(2014) 07 MAD CK 0180

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 900 of 2014 and M.P. No. 1 of 2014

National Insurance Company APPELLANT

Vs

Saraswathi RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Citation : (2014) 07 MAD CK 0180

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Judgement

R. Subbiah, J.—Challenging the findings rendered by the Motor Accident Claims Tribunal, Tiruchengode, in and by award dated 29.01.2013 in M.C.O.P.No.2 of 2009, fixing the liability on the part of the appellant herein/Insurance Company to pay the compensation amount to the respondents 1 to 3 herein/claimants, the present appeal has been filed by the Insurance Company.

2. The respondents 1 to 3 herein are the claimants and they are the wife, son & daughter of the deceased Devaraj, respectively. It is the case of the claimants that on 25.02.2005 at about 7.30 pm, while the deceased Devaraj was riding a two-wheeler viz., Suzuki Bike, from Namakkal to Tiruchengode, a mini-auto bearing Registration No.TN 34 B 0252, which was proceeding in front of him, was suddenly stopped by its driver. In that process, the rider of the two-wheeler Devaraj, who was coming behind the mini-auto, hit on the rear side of the mini-auto, as a result of which he was thrown away from the two-wheeler and sustained grievous injuries and died on the spot. Hence, the respondents 1 to 3 herein/claimants made a claim as against the owner of the mini-auto as well as the Insurance Company/appellant herein.

3. The case of the claimants was resisted by the Insurance Company contending that at the time of accident, the mini-auto was parked on the extreme left side of the road, and it was the deceased Devaraj who came in a rash and negligent manner in the two-wheeler, hit behind the mini-auto, which was parked on the left side of the road, and thus, he got himself involved in the accident. Further,

the learned counsel for the Insurance company submitted that the First Information Report registered against the driver of the mini-auto was also closed by the Police as charge abates. It is also submitted by the learned counsel for the appellant/Insurance company that in any event, at least the Tribunal ought to have fixed the contributory negligence on the part of the deceased Devaraj and thereby, ought to have deducted 50% of the compensation amount.

4. Per contra, the learned counsel for the claimants made submission supporting the award passed by the Tribunal.

5. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

6. In order to prove the nature of accident, on the side of the claimants, an eye-witness to the occurrence was examined as P.W.2. In his evidence, P.W.2 has categorically stated that on the date of accident, he was proceedings in a two-wheeler from east to west, the deceased Devaraj was proceedings in front of him in another two-wheeler, and at that time, the mini-auto, which was proceedings ahead of the two-wheeler of the deceased, was suddenly stopped by its driver without giving any signal, and that the deceased, who had not expected the sudden act of the driver of the mini-auto in stopping the vehicle, lost the balance and hit on the rear side of the mini-auto, thus he sustained injuries. P.W.2 has further stated in his cross-examination that it is incorrect to state that at the time of accident, the mini-auto was parked on the left side of the road.

7. P.W.2 is an independent witness, who has lodged the FIR. His evidence is very clear that the accident had occurred only due to the rash and negligent act of the driver of the mini-auto. Though the Insurance Company has taken a defence that the deceased had hit on the rear side of the mini-auto, except R.W.1-driver of the mini-auto, who is an self-interested witness, no other independent witness was examined on the side of the Insurance Company. Further, the Insurance Company has not taken any effort to mark the crucial document viz., Sketch. The Tribunal, after considering the evidence adduced on both sides, has come to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the mini-auto insured with the appellant herein/Insurance Company.

8. Though the learned counsel for the Insurance Company submitted that the First Information Report, which was registered against the driver of the mini-auto, was closed by the Police as charge abates, I find from the evidence of P.W.1 that since the driver of the mini-auto died during the pendency of the criminal proceedings, FIR was closed as charge abates. Hence, no significance could be attached to Ex.R.2, referred chargesheet, marked on the side of the Insurance Company.

9. Looking at any angle, I do not find any infirmity in the finding rendered by the Tribunal in fixing the liability on the part of the Insurance Company to pay the compensation amount.

10. So far as the quantum of compensation is concerned, it is the case of the claimants that the deceased was doing Rig Service and he was earning Rs.20,000/- per month. But, the Tribunal has taken only a sum of Rs.5,000/- as monthly income of the deceased and after deducting 1/3 towards his personal expenses and applying multiplier of 14, based on the age of the deceased, who was 43 years at the time of death, has awarded a sum of Rs.5,60,000/- towards loss of income. That apart, the Tribunal has awarded a sum of Rs.10,000/- for funeral expenses, a sum of Rs.2,000/- for Transportation and a sum of Rs.25,000/- for loss of love and affection. Thus, the Tribunal has passed an award for a total sum of Rs.5,97,000/- as compensation. I do not find any infirmity in the award passed by the Tribunal.

11. In the result, the Civil Miscellaneous Appeal is liable to be dismissed and accordingly, the same is dismissed. The appellant/Insurance Company is directed to deposit the entire award amount, with proportionate accrued interest and costs, if not deposited so far, to the credit of the above said MCOP. The claimants are permitted to withdraw the same, by making necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

