

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2015

CORAM

THE HONOURABLE Mr. JUSTICE N. KIRUBAKARAN

C.M.A.No.979 of 2015

1.Kathija Begam
2.Abdul Majeeth
3.Bathima Kani
4.Minor Abdullah
5.Minor Abitha Beebee
(Minors 4 & 5, rep by NF/Guardian/
Mother Kathija Begam) ..Appellants/Petitioners

/vs/

1.Nizammudeen
2.The Oriental Insurance Company Limited,
Divisional Office No.1,
No.4, Head Quarters Road,
Post Box No.3867,
Coimbatore. ..Respondents

Prayer

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 09.02.2011 made in M.C.O.P.No.349 of 2009 on the file MACT/Additional District Court, FTC No.2 at Gobichettipalayam and enhance the award amount with interest and cost by allowing this Civil Miscellaneous Appeal.

For Appellants :Mr.Ma.P.Thangavel
For Respondents :Mr.J.Chandran for R2

JUDGMENT

The appeal has been preferred by the claimants against the award of Rs.5,09,200/- passed by the Tribunal and exoneration of the liability of the second respondent-Insurance Company from the liability with regard to the accident occurred on 23.12.2007, in which, the first appellant's husband Meeran Maideen aged about 42 years, a vegetable and milk vendor alleged to be earning a sum of Rs.10,000/- as monthly income of the deceased.

2.Firstly, Mr.Ma.P.Thangavel, learned counsel appearing for the appellants would submit that it is proved before the Tribunal that the driver of the offending vehicle did not possess a valid driving license. However, instead of directing the second

respondent-Insurance Company to pay the compensation amount and recover the same from the owner of the offending vehicle, exonerated the second respondent-Insurance Company from the liability completely and passed award against only the owner of the offending vehicle. Therefore, he seeks to set aside that portion of the award alone. Secondly, he would submit that Rs.3,000/- determined by the Tribunal as monthly income of the deceased is on the lower side and hence, he seeks to enhance the same at Rs.6,500/-p.m. as per the judgment of the Hon'ble Supreme Court in Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459 and also to increase 30% towards future prospects.

3.Mr.J.Chandran, learned counsel for the second respondent-Insurance Company would submit that the appeal is not maintainable by the claimants, as the claimants are not aggrieved persons with regard to the fastening liability against the owner and the driver of the offending vehicle. Therefore, the appeal is required to be dismissed. He also relied upon the judgment of the Hon'ble Supreme Court in Sumundra Devi and others v. Narendra Kaur and others reported in 2009(1)TN MAC 96(SC).

4.Heard Mr.Ma.P.Thangavel, learned counsel appearing for the appellants and Mr.J.Chandran, learned counsel appearing for the second respondent-Insurance Company and also perused the materials available on record very carefully.

5.No doubt, the second respondent-Insurance Company proved that the driver of the offending vehicle did not possess effective valid driving license at the time of the accident. Even Ex.A6-Charge Sheet had been filed against the driver of the offending vehicle under Sections 3 and 181 of the Motor Vehicles Act. The second respondent-Insurance Company also summoned the official, namely, Junior Assistant, Regional Transport Office, Mettupalayam and he was examined as RW1 and Ex.R3-Communication was marked to show that no driving license was issued to the Driver Selvaraj. Therefore, the second respondent-Insurance Company discharged its onus with regard to its defence that the driver of the offending vehicle did not possess valid driving license. In the absence of any valid driving license, there is no liability on the part of the second respondent-Insurance Company. However, the Tribunal fastened the liability on the driver and owner of the offending vehicle and directed them to pay the award amount.

6.It is well settled law for violation of policy condition that the second respondent-Insurance Company has to be directed to pay the award amount and the same has to be recovered from the owner of the offending vehicle. Therefore, the finding given by the Tribunal with regard to liability that the owner alone has to pay the amount is set aside and consequently, the second respondent-Insurance Company is directed to pay the entire award amount and recover the same from the first respondent-owner of the offending vehicle.

