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C.M.A(MD)No.161 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.12.2020

Pronounced On : 21.12.2020

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A (MD) No.161 of 2015

Royal Sundaram Alliance Insurance Company Ltd.,
Sundaram Towers, No.45 & 46, White Road,
Chennai.

Rep.by its Branch Manager. : Appellant / 2nd Respondent

Vs.

1.Malarkodi

2.Minor P.Surthi

3.Minor P.Nila

4.Minor.P.Pavithira

5.Amsavalli

6.Akbar Ali : Respondents

(R6 dismissed vide Court Order dated 26.06.2018)

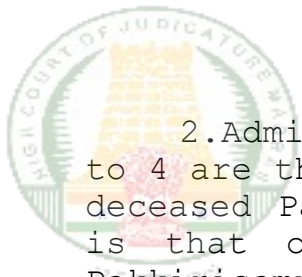
PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 06.07.2013 made in M.C.O.P.No.5 of 2009 on the file of the Motor Vehicles Accident Claims Tribunal I Additional District and Sessions Judge (PCR), Thanjavur.

For Appellant : Mr.M.E.Ilango

For R-1 to R5 : Mr.G.Karnan

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred under Section 173 of Motor Vehicle Act, 1988, challenging the award passed in M.C.O.P.No.5 of 2009 on the file of the Motor Vehicles Accident Claims Tribunal I Additional District and Sessions Judge (PCR), Thanjavur.



2. Admittedly, the first respondent is the wife, respondents 2 to 4 are the daughters and the fifth respondent is the mother of the deceased Pakkirisamy. The case of the respondents 1 to 5/claimants is that on 30.03.2009, at about 06.30 pm., when the deceased Pakkirisamy was standing in front of Haji Petrol Bunk, a Lorry bearing registration No. TN-32-V-6347, after unloading of Petrol, was driven reversely in a rash and negligent manner and dashed against the said Pakkirsamy, that the said Pakkirisamy had sustained serious injuries all over his body and was immediately taken to Thanjavur Medical College Hospital, that subsequently, he succumbed to the injuries and that the Lorry driver was solely responsible for the accident.

3. The defence of the Appellant/Insurer is that the Lorry owned by the 6th respondent herein was not at all involved in the accident, that the deceased under the complete influence of Alcohol had proceeded near the Petrol Bunk and suddenly fell down from the Bicycle and suffered injuries and that since the Lorry was in no way connected with the accident, the Appellant is not liable for the claim. The Appellant/Insurance Company has also disputed the age of the deceased and the quantum of compensation awarded.

4. During enquiry, the claimants, to prove their case, examined the first respondent, Malarkodi as P.W.1 and one Mohan alleged to be the occurrence witness as P.W.2 and exhibited 10 documents as Ex.P.1 to Ex.P.10. The sixth respondent herein/first respondent, who is the owner of the Lorry, had remained exparte. On the side of the Appellant/Insurance Company, the Medical Officer, who had examined the deceased and admitted him as inpatient Dr.A.R.Sampath has been examined as R.W.1 and the copy of the investigation report filed to the Insurance Company has been exhibited as Ex.R.1.

5. The learned trial Judge, upon considering the evidence, both oral and documentary, came to the conclusion that the accident was occurred only due to the rash and negligent driving of the sixth respondent's Lorry Driver and mulcted liability on the Appellant/Insurer. Aggrieved by the same, the Appellant/Insurance Company has come forward with the present appeal.

6. The points for consideration are :-

(i) Whether the Tribunal erred in holding that the Lorry driver was responsible for the accident by discarding the evidence of the Medical Officer and the contents of Accident Register and that by relying the hearsay evidence of P.W.1 and the evidence of P.W.2, the presence of whom at the occurrence place itself is doubtful?

(ii) Whether the quantum of compensation arrived at by the Tribunal is proper and is in accordance with law.?

(iii) Whether the impugned award, dated 06.07.2013 is liable to be interfered with?



Point No.1.

