IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1706 of 2018 and
Crl.M.P.No.13252 of 2018

M/s.National Insurance Company Ltd.
LRN Colony,
Sarada College Main Road,
Hasthampatti, Salem- 7 ... Appellant

Vs.

1. Smt. Devi
2. Selvi.Akila
3. Selvi.Ajali
4. Selvan Anand
5. Minor Aravind
   For minor petitioner Guardian mother
   1st petitioner Smt. Devi.
6. Smt.Chinnaponnu
7. P.Kesavan ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 22.09.2017 and made in M.C.O.P.No.1449 of 2014 on the file of the Special District Court, Motor Accident Claims Tribunal, Salem.

For Appellant : Mr.S.Vadivels
For Respondents : R1 to R6- Notice served, No Appearance
R7- Left

JUDGMENT

This Civil Miscellaneous Appeal has been by the Insurance Company to set aside the judgment and decree dated 22.09.2017 made in M.C.O.P.No.1449 of 2014 on the file of the Special District Court, Motor Accident Claims Tribunal, Salem.

2. The respondents 1 to 6 are the claimants. The 7th respondent is the owner and the appellant is the insurer of the offending vehicle viz. Jeep bearing Regn. No.TN-27-P-1093.

3. The case of the claimants is that on 13.08.2010, at about 20.50 hrs., while the deceased was driving his auto bearing No.TN-33-D-9506, near K.P.Karadu Corss, Sudarsan Petrol Bunk, Thirumagal bye pass to Kondalampatty Road, the 7th respondent's Jeep bearing Regn. No.TN-27-P-1093, which came behind in a rash rash and negligent manner, hit the auto of the deceased directly due to that, the deceased sustained fracture and also injuries all over the body. Immediately, he was taken to Dharan Hospital, Salem, for treatment and on the next day, he was shifted to Vinayaga

Mission's Kirupanandha Variyar Medical College Hospitals for further treatment wherein, he took treatment as inpatient for more than two weeks and thereafter, he was taking treatment as outpatient in the same hospital till 09.08.2012 and during the course of treatment, he died on 10.08.2012.

4. The claimants who are the legal heirs of the deceased, had filed a claim petition in M.C.O.P.No.1449 of 2014 on the file of the Special District Court, Motor Accident Claims Tribunal, Salem, claiming compensation of Rs.10,00,000/- for the death of the deceased.

5. Before, the Tribunal, in order to substantiate their claims, on the side of the claimants, 4 witnesses were examined as P.W.1 to P.W.4 and 17 documents were marked as Exs.P.1 to P.17, besides Ex.R-1 and Ex.X-1. On the side of the respondents, 3 witnesses were examined as R.W.1 to R.W.3 and the documents Exs.R-2 and X-2 to X-7 were marked.

6. The Tribunal, after hearing the arguments on either side and considering the materials, awarded compensation of Rs.9,15,693/- with interest at the rate of 7.5% per annum from the date of petition, till the date of

realization and directed the appellant/Insurance Company to pay the compensation to the claimants on behalf of the owner of the offending vehicle/7th respondent herein.

7. Challenging the award of the Tribunal, the Insurance Company has filed the present appeal.

8. The learned counsel for the the appellant/Insurance company submitted that initially the deceased himself had filed a claim petition in M.C.O.P. No.981 of 2011, claiming compensation for the injuries sustained by him in the accident and subsequently, the said petition was allowed to be dismissed as abated on 13.08.2014, after his death. Though the present claim petition was filed after the death of the deceased, there is no mentioning about the earlier application filed by the deceased. Further, he would submit that the accident had not occurred due to the rash and negligent driving of the driver of the alleged Jeep which is insured with the appellant/Insurance Company. The deceased himself was a tort-feasor. He violated the road traffic rules and also the Motor Vehicles Act and Rules. At the time of accident, the deceased had driven his Auto in one way which was prohibited.

Further, the deceased did not posses valid driving licence to ride the Auto and there was no permit and insurance for the Auto. Though the Tribunal considered all these facts, fixed only 30% contributory negligence on the part of the deceased and deducted 30% from the future prospects, which is perverse. He would submit that, the date of accident was on 13.08.2010, whereas, the deceased died on 10.08.2012 which is after 2 years from the date of accident. There is no material evidence to show that his death was only due to the accidental injuries. Even Ex.P.2/wound certificate shows that the deceased had only sustained simple injuries like abrasion and there was no grievous injuries or inside wound which would lead to cause the death of the deceased at the later point of time. Further, there is no medical record to show that from the date of accident to till the date of death, the deceased was under treatment and out of the best treatment, he could not survive and he died only due to the accidental injuries. He would further submit that even post-mortem was not conducted and no medical report was given by any of the doctors that the death of the deceased was only due to the accidental injuries and there is no proximate cause for his death. Even the doctors who were examined before the Tribunal, have not clearly stated that the deceased died only due to the accidental injuries. Though the wife of the deceased/1st respondent who was examined as P.W.1 had stated that after discharging from the Vinayaga Mission Hospital, the deceased was bed ridden till his death and he was immobilised, due to which, he suffered bed sore, no medical evidence was produced to substantiate the above statement. The Tribunal failed to appreciate all these facts and only on sympathy, fixed the liability on the appellant/Insurance Company and awarded higher compensation. The contributory negligence fixed against the deceased is on the lower side and the Award passed by the Tribunal under various heads are exorbitant and the same is against the guidelines of the Hon'ble Supreme Court given in the case of National Insurance Company Limited Vs. Pranay Sethi, reported in 2017 (16) SCC 680. Therefore, the Award of the Tribunal does not reflect the "just compensation" and the same is erroneous and the appreciation of evidence by the Tribunal is perverse. Therefore, the award passed by the Tribunal is liable to be set aside and the appeal may be allowed.

