BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.08.2024

DELIVERED ON : 02.09.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGOVAN

C.M.A.(MD).No.818 of 2022
and C.M.P.(MD).No.7656 of 2022

M/s.United India Insurance Co. Ltd.,
Through its Divisional Manager,
No.81C, West Great Cotton Road,
Thoothukudi,
Thoothukudi District. ... Appellant/2nd Respondent

Vs.

1.Paripooranam

2.Ganesapandi

3.Muthuvel ... Respondents/1 to 3 Claimants

4.M/s.Industrial Mineral Co. (Firm),
No.1/1C, Harbor Express Highways Road,
Thermal Nagar,
Thoothukudi,
Thoothukudi District. ... Respondent/1st Respondent

5.Harris ... Respondent/3rd Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 23.02.2022 made in M.C.O.P.No.1812 of 2017 on the file of the Motor

Accident Claims Tribunal (I Additional District Court, Tirunelveli).

For Appellant : Mr.B.Rajesh Saravanan

For Respondents : Mr.M.P.Senthil for R1 to R3
R4 & R5 – No Appearance

JUDGMENT

This appeal has been filed against the fair and decreetal order dated 23.02.2022 made in M.C.O.P.No.1812 of 2017 on the file of the Motor Accident Claims Tribunal (I Additional District Court, Tirunelveli).

2.The facts in brief:

On 19.12.2017 at about 11.45 a.m., the deceased was travelled as a pillion rider in a bike bearing Registration No.TN 69 F 5787 on the Uvary – Idayankudi Main Road. The rider of the two wheeler in rash and negligent manner suddenly turned the vehicle to his right side without showing any indication. As a result of which another bike, which was coming in the same direction bearing Registration No.TN 75 A 2498, hit the two wheeler, in which, the deceased, who was travelling as a pillion rider was thrown out, sustained injuries, taken to Asaripallam Government Government College Hospital, Nagercoil. But, without responding the treatment, he died. A case in Crime No1.5 of 2017 was registered on the file of the Uvary Police Station.

3.The deceased was aged about 55 at the time of occurrence. He was working as a gardener and apart from that he was doing Milk vending business and earning not less than Rs.20,000/- per month. Claiming compensation amount of Rs.30,00,000/- the claim application was filed by the claimants.

4.That was resisted by the Insurance Company by filing counter contending that the accident happened only due to the rash and negligent driving on the part of the rider of the two wheeler bearing Registered No. TN 75 A 2498. The owner of the vehicle and his insurer are necessary parties. The final report was filed only against the rider. Apart from that it is also contended that the deceased was not wearing helmet. The rider was not in possession of driving licence. The deceased also contributed towards the accident.

5.Regarding the first aspect of negligence, the Tribunal recorded a finding that only the first respondent's vehicle's driver was responsible for the occurrence.

6.Regarding the compensation amount, the monthly income of the deceased was fixed as Rs.9,000/- per month. Considering his age, the future prospects was fixed at 10%. 1/3rd was deducted towards the personal and living expenses. Multiplier 11 was adopted and finally loss of dependency was fixed as Rs.8,71,200/-. To that other customary amounts were added as detailed below.

Sl. No.	***Nature of Head***	***Award (Rs.)***
1.	*Loss of Dependency*	*8,71,200*
2.	*Loss of Consortium*	*50,000*
3.	*Loss of Estate*	*50,000*
4.	*Funeral Expenses*	*25,000*
	Total	***9,96,200***

7.Aggrieved over the same, the appeal is preferred by the Insurance company. The learned counsel for the appellant would submit that the deceased was a pillion rider and FIR was registered only against the other vehicle. The rider is a minor. Since there was insurance for the other vehicle, claim application has been filed against the first respondent. The Tribunal ought to have fixed the contributory negligence against the rider of the two wheeler of another vehicle.

8.Per contra, it is submitted by the respondent that contributory negligence cannot be contributed to a pillion rider. The occurrence took place because of the sudden crossing made by the first respondent. So according to him, no interference is called for over the negligence finding and as well as the quantum.

9.The learned counsel for the appellant would rely upon the judgment of the Honourable Supreme Court made in the case of ***National Insurance Co. Ltd., Vs. Chamundeswari and others*** reported in ***2021 (2) TN MAC 449 (SC),*** on the aspect of negligence.

