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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2022

PRONOUNCED ON : 25.03.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.1085 OF 2018
C.M.P.NO.9124 OF 2018

Bajaj Allianz General Insurance Co. Ltd.,
Rep.by its Manager,
No.68, SLS Towers,
1st Floor, Chetty Road,
Hasthampatty, Salem. ... Appellant/Respondent 2

Versus

1. Annapoorani

2. Sekar ... Respondents/Petitioners

3. C.Selvarani ... Respondent/Respondent

PRAYER:-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.01.2018 made in M.C.O.P.No.364 of 2017 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Bhavani.

For Appellant : Mr.J.Michael Visuvasam
For Mr.S.Manohar

For R1 and R2 : Mr.Ma.P.Thangavel

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 29.01.2018 made in M.C.O.P.No.364 of 2017 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Bhavani.

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2. The appellant is the 2nd respondent in M.C.O.P.No.364 of 2017 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Bhavani. The claimants/respondents 1 and 2 have filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of their son namely Ganapathy, who died in the accident that took place on 30.05.2014.

3. According to claimants/respondents 1 and 2, on 30.05.2014 at about 07.00 p.m., the deceased Ganapathy drove the motorcycle bearing Registration No.TN-33-X-6100 on Erode to Karur Road from West to East. While he was coming near Ariyangkattu Bridge, the first respondent in the claim petition (3rd respondent herein) drove the car bearing Registration No.TN-33-BB-8001 in a rash and negligent manner from the opposite side and dashed against the deceased due to which he sustained multiple injuries and died on spot. Thus, it is claimed that the accident occurred only due to the rash and negligent act of the 3rd respondent herein. In connection with the accident, the Modakurichi police registered a case in Crime No.95 of 2014, under Sections 279 and 304(A) IPC against the third respondent herein. According to the claimants/respondents 1 and 2, the deceased was aged 24 years at the time of accident, engaged himself as Building contractor and was earning Rs.30,000/- per month. On the death of the deceased, the respondents 1 and 2 have lost their only son and bread-winner in their family. Therefore, the claimants/respondents 1 and 2 have filed the said claim petition against the 3rd respondent herein and appellant-Insurance Company, being the owner and insurer of the car respectively.

4. The 3rd respondent-owner of the car remained exparte before the Tribunal.

5. The appellant-Insurance Company, insurer of the car filed counter statement stating that the deceased Ganapathy was not having valid driving licence, R.C, Tax, Insurance policy for the two-wheeler at the time of accident. The owner of the two-wheeler is one Sankar. He handed over the possession of the vehicle to the deceased Ganapathy, thus, the provision of motor vehicles are violated. The complaint was given by one Karthik before the Modakurichi police station based on which the case was registered against the third respondent herein. According to the Insurance company, the deceased Ganapathy over took the lorry, crossed the white line and dashed against the car which was coming from the opposite side. Thus, it was stated that the deceased contributed to the accident wholly and hence, the appellant/Insurane Company is not liable to pay compensation.

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The insurance company also denied the age, income and occupation of the deceased. It is also stated that the compensation claimed is high and excessive. Therefore, the Insurance Company prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent-mother of the deceased examined herself as P.W.1, one Karthik was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. The appellant-Insurance Company examined one Mr.M.Selvakumar as R.W.1 and Mr.Muthukumaran (Assistant Manager) as R.W.2 and marked 5 documents as Exs.R1 to R5.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to 3rd respondent herein and directed the appellant/Insurance Company to pay a sum of Rs.7,62,000/- as compensation to the respondents 1 and 2.

8. Against the said award dated 29.01.2018 made in M.C.O.P.No.364 of 2017, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/ Insurance Company would vehemently contend that at the time of accident, the deceased was not in possession of a valid driving licence to drive the two-wheeler. The two-wheeler belonged to one Sankar, but the insurer of the two-wheeler was not impleaded as a party to this case. It is further submitted that the claimants themselves have produced Ex.P3 = Ex.R3-rough sketch, which would clearly indicate that at the time of accident the deceased was driving the two-wheeler on the opposite side of the road. While so, it cannot be said that due to the negligent driving of the 3rd respondent in this appeal, the accident had occurred. When the deceased himself was the tort-feasor. the appellant/Insurance Company cannot be called upon to pay the compensation to the claimants. Even though, the First Information Report was registered against the 3rd respondent herein, after investigation, the case was referred as 'mistake of fact'. Even though, the claimants said to have challenged the final report of the Investigation Officer, before the Judicial Magistrate Court by filing a protest petition, a copy of the protest petition has not been marked before the Tribunal. In any event, it was clearly brought out that the deceased drove the vehicle in the opposite side of the road and he invited the accident. In such circumstances, the appellant cannot be mulcted

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with the liability to pay compensation to the appellant. As regards the quantum, there was no document produced by the appellant to prove that the deceased was earning a sum of Rs.30,000/- per month as a Building Contractor. However, the Tribunal has taken a sum of Rs.6,500/- per month as notional income. By giving 50% deduction towards his personal expenses and by applying multiplier '18', a huge sum of Rs.7,02,000/- was awarded towards loss of income. In any event, the amount awarded towards non-pecuniary benefits are also on the higher side and therefore the learned counsel for the appellant/Insurance Company prayed for allowing of the appeal.