7.The learned counsel appearing for the Appellant/Insurance Company would strongly contend that the above claim is a fraudulent one in connivance with the first respondent, that the vehicle of the sixth respondent was not at all involved in the accident, that the deceased under the influence of Alcohol fell down from the Bicycle and sustained injuries by himself and that therefore, they are in no way responsible for the claim. In order to substantiate their defence, they have relied on the evidence of R.W.1/Medical Officer and the contents of Accident Register recorded by R.W.1.

8.No doubt, R.W.1/Medical Officer, who had first seen the injured/Pakkirisamy and admitted in the Hospital as an inpatient would say in his evidence that the injured Pakkirisamy was brought to the Hospital by his neighbor/Ramalingam, that he was informed by the said Ramalingam that the injured under the influence of Alcohol has fallen down from the Bicycle, that the injured was unconscious at the time of his examination and that he found the smell of the Alcohol from the breath of the said Pakkirisamy. In cross examination, he would admit that he has recorded the particulars in the Accident Register, only on the basis of the information given by the said Ramalingam, that he does not know as to whether the same are true or false, that he has mentioned that the injured was under the influence of Alcohol only on the basis of the smell he felt, that he has not stated so on the basis of the chemical examination and that there is every possibility for smell of Alcohol even if the same was consumed two days before. Admittedly, no blood sample was taken from the injured so as to ascertain as to whether the injured consumed Alcohol and the percentage of the Alcohol in his blood.

9.The learned trial Judge has also observed that no viscera was preserved and sent for chemical analysis to ascertain as to whether the deceased consumed liquor or not. He has also mentioned the contents of postmortem report and recorded that no characteristic smell was noted either from the stomach fluids or from the small intestine.

10.As already pointed out, R.W.1., Medical Officer would categorically admit that he had entered those particulars only on the basis of the information given by the alleged neighbour Ramalingam. Admittedly, the Insurance Company has not chosen to summon and examine the said Ramalingam. Though an explanation was attempted to be given that since the said Ramalingam is a neighbor of the deceased, they could not expect that the said witness would reiterate the particulars that were furnished to the Medical Officer. As rightly contended by the other side, if the said witness Ramalingam had retracted his earlier stand, then they are having every right to cross examine him and contradict him with the version of the Medical Officer.



11.The respondents/claimants, in order to prove their case have examined P.W.2, who is also a worker in the Haji Petrol Bunk, Thanjavur, where the deceased Pakkirisamy was working. P.W.2 would say in his evidence that when his co-worker/Pakkirisamy was standing in the Petrol Bunk at about 06.30.pm., the Tanker Lorry bearing Registration No.TN-32-V-6347, after unloading petrol, was driven backwards in a rash and negligent manner and dashed against the said Pakkirisamy and that the Pakkirisamy had sustained injuries all over his body and was immediately taken to the Thanjavur Medical College Hospital and that he died on that day itself. During cross-examination, he would reiterate the same version that he had seen the accident directly and that the accident was occurred when the Tanker Lorry was taken in a reverse direction. He would deny the suggestion that the Tanker Lorry was not at all involved in the accident and that he was deposing falsely to favour his relative Pakkirisamy's family.

12.It is pertinent to mention that the factum of P.W.2 working in the same Petrol Bunk was not at all disputed and not even a suggestion was made to P.W.2 during his cross-examination, disputing his job in the said Petrol Bunk. Though the Insurance Company has alleged collusion between the claimants and the sixth respondent/Lorry Owner, they have not taken any steps to examine the Lorry Driver. According to the insurer, they have appointed a investigator and received the report under Ex.R.1, but they have not chosen to examine the investigator to substantiate the decision arrived at by him.

13.As rightly observed by the learned trial Judge, the nature of external injuries found in the body of the deceased would only reveal that those injuries would not have been sustained by the deceased by falling down from the Bicycle. No doubt, as rightly pointed out by the learned counsel for the Appellant, the Lorry Driver's name does not find place in the First Information Report (FIR), but as rightly contended by the other side, the registration number of the Tanker Lorry finds place in the complaint. Considering the above, the findings of the Tribunal that the accident was occurred only due to the rash and negligent driving of the Lorry Driver cannot be found fault with.

