

The Manager, Vs. 1.R.Chitra

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Court : Chennai

Decided On : Mar-08-2013

Judge : C.S.Karnan

Appellant : The Manager,

Respondent : 1.R.Chitra

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

08. 03/2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN C.M.A.(MD)No.218 of 2010 & M.P.(MD)No.1 of 2010 The Manager, The United India Insurance Company Limited, 23E, EVR Road, Puthur, Trichy. ... Appellant Vs. 1.R.Chitra 2.Ramanathan @ Rajendran 3.Karthikeyan ... Respondents PRAYER Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 19.10.2009 passed in M.A.C.T.O.P.No.73 of 2007, on the file of the Motor Accidents Claims Tribunal, Sub Court, Devakottai. !For Appellant ... Mr.G.Prabhu Rajadurai ^For Respondents... Mr.J.Anandkumar for R-1 and R-2 R-3 (Exparte) - - - :JUDGMENT The appellant / second respondent has preferred the present appeal against the judgment and decree passed in M.C.O.P.No.73 of 2007, on the file of the Motor Accidents Claims Tribunal, Sub Court, Devakottai.

2. The short facts of the case are as follows:- The petitioners, who are the parents of the deceased Vinodkumar have filed the claim in M.C.O.P.No.73 of 2007,

claiming compensation of a sum of Rs.6,70,000/- from the respondents for the death of the said Vinodkumar in a motor vehicle accident. It was submitted that on 03.06.2007, the (deceased) Vinod Kumar rode the first respondent's Hero Honda motorcycle bearing registration not TN-45-F-9844, with one Yogaraj as a pillion rider, from Keezhaseevalpatti towards Tirupattur after finishing their work at Tirupathur, when they were near Chillampatti Vilakku, an unidentified vehicle coming in the opposite direction dashed against the motorcycle and caused the accident. The rider of the motorcycle, viz., Vinodkumar sustained grievous injuries and died on the spot. The pillion rider, i.e., Yogaraj sustained injuries. At the time of accident, the deceased was 22 years and was working in a jewellery shop and earning Rs.3,000/- per month. Hence, the petitioners have filed the claim against the first and second respondents, who are the owner and insurer of the Hero Honda motorcycle bearing registration No. TN-45-F-9844.

3. The second respondent in his counter has submitted that the petitioners have to prove through documentary evidence that on 03.06.2007, the (deceased) Vinodkumar had ridden the Hero Honda motorcycle bearing registration not TN-45-F-9844, in a careful and cautious manner and that the accident was caused near Keezhaseevalpatti due to an unidentified vehicle knocking down the motorcycle ridden by the deceased. It was submitted that the accident was caused only due to the negligence of the deceased Vinodkumar. The averments in the claim regarding income of the deceased was also not admitted. It was submitted that the (deceased) Vinodkumar did not have a valid driving licence to drive the vehicle at the time of accident and as the conditions of policy of insurance of the vehicle had been violated, the second respondent, cannot be held liable to pay compensation. It was submitted that the claim was excessive.

4. The Motor Accidents Claims Tribunal had framed three issues for consideration in the case, viz., "(i) Due to whose negligence was the accident caused? (ii) Are the respondents liable to pay compensation to the petitioners? (iii) Are the petitioners entitled to get compensation claimed for in their petition?" 5. On the petitioners side, one witness was examined and six documents were marked as Exs.P1 to P6, viz., Ex.P1-copy of F.I.R., dated 03.06.2007, Ex.P2-copy of postmortem report, Ex.P3-Transfer Certificate of deceased, Ex.P4-course

certificate, Ex.P5-legal-heir certificate, Ex.P6-copy of Motor Vehicle Inspector's report. On the respondent's side, one witness was examined and no document was marked.

6. P.W.1, the mother of the deceased had adduced evidence that is corroborative of the statements made by her in the claim regarding manner of accident. She deposed that her son had a valid driving licence and that she does not know where he had kept the same. She had deposed that the accident had not occurred due to any negligence on the part of her son and that she was not able to trace out the vehicle which had dashed against her son's motorcycle.

