(2017) 11 MAD CK 0010

In the Madras High Court

Case No : 1126 of 2011

The Branch Manager, New India Assurance Co.,Ltd — APPELLANT

Vs

Pandaram, & Ors. — RESPONDENT

Date of Decision : 21-11-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 173, Section 173, Section 166, Section 166 - Appeals - Application for compensation

Citation : (2017) 11 MAD CK 0010

Hon'ble Judges : J.Nisha Banu

Bench : SINGLE BENCH

Advocate : J.Nisha Banu

Final Decision : Dismissed

Judgement

1. This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act,1988 against the award and decree dated 31.03.2011

made in M.C.O.P.No.123 of 2009 on the file of the Motor Accident Claims Tribunal (District Court) Nagercoil.

2. The brief facts of the case required to appreciate the rival legal contentions advanced on behalf of the parties are stated as hereunder:-

2.1. It is a case of fatal accident. On the fateful day, namely, 27.01.2007, when the deceased was proceeding from Nagerkovil to Madurai in a

van bearing Registration No.TN 74 K 8902, the vehicle belonging to the first respondent bearing Reg.No.TN 07 N 9404, dashed against the van

driven by the deceased. In the said incident, the deceased sustained injuries and he died on the spot. The claimants filed a claim petition claiming a

compensation amount of Rs.5,00,000/-. Before the tribunal, the claimants examined two witnesses as P.Ws.1 and 2 and marked nine documents as Ex.P.1 to Ex.P.9. On the side of the respondent, two witnesses were examined as R.Ws.1 and 2 and one exhibit was marked. The Tribunal, by

its judgment, dated 31.03.2011, had awarded a sum of Rs.4,46,000 /- with 7.5% interest from the date of petition till the date of realisation. As

against the same, the present Civil Miscellaneous Appeal came to be preferred by the Insurance Company on the ground that the amount awarded

by the Tribunal is more and excessive and also they are not liable to pay compensation.

2.2. The case of the claimants before the tribunal was that due to rash and negligent driving of the driver of the bus belonged to the first

respondent, the accident occured and as a result, the deceased died on the spot.

2.3. The respondents stated due to the negligence of the deceased, the accident had happened and therefore, they were not liable to pay

compensation.

2.4. On appreciation of the oral and documentary evidence, the Tribunal had awarded compensation as indicated above. As against which, the

present Civil Miscellaneous Appeal has been instituted by the insurance company questioning the liability and quantum.

3. The learned counsel appearing for the appellant-Insurance Company would submit that the deceased was solely responsible for the accident.

The claim against the Insurance Company is not maintainable. The claimants are put to strict proof of the age, occupation and monthly income of

the deceased and also the place, date and time of the accident and therefore, they are not liable for the accident. Further, the amount of

compensation claimed is excessive. Added further, the legal heirs of the deceased are not entitled to claim compensation.

4. Learned counsel for the respondents/claimants would submit that the Tribunal has awarded the compensation based on the oral and

documentary evidence placed for its scrutiny and the same is a just and fair compensation and therefore, there is no scope of warranting

circumstances to interfere with the impugned award of the tribunal. Hence, he prayed for the dismissal of this Civil Miscellaneous Appeal.

5. The points for consideration in this appeal is who is liable for the accident; whether the amount of compensation awarded by the Tribunal is just

and reasonable and whether the legal heirs is entitled to claim such compensation?

6. The tribunal has analysed the occurrence, based on the oral evidence of the eye witnesses to the accident, which stood corroborated by the

version of the claimants and concluded that the accident was due to the rash and negligent driving of the bus by its driver for the simple reason that

it is more evident that Ex.P.1 is the registered First Information Report which clearly shows that the F.I.R. was registered on the basis of the

statement given by the first respondent who is the driver of the bus and contents of Ex.P.1 corroborates with the evidence of R.W.1 with regard to

the accident. In this connection, the deposition of P.W.2 is crucial and the learned Judge, at paragraph No.10 has clearly observed that the bus

was driven by its driver in a rash and negligent manner. Therefore, it is proved that the bus belonging to second respondent was a cause for the

accident. Though the first respondent claims that he also sustained grievous injuries in the course of accident and in support of his contention, no

documents were marked on behalf of him. In the case on hand, no rough site sketch or observation mahazar with regard to the place of accident

are produced before this Court by either side. The fourth respondent has not taken any steps to call for any document on the file of the police as

rebuttal evidence. Further, the deceased had a valid driving license and the policy was in force at the time of accident. Therefore, the reasoning of

the Court below that the third and fourth respondents are jointly and severally liable for the accident does not warrant interference. Consequently,

both are liable to pay compensation.