7. With regard to the maintainability of the appeal, Mr. J. Chandran, learned counsel appearing for the second respondent-Insurance Company relied upon the judgment of the Hon'ble Supreme Court in Sumundra Devi and others v. Narendra Kaur and others reported in 2009(1)TN MAC 96(SC) wherein it is held that if no appeal has been filed by the owner (or) driver of the offending vehicle, the second respondent-Insurance Company cannot be fastened with the liability and enhancement of the quantum of compensation is unwarranted. There is no quarrel with regard to the dictum laid in the said case. However, what has to be seen, whether the claimants are aggrieved parties or not. Naturally, the claimants are aggrieved parties as they are aggrieved over non-ordering of pay and recover against the second respondent-Insurance Company, as it is very difficult to recover the amount by the victim of the road accident, namely, first appellant's husband directly from the owner.

8. It has been consistently held by the Hon'ble Apex Court including the judgment of three Judges Bench reported in 2004 (1) TN MAC 104 (SC) (National Insurance Co.Ltd., Vs. Swaran Singh and others) for violation of the policy condition, the second respondent-Insurance Company alone has to pay the amount and to recover the same from the owner.

9. In view of the authoritative declaration made by three Judges Bench of the Hon'ble Supreme Court, the judgment in Sumundra Devi and others v. Narendra Kaur and others reported in 2009 (1) TN MAC 96(SC) referred by the learned counsel appearing for the second respondent-Insurance Company is not binding precedent. Therefore, this Court goes by judgment made by the Three Judges Bench of the Supreme Court.

10. The claimants are also aggrieved in a sense that adequate compensation has not been paid according to them. When the amount awarded is inadequate, the nomenclature to given to the aggrieved claimants are "aggrieved". Therefore, they have got every right to maintain the appeal.

11. Moreover, the provisions of Motor Vehicles Act are beneficially in nature. Technicality cannot be applied to decide about the compensation for the victims of the road accident. Therefore, the appeal filed by the claimants are maintainable.

12. It is the case of the claimants that the deceased was earning about Rs.10,000/- per month from the business. However, in the absence of any positive evidence, the Tribunal determined only a sum of Rs.3,000/- as monthly income. The accident occurred on 23.12.2007 and as per the judgment of the Hon'ble Supreme Court in Syed Sadiq v. Divisional Manager, United India Insurance Company Limited reported in 2014(1) TN MAC 457, the Hon'ble Supreme Court determined monthly income of Rs.6500/- for the vegetable vendor and added 50% towards future prospects and determined Rs.9,750/- as monthly income. Since in the present case, the deceased was aged

about 42 years, only 30% is required to be added towards future prospectus. Therefore, this Court re-determines the monthly income of the deceased as Rs.6,500/- along with 30% future prospectus. The calculation of the monthly income as well as the future prospectus are as follows:-

$$\text{Rs.6,500/-} + 30\% = \text{Rs.8,450/-}$$

Since the size of the family is 5, the Tribunal rightly deducted $1/4^{\text{th}}$ from his monthly income towards personal expenses and the same is confirmed by this Court. Loss of income is calculated as follow:-

$$\text{Rs.6,500/-} + 30\% - 1/4 = 6,338/-$$

As per the age of the deceased is 42 years, appropriate multiplier is 14 and the loss of income is calculated as follows:-

$$6500/- + 30\% - 1/4 \times 12 \times 14 = \text{Rs.10,64,784/-}$$

The Tribunal had not awarded any amount towards loss of consortium to the first appellant and therefore, as per the judgment of the Hon'ble Supreme Court in Rajesh and others v. Rajbir Singh & others [2013(3) CTC 883], a sum of Rs.1,00,000/- is awarded towards loss of consortium. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of love and affection in favour of the appellants, which is just and reasonable. Hence, the same is hereby confirmed. With regard to the other heads, a sum of Rs.5,000/- was awarded towards funeral expenses and a sum of Rs.1000/- was awarded towards transportation charges, which are on the lower side and hence, the same are enhanced to Rs.50,000/- towards funeral expenses and a sum of Rs.50,000/- towards transportation charges. Totally, a sum of Rs.13,64,784/- rounded off Rs.13,65,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and costs. The appellants are not entitled to the interest for the delay period in filing the appeal.

