IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No. 2355 of 2014
&
M.P. Nos. 1 & 2 of 2014

United India Insurance Co. Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai - 600 013. ..Appellant/2nd Respondent

Vs.

1. Tmt. Kamala
2. Sasikala
3. Jagadeesan
4. Kayalvizhi

(Respondents 2, 3 & 4 are minors rep.
By their mother and next friend
the 1st respondent herein.)

5. Pattammal
6. K. Paramasivam

(Respondent No.6 set ex parte in
Lower Court) ..Respondents/Petitioner 1 to 5 and 1st Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 14.09.2011 passed in M.C.O.P. NO. 4159 of 2007 by the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellant :: Mr.R. Ravichandran

For Respondents:: Mr.T. Saravanan for R1 to R5
R6 ex parte

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the fastening of liability on them, by directing them to pay the award amount of Rs.6,80,000/- on behalf of the 6th respondent, the owner of the vehicle.

2. Heard the learned counsel for the appellant and learned counsel for respondents 1 to 5/claimants.

3. The only point, which the learned counsel for the appellant, would canvass is that the driver of the vehicle did not have a badge at the time of accident, which occurred on 17.11.2007, in which the 1st respondent's husband, namely, Babu, aged about 35 years, died. He would rely on Ex-R1, the investigation report, which consists of all required documents including the licence of the driver, in support of the above contention and submit that pay and recovery should have been ordered by the Tribunal.

4. On the other hand, learned counsel for respondents 1 to 5/claimants would submit that the said document was not spoken to by R.W.1, Investigator and therefore, the said document cannot be looked into.

5. The contention of the learned counsel for respondents 1 to 5/claimants has to be rejected straightaway, for the simple reason that no authority can adduce evidence contrary to documents, especially, official documents. A perusal of Ex-R1 would disclose that it contains a number of documents including the driver's licence, which was issued only to drive a non-commercial vehicle whereas the vehicle involved in the accident is a commercial vehicle for which a badge is required to be obtained by the driver. However, without looking into Ex-R1, the Tribunal, in paragraph No.9 of the award, had observed that steps have not been taken by the appellant to produce the driving licence or examine the driver to prove the contention that the driver was not having badge to drive the tourist taxi. In view of Ex-R1, the said finding is liable to be set aside and it is accordingly set aside.

6. Therefore, in view of the finding of this Court that the driver, though had valid licence, did not have a badge to drive the tourist taxi, the well-settled position of law is to direct the appellant Insurance Company to pay the compensation and thereafter, recover the same from the owner. In view of that, the award amount is directed to be paid by the appellant and the same shall be recovered from the insured, namely, the owner of the vehicle.

7. Though the appeal has been filed questioning the fastening of liability on the Insurance Company, considering the fact that the appeal is a continuation of original proceedings and also the submissions made by the learned counsel for respondents 1 to 5, this Court is inclined to reconsider the quantum of compensation awarded by the Tribunal.

8. The Tribunal determined the monthly income of the deceased at Rs.4500/-, which is too low. Hence, following the judgment of the Honourable Apex Court in Syed Sadiq and others V. Divisional Manager,

United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), wherein, for a vegetable vendor, in respect of the accident of the year 2008, the Honourable Apex Court, fixed the monthly income at Rs.6500/-, even in the absence of any material evidence, regarding the same and added 50% towards "Future Prospects", this Court determines Rs.6000/- as the monthly income as the accident occurred, in the case on hand, on 15.01.2007 and 50% is added towards "Future Prospects", since the deceased was aged about 35 years. Hence, the total monthly income would be (Rs.6000 + 50% (Rs.6000)) = Rs.9000/-.

9. As far as deduction towards "Personal Expenses" is concerned, the family of the deceased consists of five members and therefore, following the judgment rendered in Sarla Verma's case (2009 (2) TN MAC 1 (SC)), one-fourth deduction has to be made towards "Personal Expenses" as was rightly done by the Tribunal and the appropriate multiplier to be adopted is 16. Therefore, applying the same, "Loss of Income" is calculated as hereunder:

Loss of Income :: (Rs.9000 (-) ¼ (Rs.9000/-)) x 12 x 16
:: Rs.6750 x 12 x 16
:: Rs.12,96,000/-

The sum of Rs.10,000/- awarded by the Tribunal towards "Loss of Consortium" to the 1st respondent, who lost her husband at the age of 32 years, shocks the conscience of this Court and therefore, following the judgment of the Honourable Apex Court rendered in Rajesh and others V. Rajbir Singh and others reported in 2013 (3) CTC 883, a sum of Rs.1 lakh is awarded towards "Loss of Consortium" to the 1st respondent. As far as the amount of Rs.12,000/- awarded towards "Loss of love and affection" to respondents 2 to 5 is concerned, respondents 2 to 4 are minors aged about 13 years, 10 years and 5 years, at the time of accident, who lost their father's love, affection, care and guidance for the rest of their lives and the 5th respondent is the mother of the deceased, who was deprived of her son's love and affection, on account of his death in the accident in question and they have to be necessarily compensated for the said loss. Though any amount of monetary compensation cannot equalise the loss caused to them, in an endeavour to console them, a sum of Rs.1 lakh is awarded in toto to respondents 2 to 5. The amount awarded towards "Funeral Expenses" to the tune of Rs.10,000/- is enhanced to Rs.20,000/- and a sum of Rs.10,000/- is awarded towards "Transporation Expenses", considering that no amount was awarded by the Tribunal under the said head. Hence, the compensation payable to the claimants is enhanced from Rs. 6,80,000/- to Rs.15,26,000/- rounded off to Rs.15,25,000/-. The rate of interest awarded by the Tribunal remains intact.

10. Though the appeal has been preferred by the Insurance Company, on re-appreciating the evidence on record, applying the law as on date and invoking Order XLI Rule 33 CPC, this Court, has enhanced the compensation, awarding Rs.15,25,000/- as just and reasonable compensation, even in the absence of appeal/cross-appeal by

the claimants. This Court has got power and jurisdiction to enhance the compensation, suo motu, by re-appreciation, as the provisions of Motor Vehicles Act are beneficial in nature.

11. The appellant Insurance Company is directed to deposit the award amount, as per the modified award passed by this Court, namely, Rs.15,25,000/- with interest, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, except the minors' share, respondents 1 and 5 are permitted to withdraw their respective shares, as per the apportionment of the Tribunal, within a period of two weeks thereafter. The minors' share shall be deposited in Indian Bank, High Court Branch, Chennai, in interest bearing Fixed Deposit, till they attain majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

12. As observed earlier, the Insurance Company is entitled to recover the amount from the owner of the vehicle. The Civil Miscellaneous Appeal is disposed of accordingly. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nv

To
1. The MACT (Chief Judge, SCC),
Chennai.

2. The Section Officer, VR Section, High Court, Madras.

+ 1 cc to Mr.R. Ravichandran, Advocate SR.2564
+ 1 cc to Mr.T. Saravanan, Advocate Sr.2342

C.M.A. No. 2355 of 2014

TEJ(CO)
Eu 18.02.15