9. Though notice was served on the respondents 1 to 6, none appeared on behalf of the respondents 1 to 6 and the notice sent to the 7th respondent, was returned as left.

10. Heard the learned counsel for the appellant and perused the materials available on record.

11. The claimants who are the legal representatives of the deceased Karnan, had filed the claim petition in MCOP No.1449 of 2014 before the Special District Court, Motor Accident Claims Tribunal, Salem. stating that the deceased Karnan was possessing the Auto and while he was driving the Auto on 13.08.2010, he met with an accident and sustained grievous injuries for which, he took treatment in various hospitals. However, he could not recover from the injuries. Subsequently, after 2 years from the date of accident, he died on 10.08.2012. His death was only due to the accidental injuries.

12. A perusal of the records shows, as pointed out by the learned counsel for the appellant/Insurance Company, after the accident, when the deceased was alive, he himself has filed a claim petition in M.C.O.P. No.981 of 2011 on 13.05.2011, claiming compensation for the injuries sustained by him due to the accident that occurred on 13.08.2010. The said claim petition was marked as Ex.R1.

13. A reading of Ex.R1/claim petition shows that the deceased himself has clearly stated that after the accident, he was not able to do any work as before and not able to move anywhere. He was having a own auto and he himself was driving the Auto and earning. His auto also got damaged and now he is unable to do his job. So he lost his income. Subsequently, he died on 10.08.2012. Since his death was only due to the accidental injuries, the respondents 1 to 6/claimants, wanted to file a claim application for fatal and hence, they had not pressed the application filed by the deceased and subsequently, they have filed the present subject matter of claim petition.

14. As far as negligence is concerned, the learned counsel for the appellant/Insurance Company vehemently contended that at the time of accident, the deceased was riding the Auto in one way and due to that only, the accident took place and the deceased did not posses valid licence, permit and insurance at the time of accident. However, a perusal of the evidence of the eyewitness who was examined as P.W.3 shows that, the offending vehicle namely the Jeep of the 1st respondent came behind the Auto with rash and negligent manner and dashed against the Auto of the deceased and there is no

contra evidence to show that the offending vehicle did not dash against the backside of the Auto of the deceased. Even though the place of accident was one way, there is no material to show that since because the deceased drove the Auto in one way, the accident had happened. Further, though the deceased did not posses valid licence, permit, Insurance etc., there is no material to show that because of the rash and negligent action of the tort-feasor, the accident had happened. Therefore, from the evidence of P.W.3/eyewitness, the claimants have proved that the accident had happened due to rash and negligent driving of the driver of the Jeep. Hence, the Tribunal rightly fixed the liability on the insurer of the Jeep/the appellant herein. Further, the Tribunal considering the fact that the deceased has driven the Auto in one way and he did not posses licence, permit, Insurance at the time of accident, has rightly fixed the contributory negligence of 30% on the deceased and deducted compensation from his future prospects.

15. As an appellate Court and final Court of fact finding, this Court while re-appreciating the entire evidence independently, finds from the evidence of P.W.1 to P.W.4 that the claimants have proved that the accident had occurred due to rash and negligent driving of the driver of the Jeep.

Hence, the Tribunal rightly held that as an Insurer of the offending vehicle, the appellant/Insurance Company is liable to pay the compensation. This Courts finds no perversity in the findings of the Tribunal. In the absence of any contra evidence or materials, this Court confirms the findings of the Tribunal.

