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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	31.01.2022
Delivered on	02.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.3298 of 2021
and
C.M.P.No.18756 of 2021

M/s.United India Insurance Co. Ltd.,
No.110, Jawans Bhavan,
Opp. Head Post Office,
Sivakasi.

... Appellant/2nd Respondent

Vs.

Grish Chandar (died)

1.R.Baskaran
2.Punithavathi
3.S.Mathivanan
4.V.Balaji

...Respondents 1 & 2/Petitioners

... Respondents 3 & 4/
Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 26.07.2019 made in MCOP No.1148 of 2012 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant :Mr.S.Arunkumar

For Respondents : Mr.P.Arumugam for R1 & R2

JUDGMENT

[Judgment of the Court was delivered by V.SIVAGNANAM, J.]

This appeal arises out of the award passed by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai in MCOP No.1148 of 2012 dated 26.07.2019.

2. The facts of the case in nutshell:-

On 22.12.2011, at 10.00 hours, the claimants' son Girish Chander travelled as a pillion rider in a motorcycle bearing Reg.No.TN-67-AD-0388 from Kelambakkam towards Vandalur. When the said vehicle was nearing Nallambakkam Crusher Road, the rider drove it in a rash and negligent manner and hit on the center median of the road. Due to which, the Girish Chander fell down



and sustained grievous injuries and became unconscious. Immediately, he was admitted in a hospital and took treatment nearly 1-1/2 years and later, died due to the head injuries sustained by him in the accident. The third respondent herein is the rider, the fourth respondent herein is the owner and the appellant is the insurer of the offending motorcycle. Hence, the parents laid a claim petition before the Tribunal claiming compensation of Rs.1,10,00,000/-.

3. The appellant Insurance Company filed their counter disputing the manner of accident, occupation and income of the deceased and its liability to pay the compensation. It was also contended that the claim is excessive and exorbitant.

4. To substantiate the case, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and Ex.P.1 to Ex.P.16 were marked. On the side of the appellant/Insurance Company, one Suresh was examined as R.W.1 and Exs.R1 to R4 were marked.

5. The Tribunal, after considering the oral and documentary evidence, held that the rider of the motorcycle was responsible for the accident and awarded compensation of Rs.46,62,700/- to the claimants. Assailing the award, the appellant/Insurance Company has filed the present appeal.

6. The learned counsel appearing for the appellant/Insurance Company Mr.S.Arunkumar submitted that the complaint with regard to the accident was given belatedly. The claimants had not given any satisfactory explanation for the belated complaint with regard to the accident. The complaint was given subsequently in order to get compensation for the accident caused by some other vehicle by placing the third respondent's vehicle, colluding with the third respondent/Mathivanan. He further submitted that the case of the claimants that the deceased was travelling as a pillion rider with the third respondent/Mathivanan in a two wheeler, is not proved by evidence. The Tribunal, believing the evidence, fixed the negligence on the third respondent, Mathivanan and awarded compensation. The reliance placed by the Tribunal is unsustainable on facts. The finding that the third respondent's vehicle was involved in the accident and awarding compensation is unsustainable against the evidence on record. The Tribunal erred in awarding huge compensation. Thus, the learned counsel prayed to set aside the award of the Tribunal.

7. Per contra, the learned counsel appearing for the respondents/claimants submitted that the accident was proved by the oral evidence adduced by the claimants before the Tribunal. The deceased was in coma for a long period and subsequently, he died. This fact was established by producing medical evidence.



Lodging of the complaint belatedly is not a valid ground to reject the claim, as the accident is genuine one. The Tribunal rightly came to the conclusion based on the evidence that the deceased sustained injuries in the road accident while he was travelling along with the third respondent. He further submitted that the impugned award is well reasoned and it requires no interference. Hence, he prayed to dismiss the Civil Miscellaneous Appeal.

8.This Court carefully considered the submissions of the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the respondents/claimants and perused the materials available on record.

9. Perusal of the records reveal that the accident occurred on 22.12.2011 at about 10.00 hours. At the time of accident, the injured Grish Chandar was travelling as a pillion rider in the motorcycle bearing Reg.No.TN-67-AD-0388. The third respondent drove the said vehicle in a rash and negligent manner and hit the center middle of the road. Due to which, the Grish Chandar fell down and sustained grievous injuries. Perusal of the records further indicate that while filing the claim petition before the Tribunal, Grish Chandar was alive. During the pendency of the claim petition, he died and his legal heirs got impleaded themselves and prosecuted the petition.

10.The appellant/Insurance Company disputed the accident itself. According to the appellant/Insurance Company, the accident had not happened while the deceased was travelling as pillion rider with Mathivanan, the third respondent. The learned counsel appearing for the appellant/Insurance Company placed two reasons to support his arguments, viz., there are no medical records to show that the rider/Mathivanan sustained injuries in the accident and when the accident had occurred on 22.02.2011, the complaint was given belatedly, without any explanation. With regard to quantum, the learned counsel submitted that the award amount is on the higher side.

