IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CMA No.262 of 2021

National Insurance Co.Ltd.,
No.751, Mount Road,
Chennai - 600 002. ... Appellant

Vs.

Palaniappan(Deceased)
1.P.Manonmani
2.P.Santhosh
3.P.Divya
4.K.M.Koran Nambiar ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 26.04.2010 made in MCOP No.5300 of 2005 on the file of Motor Accident Claims Tribunal II, Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.P.D.Selvaraj for R1 to R3
R4-Disd vie order dated 29.04.2024

JUDGMENT

The Insurance Company have filed the appeal against the judgment and decree dated 26.04.2010 made in MCOP No. 5300 of 2005 on the file of Motor Accident Claims Tribunal II, Court of Small Causes, Chennai questioning the liability and quantum of compensation.

2. The case of the claimants is that on 25.08.2005 at about 16.00 hours, when the petitioner was walking along Ethiraj Salai, in front of Ethiraj Woman College, Chennai, from East to West direction, a car bearing Reg.No.TN 01 X 9894 drove the vehicle in a rash and negligent manner and came from behind and dashed against the petitioner and caused accident. As a result, the petitioner was thrownout and he sustained grievous injuries. He took treatment at A.K.S.Nursing Home, Kelleys, Chennai from 25.08.2005 to 05.09.2005 and the Discharge Summary was marked as Ex.P1. Thereafter on 09.12.2005, the victim succumbed to death. Under these circumstances, the claim petition came to be filed by the legal heirs before the Tribunal seeking for payment of compensation for the death of the Palaniappan.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the car belonging to the Insurance Company.

4. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.11,70,500/- under various heads as follows :-

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Extra Nourishment Charges	5,000
2.	Transport Expenses	5,000
3.	Medical Expenses	84,500
4	Mental Agony to the petitioner	10,000
5.	Compensation for pain and sufferings	10,000
6	Permanent Disability and Loss of Earnings	10,56,000
	Total Compensation	11,70,500

5. The above compensation was directed to be paid by the Driver and the Insurance company with interest at the rate of 7.5% per annum.

6. The Insurance Company has filed the above appeal questioning the negligence and quantum of compensation passed by the Tribunal.

7. The learned counsel for the appellant/Insurance Company submitted that the FIR/Ex.P5 was registered as against the driver of the car. In the FIR, it is stated that the deceased crossed the road as pedestrian. The driver of the car was came from behind in a rash and negligent manner and caused accident. Ignoring theses facts, the Tribunal, has fastened the negligence as against the Insurance Company, which is not sustainable.

8. The learned counsel further submitted that the deceased was a Sales Manager and was earning a sum of Rs.8,000/- per month. Even

then, the Tribunal has fixed monthly income at Rs.12,000/- and after deducting 1/3rd amount towards his personal expenses, awarded a sum of Rs.10,56,000/- which is highly exorbitant and this Court may interfere with the same. He further submitted that the petitioner has taken treatment for the period 25.08.2005 to 05.09.2005 and the Discharge Summary was marked as Ex.P1 and the discharge summary was marked as Ex.P2. Hence, the petitioner's death is not due to the said accident. Therefore, liability fixed on the appellant has to be set aside.

9. The learned counsel for the claimants submitted that admittedly, the deceased crossed the road as a pedestrian and a car came from behind which was driven by the 4th respondent and insured with the appellant, caused the accident. In view of the evidence of PW2, it is clear that due to rash and negligent driving of the driver of the car, the accident had happened. After considering the entire fact, the Tribunal has awarded compensation for the death of the deceased, which is perfectly in order and the same does not warrant any interference.

10. Heard the learned counsel for Insurance Company and the learned counsel for claimants.

11. This Court carefully considered the submissions made on either side and the materials available on record.

12. This Court also carefully went through the award passed by the Tribunal.

13. The first ground to be gone is with regard to the question of negligence raised by the Insurance Company. As rightly submitted by the learned counsel for the claimants that to prove the case of the claimants, PW2, who is an eyewitness, was examined. The Tribunal while considering the above evidence, concluded that the Insurance Company ought to have examined some independent witness in this case and whereas, they examined only the driver of the car and not examined any independent witness. Hence, the Tribunal came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the car belonging to the Insurance Company.

14. It is true that there was no clinching evidence beyond reasonable doubt to establish that the accident had taken place in the manner in which the driver of the car had projected it. The driver will always give the version which is advantageous to him. The claimants on the other hand will give a version which is advantageous to them. That is the reason why, the Tribunal was insisting for an independent witness. In view of the same, the decision that was arrived at by the Tribunal cannot be held to be perverse. Consequently, the finding of the Tribunal by fixing the negligence against the driver of the car is hereby confirmed.

15. Insofar as the compensation is concerned, this Court finds that the quantum fixed by the Tribunal under various heads is reasonable. Further, the accident had taken place in the year 2005 and the deceased was working as a salesman at that time of the accident, for which, the Tribunal has fixed a sum of Rs.12,000/- as notional income and after deducting 1/3rd amount towards his personal expenses since the age of the deceased is 55 years, awarded a sum of Rs.10,56,000/-, which is

perfectly in order. Hence, the appeal filed by the appellant is not sustainable.

16. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed. The appellant insurance company is directed to deposit the entire amount awarded by the Tribunal along with interest at 7.5% and costs, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

11.11.2024

msv

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No

To

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