7. R.W.1, Balasubramanian had adduced evidence that the deceased Vinod Kumar did not have a valid driving licence at the time of accident. However, the Tribunal, opined that only if the person had been certified unfit to get a driving licence, i.e., disqualified from holding a licence and if the said person had driven a vehicle, after being disqualified, he or his legal- heirs are not entitled to claim compensation for any injuries or death caused in a motorcycle accident. Hence, the Tribunal on observing that no evidence had been let in on the side of the second respondent to show that the (deceased) had been disqualified from possessing a driving licence, held the first and second respondents liable to pay the compensation to the petitioners.

8. The Tribunal, on considering that no documentary evidence had been marked to prove the income of the deceased held that the notional income of the deceased could be taken as Rs.2,000/- per month. The Tribunal, on considering that the deceased was aged 22 years at the time of accident, adopted a multiplier of '17' and awarded a sum of Rs.2,72,000/- as compensation to the petitioners under the head of 'loss of income' ($\text{Rs.}3,000 \times \frac{2}{3} \times 12 \times 17$); Rs.20,000/- was awarded under the head of 'loss of love and affection' and Rs.18,000/- was awarded towards loss of estate, transport expenses and funeral expenses. In total, the Tribunal awarded a sum of Rs.3,10,000/- as compensation to the petitioners and directed the first and second respondents to jointly and severally deposit the said sum together with interest at the rate of 6% per annum from the date of filing the petition till the date of deposit, within two months from the date of its order.

9. Aggrieved by the award passed by the Tribunal, the second respondent / United India Insurance Company Limited, Trichy has preferred the present appeal.

10. The learned counsel for the appellant / Insurance Company has contended in his appeal that the Tribunal erred in holding that the application for compensation is maintainable against the owner of the bike for the death of the rider of the bike. It was contended that the Tribunal failed to note that no one can take advantage of his own wrong. It was contended that the Tribunal failed to consider that the first liability to pay the compensation is on the person who committed the tortuous act and that the owner is vicariously liable. It was contended that the Tribunal erred in directing this appellant to pay the compensation even after it was proved that the deceased rider had no driving licence. Hence, it was prayed to set-aside the claim as against the appellant.

11. The learned counsel for the claimants has submitted that the deceased age was 22 years at the time of accident and he was earning Rs.3,000/- per month by working in a jewellery shop. The Tribunal, after well considering the judgment of Hon'ble Apex Court, reported in 2004 (1) TN MAC 104.wherein it had been observed that if the deceased was not eligible to receive driving licence and in spite of it he had driven his own vehicle and met with an accident, such a person is also entitled to get compensation. Further, the learned judge had also relied on the judgment reported in 2004 ACJ 1169.wherein it had been observed that the scooterist himself lost his balance and met with an accident, and in such a case also compensation has been granted. On the strength of the Hon'ble Apex Court case laws, the Tribunal had awarded compensation. The compensation amount is also on the lower side. The parents of the deceased were fully depending upon the income of the deceased as he was the only breadwinner of the family. Now, they are in a sorrowful mood since they have lost their only son and caretaker. In support of his contentions, the learned counsel has cited the following judgments:-
(i) M.D., Bangalore Metropolitan Tpt. Corpn. v. Sarojamma & anr reported in 2009 (2) TN MAC 11.(SC) "MOTOR VEHICLES ACT, 1988, S.163-A - Invoking of - Claimant need not establish any act of negligence on part of driver - No necessity to plead that death occurred due to any wrongful act or neglect or default of owner of vehicle." (ii) Sukhbeer Kaur v. National Insurance Co. Ltd., reported in 2008

