(2022) 11 TEL CK 0099

In the Telangana High Court

Case No : Motor Accident Civil Miscllaneous Appeal No. 1555 Of 2019

Cholamandalam M.S. General Insurance Co. Ltd. APPELLANT

Vs

Yamsani Sridevi RESPONDENT

Date of Decision : 23-11-2022

Acts Referred:

Citation : (2022) 11 TEL CK 0099

Hon'ble Judges : M.G.Priyadarsini, J

Bench : Single Bench

Advocate : A Ramakrishna Reddy, Ramachandar Rao

Final Decision : Dismissed

Judgement

1. Being dissatisfied with the order and decree passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-Principal District Judge, Karimnagar, in M.V.O.P.No.666 of 2015 dated 08.05.2018, Cholamandalam M.S. General Insurance Company Limited has filed the present appeal.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. Brief facts of the petitioners' case are that on 26.06.2013, the deceased Kumari Yamsani Sravanthi boarded an auto bearing No. AP 15 TB 5925 at Jammikunta and was proceeding to Huzurabad to meet her mother and on the way near Indiranagar H/o Chalpur Village at about 11-00 A.M., the auto was driven by its driver in a rash and negligent manner at high speed and when he tried to avoid a dog, it went and hit a motorcyclist and the auto turned turtle. Due to which, the deceased fell down and received several injuries all over the body and she was given preliminary treatment at Guardian Hospital, Warangal and she succumbed to injuries while undergoing treatment at Gandhi Hospital, Secunderabad on 28.06.2013. According to the petitioners, the deceased was aged 22 years, working as Manager in Pavan Motors, Hero Honda Showroom, Jammikunta and was earning Rs.12,000/- per month. Thus, the petitioners

claimed compensation of Rs.20,00,000/- under various heads.

4. Respondent No.1 though appeared before the Tribunal, did not file counter. Respondent No.2 filed counter disputing the manner of accident, age, avocation and income of the deceased. It is further contended that the compensation claimed by the petitioners is highly excessive and prays to dismiss the petition.

5. Based on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred due to rash and negligent driving of the auto bearing No. AP.15.TB.5925 by its driver or due to rash and negligent riding of motorcycle bearing No. AP.15.AG.4689?

2. Whether the petitioners are entitled to compensation, if so, to what amount and from which of the respondents?

3. Whether the petition is bad for non-joinder of necessary parties?

4. To what relief?

6. In order to prove the issues, PWs.1 to 3 were examined and Exs.A1 to A10 and Exs.X1 to X3 got marked on behalf of the petitioners. On behalf of respondent No.2, RW.1 was examined and Exs.B1 was marked.

7. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.15,51,660/- towards compensation to the claimants against the respondent Nos.1 and 2 jointly and severally, along with proportionate costs and interest @

7. 5% per annum from the date of filing of the petition till the date of actual deposit.

8. Heard the learned Standing Counsel for the appellant-Insurance Company and the learned Counsel for the respondent Nos.1 to 4/claimants. Perused the material available on record.

9. The learned Standing Counsel for the appellant-Insurance Company contended that the decree of the Tribunal is contrary to law, weight of evidence and probabilities of the case; that there was no negligence on the part of the driver of the offending vehicle and the Tribunal has erred in fastening the liability on the appellant-Insurance Company and the amount awarded is exorbitant. Accordingly, prayed for setting aside the impugned order in the O.P.

10. The learned Counsel appearing on behalf of respondent Nos.1 to 4-claimants submitted that the Tribunal after considering the oral and documentary evidence available on record, has awarded reasonable compensation and the same needs no interference by this Court. Therefore, the learned counsel sought for dismissal of the appeal.

11. With regard to the manner of accident, the learned Standing counsel for the Insurance Company pleaded that there was no negligence on the part of the

driver of the offending vehicle, and in support of their contention the driver-cum-owner of the auto was examined as RW-1 and he stated that when a dog came on the way he tried to avoid it and thus his auto hit the motorcycle, whereby the auto turned turtle and the deceased fell down and sustained injuries and died while undergoing treatment. This part of his evidence itself clearly shows that the accident had taken place due to his fault only. Further the evidence of PWs.1 and 3 coupled with the documentary evidence available on record clearly shows that the accident occurred due to the rash and negligent driving of the driver of the auto. Therefore, the Tribunal rightly held that the accident occurred due to the rash and negligence on the part of the driver of the auto.

12. With regard to the quantum of compensation is concerned, according to the petitioners, the deceased was aged 22 years, working as Manager in Pavan Motors, Hero Honda Showroom, Jammikunta and was earning Rs.12,000/- per month and the same was also supported by the employer of the deceased who was examined as PW.2. However, since Ex.X-2 Salary Register maintained by PW-2 shows that the normal wage payable to the deceased was Rs.10,000/-and for overtime work, the employees are being used to pay extra remuneration. Therefore, considering Ex.X-2, the tribunal rightly taken the income of the deceased at Rs.10,000/- per month, added 40% of future prospectus on it and by deducting 50% towards personal and living expenses of the deceased who is a bachelor, awarded an amount of Rs.15,12,200/- towards loss of dependency. Further the Tribunal awarded an amount of Rs.10,000/- towards transportation charges, Rs.15,000/- towards funeral expenses, Rs.14,660/- towards medical expenses and in total, the Tribunal awarded an amount of Rs.15,51,660/-, which is just and reasonable.

13. With regard to the liability, as stated above, the accident occurred due to the rash and negligent driving of the auto and the same was insured with the respondent No.2, the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation. Therefore, in view of the above discussion, this Court is of the opinion that there are no valid grounds to interfere with the cogent findings given by the Tribunal and the appeal is liable to be dismissed.

14. In the result, the M.A.C.M.A. is dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