Point Nos.2 and 3:

14. The learned counsel for the Appellant/Insurance Company has challenged the quantum of compensation arrived at by the Tribunal on the grounds that the age of the deceased was fixed contrary to the claim petition itself and that without any basis 50% of the income was added towards future prospects.

15.No doubt, as rightly pointed out by the Appellant side, the respondents/claimants have shown the age of the deceased as 45 years on the date of accident in the claim petition. In Ex.P.2/Postmortem



certificate also, the age of the deceased is shown as 45 years. But during enquiry, the respondents/claimants have produced the school certificate issued by the Head Master of the Social Service Legal Middle School, Thanjavur under Ex.P.6 and wherein the date of birth of the deceased Pakkirisamy is shown as 10.04.1970. As rightly contended by the respondents/claimants side, though a particular age is shown in the claim petition, that will not debar or prevent the claimants from producing the documentary evidence to prove the age of the deceased.

16.The learned trial Judge has rightly observed that Ex.P.7/School Record Sheet is the reliable document than any other document filed by the claimants. There is no dispute that the school record sheet overrides Postmortem certificate as well as the particulars in the claim petition and that the trial Court has rightly fixed the age as 38 years at the time of accident.

17.Coming to the future prospects, the learned trial Judge has added 50% of the income and arrived at Rs.6,000/- as monthly income of the deceased. But as rightly contended by the learned counsel for the Appellant/Insurance Company, our Honourable Supreme Court, in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, have concluded that if the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant, where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. Applying the above decision of the Honourable Apex Court, 40 % of the income is only to be added towards future prospects and it comes to Rs.5,600/- per month.

18.No doubt, the learned trial Judge has awarded Rs.20,000/- as compensation for loss of consortium and Rs.75,000/- as compensation for loss of love and affection. As rightly contended by the claimants side, Honourable Supreme Court has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently Honourable Supreme Court in **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others** reported in **(2018) 18 SCC 130**, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, Honourable Apex Court in **The New India Assurance Company Ltd. Vs. Smt.Somwati and others**, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the



amount fixed in **Pranay Sethi**'s case. But, at the same time, they have specifically observed that no amount should be awarded under separate head of loss of love and affection.

19. Apart from the first respondent/wife, the children and the mother of the deceased are also certainly entitled to get compensation towards loss of consortium at Rs.40,000/- each. The trial Court has awarded Rs.20,000/- towards loss of consortium for the first petitioner and Rs.75,000/- towards loss of love and affection for the remaining four petitioners and Rs.5,000/- towards transportation and Rs.10,000/- for funeral expenses. If compensation is awarded as per the dictum laid down by the Honourable Supreme Court in **Pranay Sethi**'s case, the same would exceed the quantum of award already fixed by the tribunal. It is pertinent to mention that the claimants have neither challenged the quantum fixed by the tribunal nor advanced any arguments in this regard.

20. Considering the above, this Court decides that the compensation awarded is liable to be sustained and that the appeal, which is devoid of merits, is liable to be dismissed. Considering the other facts and circumstances, this Court, further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

21. In the result, this Civil Miscellaneous Appeal is dismissed and decretal order dated 06.07.2013 passed in M.C.O.P.No.5 of 2009 on the file of the Motor Vehicles Accident Claims Tribunal I Additional District and Sessions Judge (PCR), Thanjavur is confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimants 1 and 5 are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs. The minors' share amount are to be deposited as ordered by the Tribunal. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

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Sub Assistant Registrar (CS)

das



To

The Motor Vehicles Accident Claims Tribunal
I Additional District and Sessions Judge (PCR),
Thanjavur.

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Copy to: The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1cc to Mr.M.E.Ilango, Advocate, SR.No.26578.

Order made in
C.M.A (MD) No.161 of 2015
21.12.2020

SS (CO)
CS (11.01.2021) 7P 5C