BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.08.2023

Pronounced On : 08.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.981 of 2018
and
C.M.P.(MD)No.10335 of 2018

The National Insurance Company (P) Limited,
Rep.by its Branch Manager,
No.331/1, Sekkalai Road,
Sivagangai District. : Appellant /2nd Respondent

Vs.

1.Pandiyaraj

2.Ramaraj : Respondents/Petitioners

3.M.Vijaya : Respondent /1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 30.11.2017 made in M.C.O.P.No.244 of 2016 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.S.Boominathan, for R1 & R.

: Mrs.P.Selvakamatchi, for R3.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.244 of 2016, dated 30.11.2017 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Sivagangai.

2. The appellant/insurer, who was made liable to pay compensation of Rs.9,62,200/- with interest at 7.5% per annum to the respondents 1 and 2 / claimants for the death of their brother Ravikumar consequent to an accident occurred on 04.11.2013, challenged the award for want of dependency and for granting major portion of the award to the owner of the vehicle.

3. The case of the claimants is that on 04.11.2013 at about 02.00 pm., one Azhagesan was riding a two wheeler bearing Registration No.TN-63-AE-7107 with the deceased Ravikumar as pillion rider in Madurai to Mandapam road to his Marakadai from north to south and at

the place near O.V.C. School Speed Breaker, the driver rode the vehicle rashly and negligently and suddenly applied the break and as a result of which, the pillion rider Ravikumar fell down and sustained injuries and he was taken to Vikram Hospital, Madurai and thereafter, Rajaji Government Hospital, Maduri and subsequently, he succumbed to the injuries on 05.11.2013 and that the accident was occurred only due to the rash and negligent driving of the two wheeler rider. It is the further case of the claimants that the deceased was working as a carpenter and was earning a sum of Rs.20,000/- per month.

4. The first respondent had remained ex-parte. The appellant/ second respondent has filed counter statement stating that the owner of the vehicle, rider and the police officials have colluded with each other and filed the criminal case and on that basis, filed the above petition; that the insurer is not liable for the claim and that the quantum of compensation claimed is excessive.

5. During trial, the claimants have examined the second claimant Ramraj as P.W.1 and two other witnesses Thiru.Pandiyan and Thiru.Vijayaraj as P.W.2 and P.W.3 respectively and exhibited 13

documents as Ex.P.1 to Ex.P.13 and Ex.X.1. The appellant insurer/second respondent has examined two witnesses as R.W.1 and R.W.2 and exhibited three documents as Ex.R.1 to Ex.R3.

6. The Tribunal, upon considering the evidence, both oral and documentary has passed the impugned award, dated 30.11.2017 by holding that the two wheeler rider was responsible for the accident, directed the appellant/insurer to pay compensation of Rs.9,62,200/-.

7. For the sake of convenience and brevity, the parties herein after will be referred as per their status/ranking in the Tribunal.

8. The learned counsel for the second respondent would submit that the vehicle involved in the accident is owned by the first respondent, who is the mother of the deceased Ravikumar and the claimants are none other than the brothers of the deceased; that the first respondent-owner of the vehicle is not a third party under the Motor Vehicles Act and that the Tribunal committed a grave error in apportioning 80% of the award amount in favour of the first respondent-owner of the vehicle.

9. The learned counsel for the second respondent/insurer would further submit that the trial Court ought to have found that the compensation payable by the Insurance Company is based on the principle of law of indemnification and wherein, the Insurance Company is called upon to pay the compensation to the claimants on behalf of the owner of the vehicle and as such the owner of the vehicle cannot be a claimant against his own insurance company.

10. Admittedly, the first respondent, who is the owner of the vehicle involved in the accident is none other than the mother of the deceased Ravikumar. The Tribunal, considering the evidence available on record, has come to a decision that the accident was occurred only due to the rash and negligent riding of the two wheeler rider. Admittedly, no other vehicle was involved in the accident.

