BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.01.2021
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.M.A(MD) No.704 of 2020
and
CMP(MD).No.7157 of 2020

The New India Assurance Company Ltd.,
Viliparli (D.O.II),
Jevanseva Pledge,
II Floor, S.V.Road,
Santgurus (W),
Mumbai - 400 054. ... Appellant/2nd respondent

vs.

1. V.Nagarani
2. Minor Menaka
3. Minor Kumaran
4. M.Kuzhanthaivelu
5. Thanga Irulayee ... Respondents 1 - 5/ Claimants

(Minors R2&R3 rep by their Mother and next friend R1)

6. Malaisamy ... 6th Respondent/1st Respondent
7. Vasu
8. The Manager,
   United India Insurance Company Limited,
   S.N.S.Complex (First Floor),
   Varatharajan Nagar, Cumbum Road,
   Thenkarai, Periyakulam,
   Theni District. ... Respondents 7 and 8/ Respondents 3 and 4

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to call for the records relating to the Fair and Decreetal Order dated 03.03.2020, passed in M.C.O.P.No.26 of 2018 by the Motor Accident Claims Tribunal, Additional District Judge (FTC), Theni and set aside the same.

For Appellant : Mr.D.Malaichamy

J U D G M E N T

This appeal has been filed against the judgment and decree dated 03.03.2020 made in M.C.O.P.No.26 of 2018, on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Theni.

2. The case of the claimants before the Tribunal:-

On 14.10.2017, the deceased Velmurugan was riding his motorcycle bearing registration number TN 60 M 8066 belonging to the 7th respondent/3rd respondent, who insured the vehicle with 8th respondent/4th respondent - United India Insurance Company, from Kanniyappapillaipatty to Mottanuthu road. When he was nearing the place of occurrence, at about 06.30 a.m., opposite to Koppaiyampatty Muthu shop the Ward from west to east, the motor cycle bearing Registration number TN 60 P 7886 belonging to the 6th respondent/1st respondent insured with the appellant/2nd respondent, came from the opposite direction driven by rider Velmurugan in rash and negligent manner without observing the traffic rules and regulations came to the wrong side of the road and dashed against the motorcycle of the deceased. As a result of which, the deceased sustained serious injuries and was taken to Theni Government Hospital and from there transfer to Madurai Government Hospital. Due to injuries caused by the accident, the deceased was died on 17.10.2017. In respect of the occurrence, a case in Crime No.485 of 2017 was registered on the file of Rajathani Police Station for the offences under Sections 279 and 337 IPC against the driver of the 6th respondent/1st respondent. Therefore, the Claimants 1 to 5 are claiming a sum of Rs.27,00,000/- towards the compensation.

3. The learned Counsel appearing on behalf of the appellant/the New India Assurance Company argued that since the deceased was unconscious after happening of the accident, the First Information Report was registered against the deceased by the complaint given by the 1st respondent as per the petition. The First Information Report was registered against the deceased and the charge sheet was also against the deceased as charge abated. He would further submitted that the deceased drove his vehicle without having licence, without wearing helmet and without following the traffic rules of the road in rash and negligent manner and without noticing the movement of the 6th respondent/1st respondent's vehicle and dashed against the 6th respondent/1st respondent and invited the accident. Due to the sole negligence on the part of the deceased, the appellant/Insurance Company is not liable for contributory negligence and on this aspect, it is not liable to pay any amount as compensation to the Claimants. It is also contended that the Tribunal ought not to have apportioned the negligence equally and mulcted liability of 50% on the appellant. The Tribunal has erroneously fixed the monthly income of the deceased at Rs.12,000/- which is higher side for an agriculture coolie. Further the Tribunal has applied 40% increment for future prospects, since the avocation of the deceased is not a permanent one.

4. According to the 8th respondent/4th respondent - United India Insurance Company, the owner of the deceased vehicle is not cooperating with the Insurance Company and effectively conduct this case with ulterior motives and colluding with the appellant/2nd respondent to cause irreparable loss and injuries to the 8th respondent's Insurance Company.

5. On the side of the claimants, 3 witnesses were examined and 6 documents marked. On the side of the respondents, 3 witnesses were examined and 3 document marked and 7 official documents Ex.X1 to Ex.X7 were marked.

6. At the conclusion of the enquiry, the Tribunal after considering the materials available on record, more particularly, MV Report of the vehicle driven by the deceased as well as the Ex.R1 and compiling the evidence of PW2 and RW1, came to the conclusion that the negligence is on the part of 6th respondent/1st respondent and the deceased equally as they are compositely negligent. Regarding the compensation, the Tribunal fixed the same at Rs. 23,78,000/- with 7.25% interest.

7. Challenging the quantum as well as the liability, the instant appeal has been preferred by the 2nd respondent/Insurance Company.

