IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.07.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1056 of 2018
and
C.M.P.No.8582 of 2018
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M/s.IFFCO-TOKIO General Insurance Co. Ltd.,
having Branch Office at Tulsi Chambers,
3rd Floor, 195, T.V.Samy Road West,
R.S.Puram, Coimbatore-2. .. Appellant

Vs.

1. Parees
2. M.Sheik Dawood
3. K.Sukumar
4. P.Balasubramani .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 30.10.2017 made in M.C.O.P.No.17 of 2015 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Erode.

For appellant : Mr.S.Arun Kumar

For respondents: R-1 & R-2 set ex-parte,
vide order of this Court, dated 21.04.2023

R-3 - No appearance

R-4 died (steps due)

JUDGMENT

The appellant herein is the Insurance Company, which had filed the present appeal challenging the Award and decree, dated 30.10.2017 passed by the Motor Accidents Claims Tribunal (Special District Court), Erode, made in M.C.O.P.No.17 of 2015.

2. The deceased was travelling in a motor vehicle bearing Registration No.TN-33-U-5833, which was hit by Tata Ace Van bearing Registration No.TN-42-A-5520, thereby, the accident had occurred, and it has resulted in causing injuries on the deceased, thereby, he succumbed to instantaneous death. A case was registered against the offending vehicle and though the complaint was filed against the offending vehicle and driver, subsequently the investigation revealed that the offending vehicle (Tata Ace Van) was involved in the accident and the said Tata Ace van was insured with the appellant-Insurance Company, and therefore, the dependents of the deceased filed claim petition before the Tribunal. The Tribunal, after considering the materials available on record, and that as the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle, fixed the notional income of the deceased at Rs.5,000/- and that the deceased was aged about 24 years at the time of the accident, thereby, the Tribunal adopted multiplier method and also awarded

the total compensation at Rs.8,95,000/- by fixing the liability towards the appellant/Insurance Company before whom the offending vehicle has been insured.

3. Now, the appellant/Insurance Company has challenged the Award passed by the Tribunal on the ground that the offending vehicle was not involved in the accident and a false claim has been made. The Tribunal, without any positive approach, has fixed the liability on the appellant/Insurance Company.

4. Learned counsel for the appellant/Insurance Company vehemently contended that in the FIR, neither the name of the driver of the offending vehicle, nor the Registration number of the vehicle, is mentioned. The Motor Vehicle Inspector who is said to have examined the offending vehicle, has clearly stated that there was no damage to the vehicle. The Inspector of Police who conducted investigation, was examined as P.W.3 before the Tribunal and P.W.3 has not stated as to how he identified the offending vehicle involved in the accident and they have simply stated that some of the persons who are said to have travelled in the vehicle, were examined and based on that, he fixed the liability and subsequently seized the vehicle and also arrested the fourth respondent herein who is the driver of the offending vehicle who had caused the

accident that had taken place on 11.07.2012, whereas, the vehicle was seized only on 31.07.2012 and the same was sent for examination for getting the Motor Vehicle Inspector's report only on 01.08.2012. Therefore, the delay of sending the vehicle for inspection by the Motor Vehicle Inspector has also not been properly examined.

5. It is the further contention of the learned counsel appearing for the appellant/Insurance Company that the claimant has not proved that only the offending vehicle Tata Ace Van, was really involved in the accident. Therefore, the Tribunal erroneously fixed the liability on the appellant/Insurance Company and it is fairly conceded that the appellant is not disputing the quantum of compensation awarded by the Tribunal and the dispute is only with regard to the liability of the appellant/Insurance Company to pay the compensation.

6. Since the claimants have not proved that it is only the offending vehicle which is involved in the accident and in the absence of the same, the Tribunal had fixed the liability erroneously, which warrants interference by this Court.

7. Further, it is stated that as against the first and second respondents herein, though substituted service by way of newspaper publication is made, none appeared for them, and they have been set ex-parte by this Court on

21.04.2023.

8. Though notice has been served on the third respondent and a counsel has also entered appearance, none appeared for the third respondent.

9. It is stated by the learned counsel for the appellant-Insurance Company that the fourth respondent died and as on date, no steps have been taken to implead the legal representatives of the fourth respondent, and therefore, the appeal is dismissed as abated as against the fourth respondent.

10. Hence, this Court perused the materials available on record, and as appellate Court, and so also, this Court being a fact-finding Court, had analysed the issue independently and re-appreciates the evidence to render an independent finding.

11. This Court perused the entire materials available on record based on the oral and documentary evidence and also after considering the submissions made by the learned counsel for the appellant-Insurance Company, it is seen that the fact remains that there was an accident and FIR was also registered in regard to the same, and a true copy of the FIR is also marked as Ex.P-1 before the Tribunal. However, the charge sheet filed goes to show that subsequently,

on 31.07.2012, on investigation, it was found that the offending vehicle only was involved in the accident and the fourth respondent herein is the driver of the offending vehicle. The evidence of P.W.3 Inspector of Police, Namakkal Crime Branch, shows that the driver of the offending vehicle was arrested on 31.12.2012, along with the offending vehicle and the driver of the offending vehicle has not filed any complaint or a counter-complaint and the driver of the offending vehicle has not even challenged his arrest proceedings.

