

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 08.08.2023

PRONOUNCED ON:05.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.788 of 2019
and
C.M.P.(MD)No.10252 of 2019

The Branch Manager,
TATA AIG General Insurance Company Limited,
Raj Towers, First Floor,
No.6/7, Karur By-Pass Road,
Near Kalainjar Arivalayam,
Thiruchirappalli Town and Munsif.

: Appellant/2nd Respondent

Vs.

1.Manimegalai
2.Devendran
3.Ramkumar
4.Premkumar

: Respondents 1 to 4 /Petitioners

5.Veerakumar

: 5th Respondent/1st Respondent

6.Devi Manohari

: 6th Respondent/3rd Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the Judgment and Decree dated 15.07.2019, in M.C.O.P.No.215 of 2015, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Pattukkottai.

For Appellant : Mr.J.S.Murali

For Respondents :Mr. S.Deenadayalan
for R.1 to R.3
:Mr.I. Sri Ranganathan
for R.6
: No Appearance for R.4 and R.5

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.215 of 2015, dated 15.07.2019, on the file of the Motor Accident Claims Tribunal / Subordinate Court, Pattukkottai.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.8,34,265/- with interest at 7.5% per annum to the respondents 1 to 4 / claimants for the death of Subbaiah, consequent to an accident occurred on 22.05.2013, challenged the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.

3. The case of the claimants is that on 22.05.2013, at about 04.00p.m., the deceased Subbaiah was riding his motorcycle TVS XL

Super bearing Registration No.TN-49-AZ-9806 with his wife as pillion rider and when he tried to park his vehicle in the edge of the road near Madukkur North nother bus stand, a TATA ACE vehicle bearing Registration No.TN-49-AU-6729, which came in a rash and negligent manner dashed against the motorcycle and as a result of which, the said Subbaiah sustained grievous injuries and subsequently succumbed to injuries in the hospital on 23.05.2013 and that the accident was occurred only due to the rash and negligent driving of TATA ACE vehicle driver. It is the further case of the claimants that the deceased Subbaiah retired as Block Development Officer and was getting monthly pension at Rs. 25,000/- and after the death of the said Subbaiah, the first claimant/wife is getting family pension at Rs.15,000/-p.m.

4. The defence of the appellant/Insurer is that the driver of TATA ACE vehicle was driving the said vehicle in a very slow speed proceeding from North to South and while crossing a speed breaker nearby Shanmugam tea stall, the deceased Subbaiah who came from North towards South in his two wheeler in a rash and negligent manner, dashed against the back side of the TATA ACE vehicle and as a result of which, he sustained injuries, that the deceased alone was responsible for

the accident and there was no contributory negligence on the part of the driver of the fifth respondent, that the TATA ACE vehicle's driver was not possessing valid and effective driving licence at the time of accident and he has obtained a driving licence to drive Light Motor Vehicle / non-transport vehicle, that he has not obtained any valid driving licence with specific endorsements to drive the transport vehicle and that therefore, the insurer is not liable for the claim.

5. During enquiry, the claimants have examined the claimants 1 and 3 as P.W.1 and P.W.2 respectively and exhibited 19 documents as Exs.P.1 to P.19. The appellant/Insurer has examined its Assistant Manager as R.W.1 and exhibited 5 documents as Exs.R.1 to R.5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned order dated 15.07.2019, holding that the accident was occurred only due to the rash and negligent driving of the TATA ACE vehicle's driver, directed the appellant/Insurer to pay the compensation of Rs. 8,34,265/- with interest at 7.5% per annum from the date of petition till the date of realization. Aggrieved by the said award, the Insurer has come forward with the present Civil Miscellaneous Appeal.

6. The learned Counsel for the appellant would submit that the trial Court has failed to consider that the deceased who was riding a motorcycle, has hit behind the TATA ACE vehicle and the deceased alone is responsible for the accident, that the Tribunal has failed to consider that the F.I.R., was registered only against the deceased and he is the tortfeasor and that tortfeasor cannot claim compensation for his own wrong and the deceased being a tortfeasor, the claimants are not entitled for any compensation from the Insurer. He would further submit that the Tribunal erred in awarding 10% of the income towards future prospects for the deceased aged about 66 years and the same is very much against the law laid down by the Constitution Bench of the Hon'ble Supreme Court in *National Insurance Company Ltd., Vs. Pranay Sethi* reported in **2017(2) TNMAC 609 (SC)**, which contemplated that there cannot be any addition towards future prospects for the age above 60 years and that therefore, the award granted under various heads are excessive and not warranted.

7. The learned Counsel for the respondents/claimants would submit that the TATA ACE vehicle driver had driven the vehicle in a rash

and negligent manner in a public road and thereby caused the accident, that the first claimant being the eye-witness to the occurrence has been examined as P.W.1 and that the deceased was working as Block Development Officer and was getting monthly pension at Rs.25,000/-.

8. The points that arise for consideration are

(1) Whether the Tribunal erred in rendering a finding that the accident was occurred only due to the rash and negligent driving of the TATA ACE vehicle driver, despite showing that the deceased alone had hit the back side of the TATA ACE vehicle and invited the accident and that the F.I.R., came to be registered only against the accused?