8. I have heard the learned counsel appearing for the appellant and perused all the materials available on record.

9. Insofar as the liability is concerned, the Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that there was composite negligence on the part of 6th respondent/1st respondent and the deceased equally by considering the accident investigation report and the evidence of PW2 and RW1. Though, the First Information Report reveals that the deceased drove the vehicle in a rash and negligent manner and dashed against the vehicle of the 6th respondent/1st respondent, it was registered while the deceased was in unconscious condition and it could not be taken as a lone substantive evidence. However, considering the damages as head on collusion, the Tribunal fixed the negligence on both riders and arrived at the ratio 50:50.

10. In respect of the 3rd respondent is concerned, the insurance policy of the vehicle driven by the deceased contains personal accident cover and a sum of Rs.50/- was received towards personal accident along with compulsory excess of Rs.100/-. The payment of personal accident cover do not depend upon the negligence of the driver and in this case, no policy conditions

produced before the Tribunal. It is also to be noted that nothing was culled out before the Tribunal to substantiate that the deceased was not having valid license. Hence, the 8th respondent/4th respondent is liable to pay a sum of Rs.1,00,000/- with interest, which has been rightly fixed by the Tribunal.

11. As far as the contention of the appellant/2nd respondent, in respect of fixing monthly income of the deceased is concerned, based on the Ex.X1 Postmortem certificate, the age of the deceased was 38 years at the time of occurrence and the same has not been seriously disputed by the appellant/2nd respondent. The deceased was aged about 38 years and before the accident, the deceased was working as agricultural coolie and earning a sum of Rs.15,000/- per month. In that view of the matter, the Tribunal, by relying upon the decision of the Hon'ble Supreme Court in ***Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited***, reported in **2014 ACJ 627**, fixed the monthly income as Rs.12,000/-. Since the size of the family is five as per the judgement ***Smt.Sarla Verma vs. Delhi Transport Corporation*** reported in ***2009(2) TN MAC 1(SC)***, $1/4^{th}$ amount has been deducted for personal expenses, which does not warrant any interference.

12. As far as the contention of the appellant in respect of future prospects is concerned, as per judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited vs Pranay Sethi and others***, reported in ***2017 (2) TN MAC 609 (SC)***, the Tribunal has rightly fixed 40% of income as future prospects as such it is calculated as **Rs.12,000 + 40% = Rs.16,800 X 12 X 15 X 3/4 = Rs.22,68,000**/-.Further as per the above judgment of the Hon'ble Supreme Court in ***Pranay Sethi*** case (supra), the Tribunal awarded a sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses and the 1st petitioner wife is entitled for Rs.40,000/- as consortium. As per the decision reported in ***2018 ACJ 2782***, ***Magma General Insurance Company Ltd., Vs. Nanu Ram Alias Chuhru Ram***, considering the 2nd petitioner being the minor, Filial consortium of Rs.40,000/- was awarded. Therefore, in total, the Tribunal fixed the compensation at Rs.23,78,000/-. Since, the composite negligence as against the deceased was equally at 50%, the appellant/2nd respondent is directed to pay a sum of Rs.11,89,000/- and the 8th respondent/4th respondent is directed to pay a sum of Rs.1,00,000/- towards compensation to the claimants with interest at the rate of 7.25% per annum from the date of petition to till the date of realization of the amount and therefore, in my opinion, the quantum of compensation fixed by the learned Judge is very reasonable and there is no infirmity in the award passed by the Tribunal.

13. In the result, this **Civil Miscellaneous Appeal is dismissed**. The appellant/New India Assurance Company and the respondent No.8/respondent No.4 are directed to deposit the entire award amount as apportioned by the Tribunal to the credit of M.C.O.P.No.26 of 2018, on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Theni, less the amount already deposited, if any, along with interest at the rate of 7.25% per annum from the date of petition till date of realisation and proportionate costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to transfer the said amount and deposit the same to the credit of C.M.A.(MD)No.26 of 2018, before the Indian Bank, High Court Branch, Madurai, which amount shall be deposited by the Indian Bank in an interest bearing account. On such deposit, the major claimants are permitted to withdraw the entire award amount along with accrued interest as apportioned by the Tribunal. Insofaras the share of the minors/ respondents 2 and 3 are concerned, the first respondent, the mother/guardian of the minor, is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minors, till they attain majority. No costs. Consequently, connected civil miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Additional District Judge(FTC)
Motor Accident Claims Tribunal,
Theni.

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1.The Record Keeper,
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Madurai Bench of Madras High Court,
Madurai.

2.The Branch Manager,
Indian Bank,
High Court Branch, Madurai.

+1 CC to Mr.D.MALAICHAMY, Advocate (SR-19[F] dated 04/01/2021)

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04.01.2021

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