IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12. 2022

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Miscellaneous Appeal No.748 of 2020
& C.M.P.Nos.4590 & 4593 of 2020

The Divisional Manager,
National Insurance Company Ltd.,
No.62-A, J.N.Street,
Puducherry. ... Petitioner

-vs-

1. Maheswari,
W/o.Vasu.

2. Saritha,
Daughter of Vasu.

3. Sarath Kumar.
Son of Vasu.

4. Arikrishnan,
Son of Srinivasan.

5. Jayalakshmi,
Wife of Arikrishnan,
All are residing at,
No.14, Seenuvasa Nagar,
Thiruvandarkovil,
Pondicherry.

6. Sokkamuthu Iyyanar,
Son of Gurusamy,
No.42/269, Tindivanam Main Road,
Kalaivanar Nagar, Near Pattanur Check Post,
Vanur Taluk, Villupuram,
Tamil Nadu ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed in M.A.C.T.O.P.No.536 of 2012, dated 12.10.2017, on the file of the Motor Vehicle Accidents Claims Tribunal, 3rd Additional District Court, Puducherry.

For Petitioner : Mrs.N.B.Surekha

For R1 to R5 : Mr.K.Sasindran

For R6 : *Insufficient address*

ORDER

The Insurance Company is on appeal against the award of the Motor Accident Claims Tribunal, Puducherry, dated 12.10.2017 made in M.C.O.P.No.536 of 2012 awarding a compensation of Rs.22,99,836/- for the death of one Vasu son of Arikrishnan in a motor accident that occurred around 8.30 p.m, on 08.06.2012.

2. According to the claimants, while the said Vasu was walking along with his friend on Pondy-Villupuram main road near Thiruvandarkovil, a swaraj Mazda load carrier lorry bearing registration No.TN-22-AT-7737 owned by the 1st respondent and insured with the 2nd respondent, which was driven in rash and negligent manner by his driver, dashed against the deceased and one Rajesh, who was riding a motor cycle. The deceased was taken to the Puducherry Government Hospital on the same day in an ambulance. He died on 09.06.2012 at 6.45a.m. Claiming that, the said Vasu was working in Pondicherry Co-operative Spinning Mills Limited and earning a sum of Rs.14,134/- per month, the claimants sought for compensation of Rs.25 lakhs.

3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimants. The Insurance Company, relying upon the medico-legal report which was marked as Ex.R.1, contended that, the accident occurred when the Vasu fell down from the two wheeler, while he was travelling as a pillion rider in an inebriated state. The involvement of the lorry insured with the 2nd Insurance Company was denied. It was claim that the lorry was a put up vehicle and the very F.I.R having been lodged on the next day would raise suspicion regarding the manner in which, the accident had taken place. It is the further plea that the F.I.R itself is a cooked up case just to extract compensation. The earnings and the dependency were also disputed.

4. Before the Tribunal, the 1st claimant was examined as P.W.1 and one Mr.Moorthy, an eye witness to the accident was examined as P.W.2. The Manager of the Pondicherry Co-operative Spinning Mills Limited was examined as P.W.3. ExP.1 to Ex.P.13 were marked. On the side of the respondent/Insurance Company, Dr.N.Kandan, who recorded the Accident Register was examined as R.W.1 and Mr.SivaKumar, Senior Assistant of the National Insurance Company was examined as R.W.2.

5. The Tribunal, on consideration of the entire evidence faulted the Insurance Company for not having examined the driver of the lorry. It was also found that the Accident Register recorded by the doctor based on the information given by the ambulance driver who was not present at the time of occurrence cannot be taken as conclusive evidence of the manner in which the accident had occurred. The Tribunal assessed the quantum of compensation taking the monthly income at Rs.14,134/- as evidenced by Ex.P.13, salary certificate and the evidence of P.W.2. It added 30% towards future prospects, deducted ¼th towards personal expenses and applying the multiplier 13, awarded a sum of Rs.21,49,836/- towards loss of dependency. It awarded a sum of Rs.25,000/-, towards loss of consortium for the 1st petitioner and Rs.25,000/- each to claimants 2 to 5 for loss of love and affection, a sum of Rs.25,000/- was awarded towards funeral expenses. In all, the compensation awarded by the Tribunal worked out to Rs.22,99,836/-.

6. Heard Mrs.N.B.Surekha, Learned Counsel for the Insurance Company and Mr.K.Sasindran, Learned Counsel appearing for the respondents/claimants.

7. Mrs.N.B.Surekha, Learned Counsel appearing for the Insurance Company would vehemently contend that the Tribunal was not right in faulting the Insurance Company for not having examined the driver of the lorry. She would point out that the case of the Insurance Company itself being that the lorry was put up lorry, examination of the driver would be only counterproductive. She would also point out that, in the Accident Register/Medico legal report, the doctor has specifically recorded that the deceased who was travelling in a motorcycle fell down and sustained injuries.