11. It is not in dispute that the vehicle involved in the incident was insured with the second respondent/insurer. The second respondent has not specifically disputed the quantum of compensation awarded at by the Tribunal. Since the Tribunal has come to a decision that the two wheeler rider was responsible for the accident, the owner of the vehicle is liable

for the claim and since the vehicle was insured with the appellant, the appellant/insurer is liable to indemnify the owner of the vehicle. When the owner is liable for the claim, he cannot be considered as a claimant, but the Tribunal without considering the above aspects, has apportioned 80% of the award amount in favour of the first respondent/owner of the vehicle.

12. As rightly contended by the learned counsel for the appellant/second respondent that the first respondent-owner of the vehicle cannot be shown as a claimant as she was insured. Even if the first respondent mother is made as a claimant, the Tribunal cannot award compensation as the very liability of the insurance company is only to indemnify the insured. Since the owner of the vehicle being insured, as the mother of the deceased cannot claim any compensation and that is why she was added as the first respondent.

13. As rightly contended by the learned counsel for the second respondent/insurer, the Tribunal without considering the fundamental aspect that the owner of the vehicle cannot be the claimant for compensation as the insurer is to indemnify the insured, has granted

compensation to the owner not in the capacity as insured, but the relative of the deceased and that the above approach of the Tribunal is very much against the settled legal position. Hence, this Court has no hesitation to hold that the apportionment of 80% of the award in favour of the first respondent-owner of the vehicle is legally invalid and as such, the same is liable to be set aside.

14. The learned counsel for the second respondent/insurer has also taken a stand, in the appeal memorandum, that the claimants are brother of the deceased; that the claimants were the adult male members of the family of the deceased and were not dependants on the deceased for their livelihood and that therefore, the Tribunal has committed error in granting the compensation to the claimants.

15. The learned counsel for the appellant/insurer would fairly concede the legal position settled by the Hon'ble Supreme Court that the legal representatives of the deceased are also entitled to get compensation. In the case of ***Manjuri Bera vs Oriental Insurance Company Limited,*** reported in ***2007 (1) TN MAC 385***, the Hon'ble Apex Court has held that even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation.

16. As observed by this Court in ***Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique*** reported in ***[1989]2SCR810*** the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr. [1987]3SCR404 a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

17. The Hon'ble Supreme Court in the case of ***N.Jayasree and others Vs.Cholamandalam MS General Insurance Company Limited*** reported in ***2021 2 TNMAC 639***, while considering the issue whether the mother-in-law of the deceased could be considered as his legal representative, has held as follows :

"*14.The MV Act does not define the term 'legal representative'. Generally, 'legal representative' means a person who in law represents the estate of the deceased person and includes any person or persons in whom legal right to receive compensatory benefit vests. A 'legal representative' may also include any person who intermeddles with the estate of the deceased. Such person does not necessarily have to be a legal heir. Legal heirs are the persons who are entitled to inherit the surviving estate of the deceased. A legal heir may also be a legal representative.*

16. In our view, the term 'legal representative' should be given a wider interpretation for the purpose of Chapter XII of MV Act and it should not be confined only to mean the spouse, parents and children of the deceased. As noticed above, MV Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent. We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. Section 166 of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realization of compensation .

18. In the case on hand, no doubt, the claimants are the brothers of the deceased. Considering the legal position above referred, this Court has no other option but to say that they are entitled to get compensation.

19. Since the first respondent-owner is not entitled to get any compensation, the compensation arrived at by the Tribunal is to be apportioned between the claimants. Accordingly, the claimants are entitled to share the compensation amount equally.

20. Except the above, the appellant has not canvassed any other reason or ground to impugn the award. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

21. In the result, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal granting 80% of the award amount to the third respondent/first respondent, is set aside. The respondents 1 and 2/ claimants 1 and 2 are entitled to get Rs.4,81,100/- each. The appellant/Insurance Company is directed to deposit the award amount

with interest at 7.5% from the date of petition, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the claimants are permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

08.09.2023

NCC : Yes/No
Index : Yes : No
Internet : Yes : No
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To

1.The Motor Accident Claims Tribunal /Chief Judicial Magistrate,
Sivagangai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.981 of 2018
and
C.M.P.(MD)No.10335 of 2018

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