(2) Whether the quantum of compensation arrived at by the Tribunal is just and proper and is in accordance with law?

Points 1 and 2:

9. Admittedly, on the basis of the complaint lodged by the TATA ACE vehicle driver, F.I.R., came to be registered in Cr.No.128 of 2013, on the file of the Mathukkoor police station against the deceased Subbaiah. P.W.1 – wife of the deceased, who had accompanied the

deceased at the time of accident, in her chief examination affidavit, has reiterated the contentions raised in the claim petition with regard to the mode of accident. P.W.1 would say that while her husband was attempting to park the two wheeler and to get into the bus in the Mathukkoor north bus stand, the TATA ACE vehicle bearing registration No. TN-49-AU-6729, which came from South to North in a rash and negligent manner, had dashed against the two wheeler and as a result of which, the said Subbaiah fell down and sustained injuries and he was taken in an ambulance to the Government Hospital, Pattukkottai and after first aid treatment, he was referred to Thanjavur Medical College Hospital and that the accident was occurred only due to the rash and negligent driving of the TATA ACE vehicle driver. Though P.W.1 was cross-examined at length by the Insurer, nothing was elicited in their favour.

10. As rightly observed by the Tribunal, after the accident, the deceased Subbaiah was admitted in the Government Hospital at about 06.30p.m., on 22.05.2013. According to the claimants, the accident was occurred at about 04.00p.m., on 22.05.2013. In Ex.P.2 – accident register extract, they have referred the mode of accident. Admittedly F.I.R., came

to be registered at 08.30 a.m., on 23.05.2013. Though the injured Subbaiah was admitted on 22.05.2013 at about 06.30p.m., no statement was taken by the jurisdictional police. Though the appellant has been alleging that the deceased alone was responsible for the accident and the TATA ACE vehicle driver was not at fault, they have not chosen to examine the TATA ACE vehicle driver or any other witness who had allegedly witnessed the occurrence to show that the deceased alone was at fault. The appellant has not even chosen to produce the rough sketch, Motor Vehicle Inspector's report and charge sheet if any filed by the jurisdictional police.

11. As rightly contended by the learned Counsel for the respondents, except the F.I.R., the appellant/Insurer has not produced any iota of materials to prove their defence regarding the mode of accident. Considering the above, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the TATA ACE vehicle driver and that the deceased was not a joint tortfeasor, cannot be found fault with.

12. Though the Insurer has taken some stand before the Tribunal that there were violations of policy conditions, the same was not pressed into service before this Court. It is settled law that whenever the Insurer takes a defence of violation of policy conditions, then it is for the insurer to prove the violation of the specific breach of the policy conditions, to get it exonerated from liability.

13. The Tribunal, considering the evidence available on record and taking note of the legal position, has rightly come to a decision that the Insurer has not proved that the fifth respondent and his driver have violated the policy conditions.

14. Now turning to the quantum of compensation, as already pointed out, it is the specific case of the claimants that the deceased was working as Block Development Officer and after retirement, he was getting the pension at Rs.25,000/- per month. The Tribunal, taking note of the Pension Payment Order under Ex.P.14 and Pension Book under Ex.P.18, has rightly fixed the age of the deceased as 66 years 7 months at the time of accident. It is evident from the records, the deceased was paid monthly pension of Rs.15,339/-.

15. The learned Counsel for the appellant would mainly contend that the Tribunal has added 10% of the income towards future prospects and the same is very much against the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd., Vs. Pranay Sethi* reported in **2017(2) TNMAC 609 (SC)**, which contemplated that there cannot be any addition towards future prospects for the age above 60 years.

16. No doubt, there is no dispute about the said legal position. But in the case on hand, the deceased was a Government servant. As rightly contended by the learned Counsel for the respondents, even pensioners used to get D.A., hike and the pension will be increased based on the Pay Commission recommendations and that therefore, the Tribunal has rightly added 10% of the income towards the future prospects. Considering the above, the action of Tribunal cannot be found fault with.

17. As per the dictum laid down in *Sarla Verma and others Vs. Delhi Transport Corporation and another* reported in **2009(2) TNMAC 1 (SC)**, the Tribunal has rightly deducted 1/4th of the income towards his personal and living expenses of the deceased and rightly applied the

multiplier “5” and arrived at Rs.7,59,265/- for loss of dependency. The Tribunal has rightly awarded Rs.40,000/- for loss of consortium to the first claimant/wife and Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.5,000/- for loss of damages to vehicles and articles and transportation under the conventional heads. Considering the above, the total compensation award at Rs.8,34,265/- is very much reasonable and the same cannot be said to be excessive. Hence, this Court is not inclined to interfere with the award passed by the Tribunal. Consequently, this Court concludes that the Civil Miscellaneous Appeal is devoid of merits and the same is liable to be dismissed.

18. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

05.09.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

- 1.The Motor Accident Claims Tribunal/
Subordinate Court, Pattukkottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

C.M.A(MD)No.788 of 2019

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.788 of 2019

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