Therefore, the theory of accident involving the lorry has been invented for the purpose of claiming compensation. She would also heavily rely upon the evidence of R.W.1, the doctor, who had spoken on the contents of Ex.R.1, the medico legal report.

8. Per contra, Mr.K.Sasindran, Learned Counsel appearing for the respondents/claimants would submit that the Accident Register/medico-legal report was prepared by the doctor, admittedly, on the basis of the information given by the Ambulance driver, who was not present at the time of occurrence. Inviting our attention to the Accident Inspection Report as well as the evidence of P.W.2, the eye witness, the Learned Counsel for the respondents would contend that, these two documents would conclusively establish the manner in which the accident had taken place and hence, there is no iota of doubt regarding the occurrence. The Learned Counsel for the respondents would also rely upon the absence of cross examination of P.W.2 on the vital aspects by the Insurance Company.

9. We have considered the rival submissions. Though, we find considerable force in the contentions of the Learned Counsel for the Insurance

Company, we find lack of evidence in support of the said contentions. Except the doctor, who prepared the Accident Register which was marked as Ex.R.1 no other witness connected with the accident has been examined. The Insurance Company has not examined the Investigating Officer. No doubt, the Tribunal was not justified in faulting the Insurance Company for not examining the driver of the lorry in the peculiar circumstances of the case. However, in the light of the evidence of P.W.2 Moorthy, wherein, he has deposed about the nature of the accident particularly the involvement of another two wheeler driven by one Rajesh and the total absence of cross examination on these aspects would lead us to believe that the accident had occurred in the manner suggested by P.W.2. If the version of the ambulance driver is accepted, there must have been no damage for the lorry. The Accident Inspection Report shows that the lorry had suffered damage in the rear left wheel mudguard joint. This by itself would falsify the theory that the deceased Vasu fell down from the motorcycle and sustained injuries. Unless, there is some kind of accident, there cannot be any damage to the lorry. We, therefore, conclude that, the Tribunal was right in finding that the accident occurred due to rash and negligent driving of the lorry driver. The fact that the Insurance Company has not chosen to examine the Investigator also, supports our conclusion.

10. Mrs.N.B.Surekha, Learned Counsel for the Insurance Company would seek us to deduct atleast 10% towards contributory negligence, as the deceased found to have consumed alcohol. We are unable to accept the said submission in as much as consumption of alcohol is not an offence. If deceased found have driven the vehicle under influence of alcohol, certainly we have to deduct certain amount towards the contributory negligence but not for a person who was walking in the road. Hence, we reject the said claim.

11. On the quantum, there is proof of salary in the form of Ex.P.13 and the evidence of P.W.2. The deceased was drawing the salary of Rs.14,134/- at the time of death. The Tribunal has awarded 30% towards future prospects. Considering the age of the deceased i.e., 50, future prospects should be taken only 25% and not 30%. The Tribunal has deducted ¼th towards personal expenses and had applied the correct multiplier of 13. If we make addition of 25% to the salary, the loss of dependency would be Rs.20,67,156/- (Rs.14,134 + 25% x 12 x 13 - ¼). The Tribunal has awarded only Rs.25,000/- towards of loss of consortium and loss of love and affection. As per the judgment of the Hon'ble Supreme Court in Pranay Sethi's case it should be Rs.40,000/- each. Therefore, the award of loss of consortium and love and affection to the 5 claimants is enhanced to Rs.40,000/- each. The Tribunal has awarded Rs.25,000/- for funeral expenses and same is split into Rs.15,000/- for loss of estate and Rs.10,000/- for loss of funeral expenses. Thus, the total compensation would be;

a.	Loss of Dependency	Rs.20,67,156/-.
b.	Loss of consortium to 1st claimant	Rs.40,000/-
c.	Loss of love and affection for the claimants 2 to 5	Rs.1,60,000/-
d.	Loss of funeral expenses	Rs.10,000/-
e.	Loss of estate	Rs.15,000/-
	Total	Rs.22,92,156/-

12. In fine, the ***Civil Miscellaneous Appeal is Allowed to the extent indicated above.*** The award of the Tribunal is modified. Consequently, connected Miscellaneous Petitions are closed. The insurance company is directed to deposit the balance award amount as per the modified award along with interest as awarded by the tribunal within a period of 8 weeks from the date of receipt of the copy of the order. On such deposit the claimants will be entitled to withdraw the compensation as apportioned by the tribunal. No costs.

(R. SUBRAMANIAN, J.) & (SATHI KUMAR SUKUMARA KURUP, J)

23.12.2022

Index : Yes/No.
Internet :Yes/No.
bsm

R. SUBRAMANIAN,J.
&
SATHI KUMAR SUKUMARA KURUP, J.

bsm

To,

1.The Motor Vehicle Accidents Claims Tribunal,
III Additional District Court, Puducherry.

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