentary evidence held that the driver of the bus caused the accident and awarded a sum of Rs.5,93,000/- as compensation with interest at the rate of 6% p.a., and directed both the owner of the vehicle and insurer of the vehicle to pay the compensation jointly to the claimants. Challenging the same, the present appeal has been filed.

7. Mr.S.Srinivasa Raghavan, learned counsel appearing for the appellant would urge that the evidence adduced by the appellant was not properly appreciated by the Tribunal. It is his contention that Ex.R2 would amply prove that the deceased has also contributed to the occurrence and atlest the Tribunal would have fixed the contributory negligence, however, the entire liability was fixed on the driver of the bus. He has further contended that admittedly, the deceased was a bachelor, but the Tribunal instead of deducting 50% towards personal living expenses, deducting 1/3rd . Therefore, the appeal is to be allowed.

8. Per contra, the learned counsel appearing for the claimants would submit that the deceased at the relevant point of time was working in Southi Arabia and he was paid Rs.25,000/- per month, even though the income is proved, the Tribunal has taken income only at Rs.4,000/-. According to the learned counsel for the

claimants, the award is very reasonable and does not warrant interference from this Court.

9. Heard the rival submissions made by both sides and perused the materials available on record.

10. In the present case, the claim petition has been filed contending that the deceased was 28 years old at the time of accident and he died only due to rash and negligent driving of the driver of the bus. To prove the negligence, P.Ws.3 & 4 were examined. In their evidence, they stated that bus was driven by its driver in a rash and negligent manner, in fact, P.W.4 is a passenger in the offending vehicle at the time of accident.

11. The appellant Insurance Company examined the driver of the bus as R.W.2 and in his evidence, he stated that the deceased was trying to over take the bus and came to a wrong side, however, admittedly, R.W.2 did not give any complaint to the police. It is true that Ex.R2 shows that the accident had taken place in the middle of the road. The road had 18 feet width. The Tribunal after considering the evidence of R.W.2 and Ex.R2 chose to accept the evidence of P.W.3 & P.W.4 on the ground that they are natural witnesses and their evidence is reliable. Since valid reason has been given by the Tribunal, this Court is not inclined to interfere with the said findings.

12. Insofar as the quantum of compensation is concerned, though the claimants have stated that the deceased was earning Rs.25,000/- per month, perusal of the record shows that no documents were produced to prove the same. Therefore, the Tribunal has fixed the monthly income of the deceased at Rs.4,000/- and after deducting 1/3rd awarded a sum of Rs.5,76,000/- for loss of income.

13. It is the admitted fact that the deceased was bachelor and the claimants are parents and sister of the deceased. It is settled that in the case of bachelor 50% has to be deducted for his personal and living expenses. After deducting 50%, his contribution to the family would be at Rs.2000/- and applying multiplier '18', the loss of income would be at Rs.4,32,000/-. As per the judgment of the Apex Court reported in ***2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi],*** the claimants are entitled to Rs.70,000/- towards conventional damages. The total amount comes to Rs.5,02,000/- and the same is rounded off to Rs.5,00,000/-.

14.In the result, this Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from Rs.5,93,000/- to a sum of **Rs.5,00,000/-** along with interest @ 6% per annum from the date of petition till date of realization with proportionate costs.

15. It is represented by the learned counsel appearing for the appellant Insurance Company that the entire award amount has already been deposited before the Tribunal. Therefore, the claimants are permitted to withdraw the modified award amount as per the ratio of apportionment made by the Tribunal, by making necessary application before the Tribunal. The Tribunal is directed to refund the excess amount, if any, to the appellant Insurance Company. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

AM

Note: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Kulithalai.

2.V.R. Section-2 copies
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.S.Srinivasa Raghavan , Advocate SR.No.25818
+1 cc to Mr.V.Illanchezian, Advocate SR.No.25908

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