(2011) 06 MAD CK 0514

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2434 of 2008

Bajaj Allianze General Insurance Company Ltd. APPELLANT

Vs

R. Selvaraj and Others RESPONDENT

Date of Decision : 21-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0514

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : K. Padmanabhan, for the Appellant; No Appearance, for the Respondent

Judgement

C.S. Karnan, J.—This appeal has been filed by the Appellant against the award and decree dated 22.01.2008 made in M.C.O.P. No. 2979 of 2006, on the file of the Motor Accident Claims Tribunal,(Chief Judge of Small Causes Court), Chennai.

2. The short facts of the case are as follows:

On 23.04.2006 at about 8.15 a.m., the (deceased) Laila was travelling as a pillion rider in a motor cycle bearing Reg. No. TN 55 L 7939, along with one Muthu, who was the rider, and were proceeding from Ambattur to Kolathur along the Red hills Road and when they were near Sri Lakshmi Agencies Petrol Bunk, the rider of the motor cycle rode the motor cycle in a rash and negligent manner and dashed against the quarry lying on the Road, resulting in the pillion rider being thrown out from the motor cycle. As a result of this accident, the pillion rider sustained fatal injuries and died. Hence, the Petitioners who are the legal heirs of the deceased Laila have filed a claim for Rs. 5 Lakhs against the Respondents, who are the owner and insurer of the motor cycle bearing Reg. No. TN 55 L 7939.

3. The 2nd Respondent, Bajaj Allianze General Insurance Co. Ltd., has filed a counter stating that the deceased was a pillion rider the motor cycle bearing Reg. No. TN 55 L 7939 and was a gratitious passenger in the 1st Respondent''s

vehicle. Therefore, the deceased cannot be deemed as a ''third party'' and as such the above claim petition is liable to be dismissed as not maintainable. It was also stated that the rider of the motor cycle bearing Reg. No. TN 55 L 7939 had no valid driving licence to drive the vehicle at the time of accident. It was also stated that the Petitioner should prove the age, avocation, income, place, date and time of the accident through documentary evidence and further prove that they are the legal heirs of the deceased through documentary evidence. It was also stated that the policy of insurance does not envisage any cover in respect of a pillion rider of the motor cycle unless and until extra premium is paid for the coverage of the pillion rider.

4. On the averments of both the parties, the Tribunal framed three issues for consideration in this case, namely

a. Whether the accident had occurred due to the rash and negligent riding of the motor cycle ?

b. Whether the Petitioners are entitled to get compensation from the Respondents 1 and 2 ?

c. To what other relief ?

5. On the Petitioners side two witnesses were examined as PW1 and PW2 and four documents were marked as Exs.P1 to P4, namely copy of F.I.R., copy of motor vehicles report, copy of postmortem certificate and legal heir certificate. On the side of the Respondent one witness was examined as RW1 and one document was marked as Ex.R1. Copy of insurance policy and India Motor Tariff.

6. On scrutiny of Ex.P1, F.I.R., it is seen that the Criminal Case has been registered against the rider of the motor cycle, on the basis of a complaint given by one Gopi. The manner of accident as narrated in the F.I.R., is corroborated by PW2, eye witness, to the extent that the accident occurred when the motor cyclist hit against the quarry lying on the road. The Tribunal, on considering that the accident happened at 8.15 a.m., were inclined to hold that had the rider of the motor cycle been cautious, he could have noticed the quarry lying on the road and could have avoided hitting against the same and could have avoided the accident. Hence, the Tribunal held that the accident had been caused by the rash and negligent riding of the motor cycle.

7. From a scrutiny of Ex.R1, the insurance policy, it is seen that the policy issued is a package policy and a sum of Rs. 160 is collected as premium on the basis of 3rd party liability from the insured. It is also seen that the liability to 3rd parties covers the death or bodily injury to any occupant in the insured vehicle for hire or reward. Though the 2nd Respondent has raised the questions on their liability to indemnify the Petitioners on behalf of the 1st Respondent mainly on the ground that the deceased was a pillion rider and was a gratuitous passenger and no additional premium for insurance was paid for 3rd party pillion rider, the Tribunal, on holding that the 2nd Respondent had not produced the proposal

form for the issuance of the policy, which would be a more authenticated document to show as to whether the premium is intended to cover the pillion rider or not, held that the insurance policy for the vehicle in question, taken, covers the personal risk of the unnamed pillion rider. Hence, the Tribunal held both the 1st and the 2nd Respondents jointly and severally liable to pay compensation to the Petitioners and held the 2nd Respondent, on behalf of the 1st Respondent is liable to indemnify the Petitioners.