13. In the result, the Civil Miscellaneous Appeal is partly allowed by enhancing a sum of Rs.13,65,000/- as compensation along with interest at the rate of 7.5% p.a., from the date of petition, till the date of deposit and costs.

14. As found earlier, the second respondent-Insurance Company is directed to pay the entire award amount along with interest and costs, within a period of four weeks, from the date of receipt of a copy of the judgment and to recover the same from the first respondent-owner. The appellants 2 to 5 are entitled to Rs.2,00,000/- each with proportionate interest and costs. The balance amount of Rs.5,65,000/- along with proportionate interest and costs would be paid to the first appellant. On such deposit being made, the appellants 1, 2 and 3 are permitted to withdraw their respective share amount along with interest as stated above. The minor share amounts (fourth and fifth appellants) shall be deposited in any of the Nationalised Bank, till they attain

majority. The first appellant/mother is permitted to withdraw the interest once in three months. The appellants are directed to pay the requisite Court Fee within a period of two weeks.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

The Additional District Court,
(Fast Track Court No.II),
Motor Accident Claims Tribunal,
Gobichettipalayam.

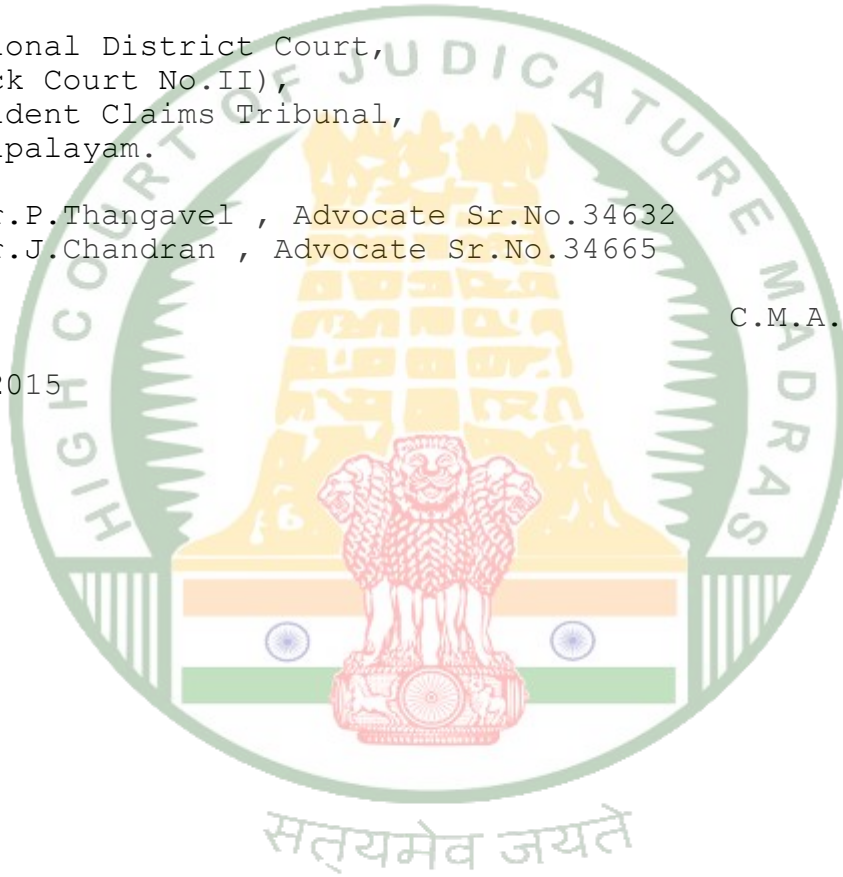
1 cc to Mr.P.Thangavel , Advocate Sr.No.34632

1 cc to Mr.J.Chandran , Advocate Sr.No.34665

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