ACJ 109."Motor Vehicles Act, 1988, Section 147 (1) Motor insurance - Owner - insured - Death of liability of insurance company - Owner of tanker died while driving his own vehicle - Tribunal dismissed the claim of legal representatives of the deceased on the ground that deceased was driving his own vehicle and policy did not cover the risk of owner - insured - certificate of insurance covered the risk of owner of vehicle in the event of any accident arising out of the use of vehicle - Whether insurance Company is liable for death of insured who died in motor accident while driving his own vehicle- Held: Yes. Evidence-Policy-Appreciation of Certificate of insurance was placed on record but was not exhibits-Insurance company never objected to this document nor denied its existence-Whether the certificate could not be discarded and reliance could be placed upon it-Held: Yes. Quantum-Fatal accident-Deceased aged 48, a businessman, earning Rs.4,000/- p.m.-Claimants: widow, two daughters, one son and mother-Appellate Court assessed income of Rs.4,000/-p.m., dependency at Rs.32,000/-p.a., adopted multiplier of '13' and allowed Rs.4,16,000/- plus Rs.15,000/- under conventional heads; total Rs.4,31,000/-. (iii) United India Insurance Co. Ltd., V. Chhaganlal Punamchand Jain reported in 2005 ACJ 104."Motor Vehicles Act, 1988, Section 166 read with section 163-A-Claim application - Structured formula - Tribunal awarded compensation under Section 166 following structured formula - Whether Second Schedule to Section 163-A can be applied in a claim application filed under Section 166-Held: yes. Quantum - Fatal accident-Principles of assessment - Multiplier - Choice of - Deceased aged 19, unmarried - claimants: father aged 48 and mother aged 45 - Tribunal adopted multiplier of 16 - Contention that multiplier with respect to age of parents ought to have been adopted - Whether the multiplier of 16 adopted by the Tribunal is appropriate - Held: no; when the deceased is unmarried, multiplier has to be reckoned having regard to the age of parents. Quantum-Fatal accident-Principles of assessment - Computation of dependency - Tribunal made 1/3rd deduction for personal expenses of the deceased who was unmarried - Contention that 2/3rd deduction out of total income of the deceased be made considering that deceased would have got married - Whether deduction of 2/3rd out of total income of the deceased be made - Held: Yes. Quantum-Fatal accident - Principles of assessment - Future prospects - Whether future income of the deceased has to be taken into consideration while assessing compensation-

Held:yes. (1996 ACJ 58.(SC) followed)" (iv) Deepal Girishbhai Soni and others V. United India Insurance Company Limited reported in 2004 ACJ 93."Motor Vehicles Act, 1988, Section 163-A read with Second Schedule and Section 166 - Claim application - Structured formula - Claim for death of parents in accidents and claimants were awarded compensation under Section 163-A read with Second Schedule - Claimants seek to pursue their claim under Section 166 treating the amount of compensation awarded as interim - Claimants contend that actual loss suffered is not adjudicated upon and merely 'adequate compensation' under structured formula has been paid; exercise of option is limited only to claims under Section 163-A or section 140 and thus remedy under Section 166 is not barred; ceiling of Rs.40,000/- per annum in Second Schedule is indicative of the fact that compensation payable is only interim in nature; when order under Section 140 is not final, there is no reason as to why an award under Section 163-A should be treated as final - Rival contention that provision of excluding 1/3rd of total and certain provision relevant for computation of total amount of compensation have been provided for is suggestive of the fact that award under Section 163-A is final - Whether the award under Section 163-A is interim and the claimants are entitled to pursue their claim under Section 166-Held: no, award under 163-A is full and final settlement of the claim, scheme envisaged under Section 163-A leaves no manner of doubt that by reason thereof the rights and obligations on the parties are to be determined finally; section 163-A does not provide for set off against a higher compensation like Section 141 (2001 ACJ 82.(SC) confirmed)" 12. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on relying upon the judgments cited by the learned counsel for the claimant and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding liability and quantum of compensation. This Court is of the further view that the Tribunal had relied on the Hon'ble Apex Court judgments made in similar cases and assessed the compensation in a similar way in the instant case. Therefore, this Court is not inclined to interfere with the impugned award. As per this Court records, it is seen that the appellant / Insurance Company had deposited part of the amount and the claimants were permitted to withdraw a portion of the deposited amount. Now, this Court directs the appellant / United India Insurance

Company to deposit the balance compensation with accrued interest thereon, after deducting the earlier deposit made by them, within a period of four weeks from the date of receipt of a copy of this order.

13. After such a deposit being made, it is open to the claimants to withdraw their apportioned share amount with accrued interest thereon, as per the Tribunal order, lying in the credit of M.C.O.P.No.73 of 2007, on the file of the Motor Accidents Claims Tribunal, Sub Court, Devakottai, after filing a Memo, along with a copy of this order, subject to deduction of withdrawals, if any, made by the claimants.

14. In the result, the above appeal is dismissed. Consequently, the order passed in M.C.O.P.No.73 of 2007, on the file of the Motor Accidents Claims Tribunal, Sub Court, Devakottai, dated 19.10.2009, is confirmed. There is no order as to costs. Connected miscellaneous petition is closed. r n s To The Sub Court, Motor Accidents Claims Tribunal, Devakottai.

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