10. On the above submission of the learned counsel for the appellant, this Court heard the learned counsel for the respondents 1 and 2/claimants, who justified the award passed by the Tribunal as reasonable and prayed for dismissal of the claim petition.

11. Heard the counsel for both sides and perused the materials on record. Admittedly, there was an accident involving the two-wheeler driven by the deceased and the car driven by the 3rd respondent in this appeal. The counsel for the appellant would mainly urge that the deceased had driven the two-wheeler on the opposite side of the road and it is he who had contributed entirely for the accident. It is also his contention that the 3rd respondent had driven the car slowly especially when there was a speed breaker 100 meters ahead on the place of accident. Further, there is a railway underground bridge before the place of occurrence. Therefore, the counsel for the appellant submitted that in all likelihood, the 3rd respondent herein would not have driven the car in a rash and negligent manner and there is no possibility for her to drive the vehicle at a high speed.

12. Unfortunately, there is no evidence to show the manner in which the 3rd respondent had driven the vehicle. First of all, the 1st respondent examined on the side of the Insurance Company namely, the Special Sub-Inspector of Police, in his cross examination, has admitted that he only registered the First Information Report on the basis of the complaint given by one Karthi. He has also admitted that he had not recorded the statement of the persons who have witnessed the accident. Therefore, the deposition of R.W.1 in his chief examination that it was the deceased who attempted to overtake the tanker lorry and hit the car driven by the 3rd respondent has been rightly rejected by the Tribunal. Further, the Tribunal correctly recorded a finding that the 3rd respondent will be best person to

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speak about the manner in which the accident had taken place. However, conveniently she remained ex-parte. The appellant/ Insurance Company also did not take any steps to examine the 3rd respondent on their side. While so, it is futile on the part of the appellant/Insurance Company to say that the deceased drove the vehicle on the wrong side of the road and the 3rd respondent had driven the car carefully etc. When it is alleged by the appellant Insurance Company that the car was driven slowly and carefully by the third respondent, it is for the third respondent to stepped into the witness box and clear the air of controversy. When the third respondent did not turn up either in person or through a pleader to narrate as to what precisely happened on the fateful day, this Court cannot believe the version of the appellant insurance company as regards the manner of accident or the wrong side in which the deceased drove the vehicle. Having regard to the above, this Court is of the considered view that the Tribunal is right in rejecting the contentions urged by the appellant/Insurance Company, which were also made before this Court in this appeal. In such view of the matter, this Court do not find any reason to interfere with the findings rendered by the Tribunal in so far as it relates to liability.

13. As regards the quantum, admittedly there was no documentary evidence filed by the claimants/respondents 1 and 2 to prove the income of the deceased. The fact remains that the deceased was 22 years old at the time of accident. He was a bachelor. Therefore, the Tribunal had taken a sum of Rs.6,500/- as his notional income, deducted 50% towards his personal expenses, applied multiplier '18' to award a sum of Rs.7,02,000/- as compensation towards loss of income. Such an amount awarded by the Tribunal is reasonable taking note of the young age of the deceased. The deceased, a 22 year old young man, could have definitely earned a sum of Rs.6,500/- towards his livelihood and fixation of such sum by the Tribunal, therefore, do not require any interference by this Court. Further, the amount awarded towards loss of love and affection, funeral expenses, transportation are also very reasonable and this Court does not find any reason to interfere with the same.

14. In the result, the judgment and Decree dated 29.01.2018 made in M.C.O.P.No.364 of 2017 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Bhavani is confirmed. The Civil Miscellaneous Appeal filed by the appellant/Insurance Company fails and accordingly it is dismissed. No costs. The appellant-Insurance Company is directed to deposit the award amount, along with interest and costs, less the amount if any already deposited, within a period of six

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weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.364 of 2017 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Bhavani. On such deposit, the respondents 1 and 2 are permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any already withdrawn, as apportioned by the Tribunal, by filing necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The IV Additional District Judge,
   Motor Accidents Claims Tribunal,
   Bhavani.

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.20506
+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.20182

C.M.A.NO.1085 OF 2018

SR-II(CO)
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