8. Though PW1, the husband of the deceased, had adduced evidence stating that the deceased was aged 47 years and doing tailoring work and earning Rs. 3,500/- per month, no independent witness had been examined to prove the avocation and income of the deceased. Hence, the Tribunal held that the notional income of the deceased could be taken as Rs. 3,000/- per month and adopting a multiplier of 10, awarded a compensation of Rs. 3,60,000/- towards loss of income for the Petitioner (Rs. 3,000 X 12 X 10); Further, the Tribunal awarded Rs. 5,000/- towards transport to hospital and Rs. 5,000/- for funeral expenses; Rs. 5,000/- towards loss of consortium to the 1st Petitioner; and Rs. 5,000/- each for loss of love and affection to the Petitioners 2 to 4. In total, the Tribunal awarded Rs. 3,90,000/- as compensation together with interest at the rate of 7.5% per annum from the date of petition till date of deposit and directed the 2nd Respondent, on behalf of the 1st Respondent, to deposit the award with interest, within two months from the date of its order.

9. Aggrieved by the said award passed by the Tribunal, the 2nd Respondent, Bajaj Allianze General Insurance Co. Ltd., has filed the present appeal to set aside the award passed. The learned Counsel for the Appellant has argued that no additional premium was collected from the owner of the motor cycle in order to cover the risk of the said pillion rider. It was also pointed out that the Tribunal erred in interpreting the terms and conditions of the policy which was marked as Ex.R1, in which, it clearly indicates that a sum of Rs. 160/- is collected as premium on the basis of 3rd party liability and hence, the Tribunal was wrong in holding that the terms and conditions of policy covers the death or bodily injury to any occupant in the insured vehicle for hire or reward. It was also submitted that the Tribunal should have deducted 1/3rd of notional income of deceased for her personal expenses and then arrived at a sum of Rs. 24,000/- per annum as the loss of income to the family of the deceased. It was also argued that the Tribunal had wrongly fixed the notional income of deceased as Rs. 3,000/- without any documentary evidence.

10. Considering the facts and circumstances of the case and arguments advanced by the learned Counsel for the Appellant and on perusing the impugned award passed by the Tribunal, this Court is of the considered opinion that as per claimants'' statements, the deceased was earning Rs. 3,500/- per month through tailoring profession, out of which the Tribunal had to deduct 1/3rd for personal expenses of deceased. This contention has been raised by the learned Counsel for the Appellant. In the instant case, the claimants are four in

number and as such only 1/4 of the income of deceased has to be deducted as her personal expenses. After deducting1/4 of the income, the loss of income to the claimants is Rs. 3,15,000/- (Rs. 3500X1/4X3X10X12). The balance of compensation of Rs. 75,000/- is awarded as follows:Rs. 30,000/- towards love and affection; Rs. 10,000/- for loss of consortium; Rs. 10,000/- for funeral expenses; and Rs. 25,000/-towards loss of estate.

11. The Appellant has contended that a pillion rider cannot be considered as 3rd party as per insurance policy. The pillion rider was not a owner of the vehicle and as such this Court considers that the deceased could only be taken as a 3rd party.

12. The age of the deceased was 47 years and she was engaged as a tailor and was earning Rs. 3,500/- per month. The accident had taken place in the year 2006. Considering these aspects, the quantum of compensation of a sum of Rs. 3,90,000/- awarded by the Tribunal is not on the higher side. Therefore, the impugned award passed by the learned Tribunal is confirmed, as it is found to be fair and Justifiable. On 08.08.2008, this Court imposed a condition on the Appellant to deposit the entire compensation amount.

13. It is open to the claimants to withdraw their apportioned share amount with accrued interest thereon lying in the credit of M.C.O.P. No. 2979 of 2006, on the file of the Motor Accident Claims Tribunal,(Chief Judge of Small Causes Court), Chennai, after filing memo along with a copy of this order, subject to withdrawals, if any, made already.

14. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, the award and decree dated 22.01.2008 made in M.C.O.P. No. 2979 of 2006, on the file of the Motor Accident Claims Tribunal, (Chief Judge of Small Causes Court), Chennai is confirmed. Consequently, connected Miscellaneous Petition is closed, if any. There is no order as to costs.