IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.19 of 2022
and C.M.P.No.154 of 2022

The National Insurance Co, Ltd.,
Motor Third PArty Hub, Regina Mansion,
No.46, Moore Street, Third Floor,
Chennai - 600 001. ... Appellant

Vs.

1.Suganya
2.PRakash
3.D.Senthilkumar ... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.03.2020 in M.C.O.P.No.1082 of 2016 on the file of the learned Special Sub-Court-II, Motor Accident Claims Tribunal, small Causes court, chennai.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Amar D.Pandiyan for R1 & R2
Set ex-parte before the Tribunal - R3

JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the finding on negligence and the quantum of compensation awarded by the Tribunal made in M.C.O.P.No.1082 of 2016 on the file of the Special Sub-Court-II, Motor Accident Claims Tribunal, Small Causes Court, Chennai.

2. The first and second respondents are the first and second respondents in M.C.O.P.No.1082 of 2016 on the file of theSpecial Sub-Court-II, Motor Accident Claims Tribunal, Small Causes Court, Chennai. They filed the claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of Mokith Abinav, who died in the accident that took place on 04.12.2015.

3. According to the first and second respondents, on the date of accident i.e., on 04.12.2015 at about 14.00 hours, when the deceased minor was riding pillion in the bike bearing registration No.TN06-L-9084, proceeding from West to East, near Tambaram Branch Road, Bypass Road - P.H.Road, Maduravoyil, the driver of the lorry bearing registration No. TN-01-P-1211 belonging to the first respondent, proceeding on the same direction drove the same in a rash and negligent

manner without observing Traffic Rules and dashed the two wheeler. As a result of which the deceased was thrown out of the bike and thereafter the road side front wheel of the lorry ran over the head of the deceased and he died on the spot. The deceased was aged about 7 years, at the time of the accident.

4. The third respondent who is the owner of the lorry, remained *ex-parte* before the Tribunal.

5. The appellant/Transport Corporation filed counter statement denying all the averments made in the claim petition and stated that the accident did not happen due to the act of the driver of the lorry. In any event, the compensation claimed by the first and second respondents is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first and second respondents examined himself as PW1 and marked Exs. P1 to P9. The appellant/ Insurance company RW1 to RW3 and marked Exs.R1 to R6.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the deceased died due to the rash and negligent the act of the driver of the lorry and directed the appellant/

Insurance company being the insurer of the lorry to pay a sum of Rs.10,10,000/- as compensation to the first and second respondents.

8. The learned counsel for the appellant/ Insurance Company submitted that the rider of the two wheeler was also guilty and negligent and the Tribunal ought to have fixed 50% of contributory negligence on the driver of the two wheeler. The learned counsel further submitted that in any case the deceased was aged 7 years at the time of accident and the Tribunal ought not to have considered the annual income at Rs.60,000/- without 50% deduction and hence, the compensation awarded by the Tribunal at Rs.10,10,000/- is excessive.

9. Per contra, the learned counsel for the first and second respondents submitted that this court in C.M.A.No.3561 of 2021 (***The Divisional Manager, National Insurance co., Vs Sivaraman and others***), for the accident which took place in the year 2016, have taken the income of minor including the future prospects at Rs.7,000/- and calculated the annual income at Rs.84,000/- . Therefore, the learned counsel submitted that the compensation under the head "Loss of income" fixed by the Tribunal need not be interfered with. Hence, he prayed for dismissal of the above appeal.

10. Heard the learned counsel appearing for the appellant/ Insurance Company as well as the learned counsel appearing for the first and second respondents and perused all the materials available on record. Though notice was served on the 3rd respondent, none had entered appearance.

11.Though the appellant had questioned the finding of the Tribunal with regard to negligence, this Court finds that the learned counsel for the appellant was unable to point out any error or infirmity in the finding of the Tribunal. As stated earlier, the driver of the offending vehicle/ lorry drove the lorry in a rash and negligent manner and hit the motor cycle from behind. The second respondent herein who was examined as P.W.1 is an eye witness of the occurrence. FIR was also registered against the driver of the offending vehicle. The manner in which the accident took place as spoken to by P.W.1 and which is found from the other evidence shows that the driver of the offending vehicle was completely responsible for the accident. Therefore, the finding of the Tribunal with regard to negligence is confirmed. Further, it is also seen that the owner of the offending vehicle had a valid insurance policy. The

Tribunal found that the driver of the offending vehicle did not have a license to drive a heavy vehicle. It is well settled that if there is a violation of policy condition, it is for the Insurance Company to pay the compensation amount and thereafter, recover it from the insured. Therefore, the finding of the Tribunal in this regard is not interfered with.

12. This Court finds that the Tribunal has fixed Rs.60,000/- as annual income and adopted the multiplier of 15. The multiplier adopted by the Tribunal cannot be faulted. The Tribunal had taken the annual income as Rs.60,000/- by relying upon the judgment of the Hon'ble Supreme Court in ***Kishan gopal and another V. Lola*** reported in ***2013 (2) TN MAC 358 (SC)***, wherein, the Hon'ble Supreme Court had taken the notional income at Rs.30,000/- per annum for an accident that took place in the year 1992 in the case of a minor. The accident in the instant case had taken place in the year 2015 and hence, the Tribunal took the notional income of the deceased as Rs.60,000/- per annum. The Tribunal considered the furture prospects and deductions following the judgment of this Court in "***The National Insurance Co., Ltd., K.Sugumar"*** reported in ***2017 (2) TN MAC 805*** and held that it would be reasonable

to fix the annual income at Rs.60,000/-. For better appreciation the relevant portion of the judgment is extracted hereunder:-

> *"...Applying the ratio laid down by the hon'ble supreme court, wherein, the reduction in money value has been pointed out, this Court can take the notional income of the deceased at Rs.60,000/- p.a. The consideration of increase on account of future prospective increase in income would remain offset by deduction towards personal expenses of the deceased."*

13. This Court is of the view that the Tribunal had taken the notional income correctly and hence, no interference is called for. Therefore, this Court is of the view that the compensation under the head "Loss of income" at Rs.9,00,000/- (Rs.60,000/- x 15) is justified. The compensation under the other heads is also just and reasonable. Therefore, the appellant has not made out any ground for interference and hence, the appeal is liable to be dismissed.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.10,10,000/- awarded by the Tribunal as compensation to the first and second respondents along with interest and costs is confirmed. The appellant/ Insurance Company is directed to deposit the

entire award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the first and second respondents are permitted to withdraw their respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. It is open to the appellant to establish that the driver of the first respondent's vehicle did not have a valid license and recover the compensation from the first respondent in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

11.07.2023

Index: Yes/No
Internet: Yes/No
Neutral Citatiaon : Yes/No
gba

To

1.The Special Sub Court - II,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.
Krishnagiri.

2.The Section Officer
VR Section
High Court of Madras
Chennai – 600 104

SUNDER MOHAN,J.

gba

C.M.A.No.19 of 2022

and C.M.P.No.154 of 2022

11.07.2023