6.1. Now, it is to be seen that whether the award given by the tribunal requires interference at the hands of this Court. The deceased was 23 years

at the time of the accident and the tribunal ought to have applied multiplier 18, however, the Court below had wrongly applied multiplier 13 by

taking into account the age of the parents of the deceased which is against the settled principles of law and if the age of the deceased is taken into

consideration, the award amount would be much more than that of the Court low is awarded. Therefore, the award amount is quite reasonable and

does not warrant inference from any quarters.

6.2. Lastly, as to whether the legal heirs are eligible to claim compensation, it is useful to refer the judgement of the Apex Court in the case of

Manjuri Bera vs Oriental Insurance Company Ltd., Appeal (civil) 1702 of 2007, wherein an interesting question was involved in that appeal. By

the impugned judgment the Calcutta High Court held that though the appellant, a married daughter of Bata Krishna Mondal (hereinafter referred to

as the ''deceased'') could maintain a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988 (in short the ''Act'') she was not

entitled to any compensation as she was not dependant upon the deceased. The relevant portion found in the said judgment is usefully extracted

below:-

6. Section 166 of the Act corresponds to Section 110 of the Motor Vehicles Act, 1939 (hereinafter referred to as the ''Old Act'')

and the same reads as follows:

Application for compensation: (1) An application for compensation arising out of an accident of the nature specified in Sub-section

(1) of Section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be.

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the

application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives

who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under Sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having

jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the

claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form

and contain such particulars as may be prescribed:

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a

separate statement to that effect immediately before the signature of the applicant.

Xx xx xx

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under Sub-section (6) of Section 158 as an application for

compensation under this Act.

In terms of Clause (c) of Sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the

deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said subsection

makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal

representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in

its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.

7. Section 168 of the Act reads as follows:

Award of the Claims Tribunal: On receipt of an application for compensation made under Section 166, the Claims Tribunal shall,

after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard,

hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an

award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom

compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or

owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under Section 140 in respect of the death or permanent

disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in

respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a

period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within

thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the

Claims Tribunal may direct.

....

9. According to Section 2(11) of CPC, ""legal representative"" means a person who in law represents the estate of a deceased person,

and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative

character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition

of legal representative under the Arbitration and Conciliation Act, 1996, i.e. under Section 2(1)(g).

10. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989]2SCR810 the

definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it

stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate

of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or

administrators in possession of the estate of the deceased. All such persons would be covered by the expression ''legal

representative''. As observed in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr. [1987]3SCR404 a

legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a

wife, husband, parent and child.

(emphasis supplied)

12. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum

cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he

or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from

Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation

for the able assistance rendered by Shri Jayant Bhushan, the learned Amicus Curiae.

....

16. In the impugned judgment the High Court has correctly drawn a distinction between ""right to apply for compensation"" and

entitlement to compensation"".

The High Court has rightly held that even a married daughter is a legal representative and she is certainly entitled to claim

compensation. It was further held, on the facts of the present case, that the married daughter was not dependent on her father. She

was living with her husband in her husband''s house. Therefore, she was not entitled to claim statutory compensation. According to

the High Court, the claimant was not dependent on her father''s income. Hence, she was not entitled to claim compensation based on

No Fault Liability"".

Apart from the judgment quoted above, the act is very clear that the legal heirs can sue the matter and they are entitled to get compensation

awarded by the Court concerned. In such event, the claimants are entitled to get compensation and I answer this point in favour of the claimants.

6.2. In the considered opinion of this Court, the award of the tribunal is wholly justifiable and reasonable and there is no warranting circumstances

to interfere with the award of the Tribunal. Hence, the appeal is dismissed by confirming the award of the Tribunal. The appellant -insurance

company is directed to deposit compensation, as awarded by the Tribunal, after deducting the amount, if any, already paid to the claimants, within

a period of four weeks from the date of receipt of a copy of this judgment. The claimants are entitled to withdraw their share as apportioned by the

Tribunal without filing any formal application in the Tribunal.

7. The Insurance Company is directed to deposit the entire enhanced award amount along with accrued interest and costs, less the amount

deposited, if any, to the credit of M.C.O.P.No.123 of 2009 on the file of the Motor Accident Claims Tribunal (District Court) Nagercoil, within a

period of four weeks from the date of receipt of a copy of this judgment;

8. The Tribunal is directed to transfer the entire award amount, as apportioned by this Court in this Civil Miscellaneous Appeal, along with accrued

interest and costs directly to the respective Personal Savings Bank Account Numbers of the appellants-claimants, through RTGS/NEFT system,

after getting their Account Details, within a period of four weeks, thereafter; and in the facts and circumstances of the case, there shall be no order

as to costs.

9. Accordingly, this civil miscellaneous appeal is dismissed. Consequently, connected miscellaneous petition is closed.