10.We will go by the evidence on record. In the petition itself it is stated by the claimants that the first respondent suddenly turned his right without showing any indication. As a result of which, another vehicle which belongs to the third respondent hit the two wheeler, in which, the deceased sustained injuries.

11.The Tribunal fixed the liability of negligence on the first respondent in the main petition. It was rightly held so because the manner of the accident itself indicates the rash and negligent driving on the part of the first respondent. When he turned right, he ought to have taken proper care and cautions by showing proper indication. So without indication he crossed to the right and invited the accident. So I find absolutely no reason to interfere into the finding recorded by the Tribunal.

12.The contention on the part of the appellant that the rider of the two wheeler, in which, the deceased was travelling, drove the vehicle in rash and negligent manner, is without any evidence. The further contention that contributory negligence ought to have been fixed, is also without any proper evidence. So regarding the first aspect of negligence, I find no substance in the arguments advanced by the appellant.

13.Regarding the coverage, there is some issue, because the deceased was a pillion rider. Unless a package police was issued, pillion rider cannot claim compensation. For that purpose the policy document was ordered to be produced.

14.Perusal of the police copy shows that it is a package policy and seating capacity is noted as two and since it is package police, the persons who were travelling as pillion rider is also to be covered.

15.Standard format of the package policy condition with regard to the liability reads as under:

> ***"Section II – Liability to Third Parties*** *1. ....*
> *i)death of or bodily injury to any person including occupants carried in the insured vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor vehicles Act, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured."*

16.So as noted by the Tribunal since the third respondent's vehicle is also involved in the occurrence, the claimants being the legal heirs of the deceased are entitled to claim compensation either before the Commissioner of Labour under the provisions of Workmen Compensation Act or before the Motor Accidents Claims Tribunal. Since it is a package policy, the appellant Insurance Company cannot disown the liability.

17.But, however, the learned counsel for the appellant would submit that the first respondent's vehicle driver did not own proper driving licence. That was not established before the Tribunal. So apart from that it is also submitted that the contributory negligence ought to have been fixed by the Tribunal. Since there was negligence on the part of the third respondent also, but as seen from the finding of the trial Court, the occurrence took place because of the sudden turning made by the first respondent towards the right without noticing the vehicle coming in the backside and making indication. So the entire responsibility was rightly fixed upon the first respondent before the Tribunal. The second respondent, who is the appellant herein is the insurer of the first respondent is liable to pay the compensation.

18.Regarding the compensation amount also, I find no reason to interfere. The age of the deceased was taken as 55 on the basis of the entry made in the postmortem report. It is not disputed by the claimants. Due to the absence of proper proof of income, the notional income was fixed as Rs.19,000/-. Since it is stated that he was working as gardener under the first respondent, multiplier 11 was adopted. Future prospects 10% was taken and finally loss of dependency was fixed at Rs.8,71,200/-. It was correctly fixed. But, loss of consortium was fixed as Rs.50,000/-, which is not proper. So it is reduced to Rs.40,000/-. Loss of Estate is fixed as Rs.50,000/-, which is also reduced to Rs.15,000/-. Funeral Expenses is also reduced to Rs.15,000/-, which the Tribunal fixed as Rs.25,000/-. So the award of compensation is reduced as follows:

Sl. No.	***Nature of Head***	***Award (Rs.)***
1.	*Loss of Dependency*	*8,71,200*
2.	*Loss of Consortium*	*40,000*
3.	*Loss of Estate*	*15,000*
4.	*Funeral Expenses*	*15,000*
	Total	***9,41,200***

19.Accordingly, this civil miscellaneous petition stands partly allowed.

(i)The quantum of compensation awarded by the Tribunal is reduced to ***Rs.9,41,200/- (Nine Lakhs Forty One Thousand and two hundred only)***, which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant/ insurance company is directed to deposit the entire compensation of ***Rs.9,41,200/- (Nine Lakhs Forty One Thousand and two hundred only)*** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs before the Tribunal, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / insurance company, the claimants are also permitted to withdraw the entire award amount of ***Rs.9,41,200/- (Nine Lakhs Forty One Thousand and two hundred only)*** as apportioned by the trial Court and they after following the due process of law, less any amount already received by them.

(iv) Consequently, connected miscellaneous petition stands closed. No costs.

02.09.2024

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

1.The I Additional District Judge, Motor Accidents Claims Tribunal,
Tirunelveli.

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

G.ILANGOVAN,J.

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