16. As far as death is concerned, though the learned counsel for the appellant vehemently contended that the accident took place on 13.08.2010 and the deceased died after 2 years from the date of accident i.e. on 10.08.2012 and there is no material to show that his death was only due to the injuries sustained in the accident, as already stated, in the claim petition/Ex.R1 filed by the deceased, he has stated that due to the accident, he sustained grievous injuries and took treatment in various hospitals and till the filing of the claim petition, he was in continuous treatment and he was immobilized and unable to do any work. Even though the learned counsel for the appellant/Insurance Company by pointing out Ex.P.2/wound certificate given at the Dharan Hospital where the deceased took first aid, stated that all the injuries mentioned in Ex.P.2/wound certificate are simple in nature and the same would not lead to death, the doctors, who were examined as P.W.2

and P.W.4, have clearly stated that the injuries sustained by the deceased are grievous in nature. Even medical records issued by the Vinayaka Mission's Kirupananda Variyar Medical College & Hospitals, clearly shows that the deceased had sustained grievous injuries in the forehead, cheek, left ear, tongue, fore arm and also sustained fracture of left nasal bone. Ex.P2 is only the wound certificate issued by the Dharan Hospital where the deceased took first aid. The doctor who gave first aid to the deceased immediately after the accident, has only mentioned the outside wounds sustained by the deceased in the wound certificate/Ex.P2 and not mentioned anything after taking X-ray or Scan. Even the doctor/P.W.4 has clearly stated that as per the CT Scan report, the deceased had sustained fracture and cerebellar volume loss due to which, he died and the cause of death certificate was marked as Ex.P.17. The medical records clearly show that the deceased after taking first aid in Dharan Hospital on 13.08.2010, went to Vinayaga Mission's Kirupanandha Variyar Medical College & Hospital for further treatment on 14.08.2010, where Scan was taken and took treatment upto 21.08.2010 as inpatient. Even Ex.P.4-Accident Register, X-1-medical report, Ex.P17-cause of death certificate, would clearly show that the deceased had sustained grievous injuries in the accident and he was in continuous treatment and the evidence of

P.W.4/doctor also substantiated the same. Therefore, from the evidence of the claimants, it is proved that the deceased sustained grievous injuries due to the accident and he was in continuous treatment till his death. Though no medical records were produced to substantiate the same, from the claim petition/Ex.R1, filed by the deceased, it can be seen that he was the only breadwinner of the family and he sustained severe injuries all over the body and also sustained fracture in the accident, due to which, he was immobilised and bed ridden. Therefore, just because no medical records were produced to prove the subsequent treatment, it does not mean that the injuries sustained by the deceased would not cause death. Therefore, from the evidence of P.W.4 and the medical records, the claimants have proved that the death was only due to the injuries sustained by the deceased during the accident and the appellant/Insurance Company has not produced any contra evidence.

17. Therefore, though the deceased died after 2 years from the date of accident, considering the entire facts and circumstances and materials available on record including the medical evidence, this Court finds that the death of the deceased was only due to the injuries sustained by him during the accident.

18. As far as quantum of compensation is concerned, though the learned counsel for the appellant vehemently contended that the quantum fixed by the Tribunal is on the higher side and does not reflect the "just compensation" and has been fixed against the guidelines of the Hon'ble Supreme Court given in the case of Pranay Sethi, on a careful reading of the entire materials, this Court finds that though the deceased was not possessing any driving licence, permit and Insurance, the Tribunal fixed Rs.7,500/- as the monthly income of the deceased, taking note of the year of accident and also of the fact that the deceased was possessing the Auto and he was an Auto driver. Further, as per the guidelines of the Hon'ble Supreme Court, the Tribunal has applied the multiplier of 14 for fixing the compensation. This Court does not find any perversity in fixing the monthly income of the deceased as Rs.7,500/- and the same is not exorbitant and is reasonable.

19. As far the other heads are concerned, though the learned counsel for the appellant submitted that the compensation awarded under the other heads viz., "for loss of love and affection" and “funeral expenses” are on the higher side, the same cannot be fixed uniformly to all the claimants invariably, as the funeral expenses would differ as per the customs prevailing in their caste and community and the love and affection would vary from

person to person and it cannot be fixed uniformly. Further, there cannot be any oral or documentary evidence for funeral expenses and for loss of love and affection.

20. Therefore, considering the facts and circumstances and the oral and documentary evidence, the Tribunal has rightly found that the deceased has also contributed his negligence to the accident and deducted 30% from the future prospects of the deceased and also considering the age, avocation of the deceased and the status of the claimants, the Tribunal rightly awarded compensation of Rs.9,14,693/-. This Court finds that the award passed by the Tribunal is a "just compensation" and it is not an exorbitant one.

21. This Court finds no perversity in the appreciation of evidence by the Tribunal and there is no merit in the appeal and the same is liable to be dismissed.

22. The learned counsel for the appellant submitted that they have already deposited 50% of the compensation at the time of admission and enjoying the benefit of interim stay. Since the appeal is now disposed of, the

appellant/Insurance Company is directed to deposit the balance 50% of the compensation within one month from the date of receipt of a copy of this judgment. Since the accident is of the year 2010, the Tribunal is directed to pay the compensation amount to the claimants without any further delay and without any formal application.

23. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeal.

26.07.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1. The Special District Court,
   Motor Accident Claims Tribunal, Salem.

2. The Section Officer,
   VR Section,
   High Court,
   Madras.

P.VELMURUGAN. J.

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