IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.993 of 2020
and
C.M.P.No.6229 of 2020

The Branch Manager,
The National Insurance Company Limited,
1st Floor, Sharadamma Building,
Bye Pass Road, Hosur,
Krishnagiri District.

C/o. The Divisional Manager,
National Insurance Company Limited,
Divisional Office,
No.9, Infantry Road,
Near Alankar Theatre,
Vellore - 632 002. ... Appellant / 3rd Respondent

Vs.

1. Ramachandrappa
2. Murthy
3. Asokan ... Respondents 1 - 3 / Petitioners 1 - 3
4. Mr.Eresha ... 4th Respondent / 1st Respondent
5. Muniraju ... 5th Respondent / 2nd Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.04.2019 made in M.C.O.P.No.487 of 2018 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Hosur.

For Appellant	:	Mr.J.Chandran
For Respondents	:	Mr.M.Sivakumar for R1 to R3 No appearance for R4 Not ready notice for R5

JUDGMENT

Aggrieved by the compensation awarded by the Tribunal in M.C.O.P.No.487 of 2018, the appellant / Insurance Company has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. For the sake of convenience, the parties are referred as per their ranks before the Tribunal.

3. The appellant is the Insurance Company. On 19.11.2017, at 8.00 am while the deceased was travelling as a pillion rider along with her

son, i.e. first respondent in Hero Honda Passion Motorcycle bearing Registration No.TN-70-E -1743, due to sudden break applied by the first respondent, the deceased lost her balance and fall on the road resulting in serious injuries to head and face. Immediately, the deceased was admitted in Kauvery Hospital, Hosur, where she succumbed to the accident. Claiming compensation in a sum of Rs.50,00,000/-, the claim petition was filed by the claimants, who are the husband and the sons of the deceased wife.

4. The claim petition was contested by the Insurance Company on the ground that the accident was occurred by an unidentified vehicle and not due to the rider, i.e., first respondent, therefore the third respondent / Insurance Company is not liable to pay compensation to the claimants. That apart, the rider of the vehicle was not holding valid driving licence, hence the first respondent - rider of the vehicle who is the son of the deceased is liable to pay compensation for the accident. The other contentions raised by the Insurance Company with respect to the age, income and avocation of the deceased that the award arrived at by the Tribunal was excessive. The

Tribunal after considering the submissions made by the claimants as well as the Insurance Company and the documents placed before the Tribunal came to the conclusion that the accident occurred due to the rash and negligent act of the rider of the vehicle / first respondent, which vehicle is insured with the third respondent. The second respondent is the owner of the vehicle. The Tribunal also relied upon Ex.P4 - MVI Report which reveal that the two wheeler rider had not produced his valid driving licence at the time of inspection. Thereby, the Tribunal came to the conclusion that the third respondent / Insurance Company is liable to pay compensation to the claimants and then recover the same from the respondents 1 and 2. Aggrieved by the said order, the present appeal has been filed by the appellant / Insurance Company.

5. The learned counsel for the appellant / Insurance Company would submit that the accident had happened on 19.11.2017, however the FIR was registered on 04.12.2017. He further submitted that out of Rs.15,47,112/- awarded towards death of the deceased in favour of the

husband and the three major sons, it includes the first respondent viz., Eresha who was in fact impleaded as first respondent is excessive, exorbitant and unsustainable. The learned counsel also submitted that considering the circumstances that the motorcycle was rode by the first respondent, who is the son of the deceased, wherein the rider is not the owner of the vehicle, since the vehicle was borrowed from one Muniraju - the owner of the vehicle, the accident occurred due to the own negligence and therefore, the claimants are not entitled for compensation on the ground of contributory negligence. The Tribunal ought to have dismissed the claim petition and therefore, the award is not sustainable.

6. The learned counsel for the respondents 1 to 3 / claimants would submit that the insurance policy was valid from 23.01.2017 to 22.01.2018 whereas the accident had occurred on 19.11.2017 and therefore, the accident is well covered by the insurance. He further submitted that the present policy is a package policy which also covers the pillion rider under the terms and conditions of the policy. The Tribunal also took into

consideration that the deceased as a vegetable vendor was earning a sum of Rs.15,000/- per month and awarded Rs.6,000/- as monthly income. Further, the deceased was aged about 54 years at the time of the accident, therefore the Tribunal had applied the correct multiplier of 11. Therefore, the award of the Tribunal need not be interfered with.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The manner in which the accident occurred is not disputed and the insurance policy is in valid at the time of accident also not disputed. Admittedly the period of insurance policy was from 23.01.2017 to 22.01.2018, however the accident had happened on 19.11.2017 within the said period. Ex.P1 is the copy of the FIR. Though there is a delay in filing the FIR which cannot take away the right of the claimants to claim compensation. It is seen from the records that the policy is a package policy

in which the pillion rider is covered, therefore the Tribunal has rightly come to the conclusion that the Insurance Company was liable to pay the compensation to the claimants and then recover the same from the respondents 1 and 2. The Tribunal had rightly fixed the monthly income of the deceased by adopting multiplier of 11. The quantum of compensation on the ground of fixing the monthly income at the exorbitant rate does not arise, therefore, this Court is an agreement with respect to the quantum of compensation awarded as well as pay and recovery ordered by the Tribunal and the same is confirmed.

9. Finding no merits to interfere with the impugned award, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

28.11.2023

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Motor Accidents Claims Tribunal,
   Additional District Judge,
   Hosur.

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

M.DHANDAPANI, J.

vji

C.M.A.No.993 of 2020
and
C.M.P.No.6229 of 2020

28.11.2023