(2014) 07 MAD CK 0013

In the Madras High Court

Case No : C.M.A.No.3134 of 2010 and M.P.No.1 of 2014

Royal Sundaram Alliance Insurance Co. Ltd. APPELLANT

Vs

Suguna RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Citation : (2014) 2 TNMAC 449

Hon'ble Judges : Mr. R.Subbiah, J.

Bench : Single Bench

Advocate : Mr. M.B. Gopalan, Advocate, for the Applicant; Mr. C. Veeraraghavan, Advocate, for the Respondent Nos. 1 to 3; No appearance, for the Respondent No. 4; Died, for the Respondent No. 5; Ex parte, for the Respondent Nos. 6 and 7; Mr. Elveera Ravindran, Advocate, for the Respondent No. 8

Final Decision : Disposed Off

Judgement

Mr. R.Subbiah, J.—By consent, this Civil Miscellaneous Appeal is taken up for final hearing.

2. This appeal has been filed by the Insurance company against the award dated 09.07.2010 made in MCOP NO.558 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal District Court), Villupuram, questioning the finding of the tribunal, in fixing the entire liability for the accident on the part of the driver of the vehicle insured with them.

3. Respondents 1 to 5 are the claimants before the Tribunal. The first respondent is the wife of the deceased, respondents 2 and 3 are minor daughter and son respectively and the fourth and fifth respondents are the parents of the deceased. Sixth respondent is the owner of the offending vehicle, seventh respondent is the employer of the deceased and eighth respondent is the insurer of the vehicle driven by the deceased.

4. It is the case of the respondents/claimants before the Tribunal that on the date of accident, the driver of the Tanker Lorry bearing Regn.No.TN02Q7479,

namely Jaganathan, was proceeding from Pondicherry towards Chennai and another lorry bearing Regn.No.TN31F9981 insured with the appellant Insurance Company, came in a rash and negligent manner and dashed against the lorry bearing Regn.No.TN02Q7479 and thus caused the accident and in the said accident, the said Jaganathan died on the spot. At the time of accident he was aged 31 years and as a H.T.V Lorry Driver in 6th respondent company, earned a sum of Rs.10,600/- as monthly income. The respondents/claimants has made a claim for Rs.20,00,000/- against the owner of the lorry bearing Regn.No.TN31F9981 and insurer, the appellant insurance company herein and also against the owner of the Tanker lorry bearing Regn.No.TN02Q7479 and its insurer viz., M/s.New India Assurance Company Limited, Chennai, the 8th respondent herein.

5. In order to prove the claim, on the side of the respondents/claimants, three witnesses were examined as Pws.1 to 3 and marked 16 documents viz., Ex.P1 to P16. On the side of the appellant insurance company no oral evidence was adduced. Only the Investigation Report was marked as Ex.R1. On the side of M/s.New India Assurance Company Limited, Chennai, 8th respondent herein, an official from the said insurance company was examined as RW1 and the investigation report was marked as Ex.R2.

6. The said claim was resisted by the appellant insurance company contending that the accident occurred only due to the contributory negligence of the deceased. That apart, the insurance company has also taken a defence that the amount of Rs.20,00,000/- claimed by the claimants is extremely on the higher side and as such the claim petition is liable to be dismissed.

7. The Tribunal after analysing the entire evidence, both oral and documentary, has come to the conclusion that the accident was the result of rash and negligent driving of the driver of the lorry bearing registration No.TN31F9981, insured with the appellant insurance company and thus, fixed the entire liability on the part of the appellant insurance company to pay the compensation amount. By coming to such a conclusion, the Tribunal has calculated the compensation on different heads and passed an award for a total sum of Rs.8,51,000/-.

8. Now, aggrieved over the same, the present appeal has been filed by the appellant insurance company, challenging the finding of the Tribunal in fixing the entire liability on the part of the appellant insurance company to pay the compensation amount.

9. With regard to the liability fixed on the appellant insurance company to pay the compensation amount, it is contended by the learned counsel appearing for the appellant insurance company that the accident is the result of ''head on collision'' and under such circumstances, contributory negligence ought to have been fixed against the deceased and accordingly, the tribunal ought to have deducted 50% of the compensation amount.

10. Per contra, it is contended by the learned counsel appearing for the claimants

that the Tribunal has rightly fixed the liability on the insurance company and the quantum of compensation awarded by the Tribunal is also just and reasonable, which warrants no interference by this Court.

11. Learned counsel for M/s.New India Assurance Company Limited, Chennai, the 8th respondent also made submissions supporting the finding recorded by the claims tribunal.

12. Keeping the submissions made by the learned counsel on either side, I have carefully gone through the entire materials available on record.

13. On a perusal of the materials available on record, I find that the police has filed criminal case only as against the driver of the lorry bearing Regn.No.TN31F9981, insured with the appellant Insurance Company. Furthermore, on the side of the appellant Insurance company, one Rajendran, PW2, was cross examined and he had categorically stated in his evidence that the lorry bearing Regn.No.TN31F9981 came in a rash and negligent manner and dashed against the tanker lorry bearing Regn.No.TN02Q7479. The eyewitness examined on the side of the respondents/claimants has also categorically stated that the accident has occurred only due to the rash and negligent driving of the lorry bearing Regn.No.TN31F9981. On the side of the appellant insurance company, no contra evidence was adduced to persuade this Court to accept the defence that the accident has occurred due to head on collision and there was a contributory negligence on the part of the deceased in causing the accident.

14. Furthermore, Accident Sketch was not marked on the side of the appellant Insurance Company before the tribunal. In the absence of Accident Sketch, now this Court is not inclined to accept the case of the appellant Insurance company that by fixing contributory negligence, 50% liability ought to have been fastened on the part of the deceased, by the tribunal and thereby ought to have deducted 50% of contribution towards contributory negligence. In my considered opinion, the claims tribunal by placing reliance on the available evidence, has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the lorry bearing Regn.No.TN31F9981, by its driver and thus directed the appellant-insurance company to pay the compensation amount. In the absence of any contra evidence on the side of the appellant insurance company, I do not find any infirmity in the award passed by the Tribunal. Hence the award needs no interference.

15. In the result, the compensation awarded by the Motor Accident Claims Tribunal (Principal District Court), Villupuram, dated 09.07.2010 made in M.C.O.P.No.558 of 2009 is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16. Consequent to the dismissal of the appeal, the appellant - Insurance Company, is directed to deposit the entire award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.558 of 2009 on the file of the Motor Accidents Claims Tribunal

(Principal District Judge), Villupuram within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, except the minor respondents, other respondents/claimants 1, 4 and 5, are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, as apportioned by the tribunal, by making necessary applications.

17. The share of the minors/2nd and 3rd respondents, shall be deposited in any one of the Nationalised Banks, proximate to the residence of the minors in a fixed deposit under the reinvestment scheme intially for a period of three years. The interest accruing on the same of the minors/2nd and 3rd Respondents shall be paid to the 1st Respondent/mother of the minors once in three months, till they attain majority.