11. Admittedly, the accident had happened on 22.12.2011. Discharge Summary (Ex.P.12) reveals that the injured sustained injuries in the road accident. Admittedly, the First Information Report (Ex.P.1) was lodged only on 15.01.2012, not immediately after the accident. Further records reveal that the case was registered against the third respondent/Mathivanan and the Charge Sheet (Ex.P.2) was also filed against him. Further, the third respondent admitted his guilt in his evidence before the Judicial Magistrate, Chengalpet and paid fine amount imposed by the Court, which is evidenced by the order passed by the Judicial Magistrate, Chengalpet (Ex.P.16). The First Information Report (Ex.P.1) and Discharge Summary (Ex.P.12) evidence the fact that



the third respondent Mathivanan while riding two wheeler, caused the accident and thereby, deceased sustained injuries. It is true that the unexplained delay in lodging a complaint will normally create a suspicion over the case of the claimant. However, in the case on hand, there is no valid reason to disbelieve the First Information Report (Ex.P.1), Discharge Summary (Ex.P.12) and a copy of the order passed by the Judicial Magistrate, Chengalpet (Ex.P.16). In these circumstances, the Tribunal rightly held that the third respondent/Mathivanan caused the accident, in which, the deceased sustained injuries, hence, we find no merit in the arguments of the learned counsel appearing for the appellant and the finding of the Tribunal with regard to the negligence fixed upon the third respondent/Mathivanan and fixing of liability upon the insurer of the respondent's vehicle is confirmed.

12.With regard to the death, admittedly, the accident had taken place on 22.12.2011 and medical records Exs.P.4, P.5, P.12 and P.13 reveal that he was continuously taking treatment till his death. Therefore, there is no contra evidence to show that the injured died due to some other reasons. Hence, the finding of the Tribunal that the deceased died subsequent to the injuries in the accident, is correct.

13.With regard to the quantum, it is seen that the deceased was a B.Tech Graduate and worked as a Training Officer in the First Sources Solutions Limited, Chennai and earned Rs.20,000/- per month. His degree certificates (Exs.P.8 and P.9) and appointment order (Ex.P.11) reveal his monthly income and the Tribunal fixed his monthly income at Rs.20,000/-. The deceased was aged about 25 years and a Bachelor. It is seen that the deceased was working in a private concern which is not coming under the Government Job, but the Tribunal added 50% towards future prospects, which is contrary to the principles laid down by the Hon'ble Supreme Court in the case of National Insurance Company Ltd., vs. Pranay Sethi and others reported in 2017(2) TNMAC 609 (SC). As per the said decision, the claimant is entitled to 40% of the income towards future prospects. Hence, 50% of the income added by the Tribunal towards future prospects, is set aside and only 40% of the income is to be added towards future prospects. The Tribunal rightly applied the multiplier '18' and deducted 50% towards personal expenses. Accordingly, by adding 40% of the income towards future prospects and after deducting 50% towards his personal expenses and by applying multiplier '18', the contribution of the deceased to the family comes Rs.30,24,000/- $(20000+8000(40\%)=28000 \times 12 \times 18 \times 1/2)$. The Tribunal awarded Rs.2,00,000/- towards loss of love and affection and Rs.1,00,000/- towards filial consortium, which is contrary to the principles laid down by the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others



reported in 2018(1) TN MAC 452 (SC). As per the said decision, the claimants are entitled to Rs.40,000/- each towards consortium, which comes Rs.80,000/-. Hence, the amount of Rs.2,00,000/- awarded under the head of loss of love and affection and Rs.1,00,000/- awarded towards filial consortium are set aside. This Court awards Rs.40,000/- each to the claimants towards consortium. Rs.15,000/- towards loss of estate. The amount awarded under the heads of medical expenses and funeral expenses and the rate of interest fixed by the Tribunal as 7.5% per annum, are confirmed. Accordingly, the compensation awarded by the Tribunal to the claimant is re-quantified as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of dependency	32,40,000/-	30,24,000/-	reduced
Loss of Love and Affection	2,00,000/-	Nil	set aside
Filial Consortium	1,00,000/-	80,000/-	reduced
Medical Expenses	11,07,690/-	11,07,690/-	confirmed
Funeral Expenses	15,000/-	15,000/-	confirmed
Loss of Estate	Nil	15,000/-	granted
Total	46,62,690/-	42,41,690/-	reduced
Rounded off	46,62,700/-	42,42,000/-	Rs.4,20,700/- is reduced

14. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed and the award amount is reduced to Rs.42,42,000/- from Rs.46,62,700/-. Out of which, Mother of the deceased would be entitled for Rs.25,00,000/-. Father of the deceased is entitled to Rs.17,42,000/-. The appellant/Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants are permitted to withdraw their share less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar



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To

WEB COPY

1. The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.

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

+2cc to Mr.K.Jayakumar, Advocate SR.No.13992

+1cc to Mr.S.Arunkumar, Advocate, Sr.No.14744 (07/04/2022)

C.M.A.No.3298 of 2021
and
C.M.P.No.18756 of 2021

BR(CO)
CB(16/03/2022)