12. Even the appellant/Insurance Company has also not challenged the charge sheet proceedings filed by P.W.3. The appellant has not let in any contra evidence to show that the offending vehicle was not involved in the accident. However, the fact remains that the offending vehicle was insured with the appellant/Insurance Company and hence, the appellant is the insurer and they are liable to pay the compensation to the dependents of the deceased, namely the claimants.

13. Therefore, the only contention raised by the learned counsel for the appellant/Insurance Company is that, in the FIR, neither the name of the driver of the offending vehicle, nor the Registration Number of the offending vehicle, is mentioned.

14. It is well settled proposition of law that the FIR is not the Encyclopaedia. Subsequently, the evidence of P.W.3 clearly shows that there was meticulous investigation and during the investigation, the investigating agency also found the vehicle which was involved in the accident and also the driver who drove the offending vehicle at the time of accident, was arrested and the vehicle was seized and sent for inspection by the Motor Vehicle Inspector and the driver was remanded to judicial custody, which was not challenged by the appellant/Insurance Company and the Insurance Company had also not produced any contra evidence.

15. Further, one cannot expect the dependents of the deceased to find out the real culprits and also as to the actual vehicle was involved in the accident, and when once the complaint had been filed and the law was set in motion, it is for the investigating agency to investigate the matter. In this case, the FIR was registered in the name of the driver of the unknown vehicle and the unknown driver and subsequently, the investigation revealed that after completion of the investigation, the charge-sheet has also been filed and the charge-sheet reveals the name of the driver of the offending vehicle and its Registration Number.

16. Therefore, unless the investigating agency proves through contra

evidence that the insured vehicle was not involved in the accident, and as there is no contra evidence even to the charge-sheet and also the evidence of P.W.3 who conducted the investigation, this Court, as a final Court of fact finding, while re-appreciating the evidence independently, finds that the offending vehicle Tata Ace Van was actually involved in the accident and it is only because of the driver of the said vehicle who drove the offending vehicle in a rash and negligent manner, the accident had occurred and hence, the Tribunal has given cogent reasons. As already stated, there is no contra evidence to dis-prove the same, and hence, the evidence let in by the claimants, inspires the confidence of this Court, and therefore, there is no reason to reject the evidence of the claimant.

17. In the above circumstances, the liability fixed by the Tribunal on the appellant/Insurance Company, is in order and therefore, there is no perversity in appreciating the evidence and while re-appreciating the evidence, this Court finds that there are enough materials to prove that the offending vehicle was involved in the accident and the driver who drove the offending vehicle had only caused the accident due to the rash and negligent driving of the offending vehicle.

18. Therefore, for the reasons stated above, this Court does not find any

merit in the appeal.

19. Further, the learned counsel for the appellant/Insurance Company did not challenge the quantum of compensation; even otherwise, it is admitted that the deceased was aged about 24 years at the time of accident and also though two witnesses were examined through employment, however, the employment was not proved in the manner known to law and hence, the Tribunal had rightly fixed the notional income of the deceased at Rs.5,000/- and also adopted the multiplier method and since the deceased was a Bachelor, 50% of the income was deducted towards personal expenses. Further, the compensation awarded by the Tribunal under the other heads, is only as per the guidelines of the Honourable Supreme Court, more particularly, the decisions of the Supreme Court report reported in 2009 (6) SCC 121 (Sarla Verma (smt) and others Vs. Delhi Transport Corporation and another) and 2017 (16) SCC 680 (National Insurance Company Limited Vs. Pranay Sethi and others). The compensation awarded by the Tribunal under various heads are tabulated below:

Sl.No.	***Heads under which the amounts are awarded***	***Amounts awarded by the Tribunal***
1	Loss of earning power	8,10,000
2	Others/funeral expenses	25,000
3	Loss of consortium	--
4	Loss of love and affection	50,000

Sl.No.	Heads under which the amounts are awarded	Amounts awarded by the Tribunal
5	Transport to hospital	5,000
6	Damages to clothes and articles	5,000
	Total	8,95,000

20. This Court finds that even the quantum of compensation determined by the Tribunal is just and proper and the compensation awarded at once by the Tribunal is "just" in the facts and circumstances of the case. Therefore, there is no reason to interfere with the findings of the Tribunal in regard to quantum awarded therein.

21. The appeal sans merit and the same is accordingly dismissed. There shall be no order as to costs in the present appeal. Consequently, C.M.P. is closed.

22. The appellant/Insurance Company is directed to deposit the entire compensation as awarded by the Tribunal to the credit of M.C.O.P.No.17 of 2015 on the file of the Special District Court, Motor Accidents Claims Tribunal, Erode, along with interest and costs awarded by the Tribunal, from the date of claim petition till the date of deposit, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On

such deposit being made, the Tribunal is directed to credit the compensation to the Bank Account of the respective claimants in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). The claimants are entitled to withdraw the compensation as per the proportion of shares adopted by the Tribunal, after adjusting the amount, if any already withdrawn.

20.07.2023

Index: Yes/no
Speaking Order: Yes/no
Neutral Citation: Yes/no
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To
1. The Motor Accidents Claims Tribunal,
   Special District Judge, Erode.
2. The Section Officer, V.R.Section, High Court, Madras.

P.VELMURUGAN, J

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C.M.A.No.1056 of 2018

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