BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2015

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
C.M.A.(MD)No.286 of 2005

The Branch Manager,
National Insurance Company Limited,
37 C, S.N.High Road,
Opposite to Head post Office,
Tirunelveli. ... Appellant/2nd respondent

Vs.

1. Alagammal
2. Maheswari
3. Sukumar
4. Jothi
5. Arumugam
6. Sudalai Mudaliar ... Respondents/Petitioners
7. Athimoolam ... 1st Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.04.2004 passed in M.A.C.O.P.No.204 of 2002 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Tenkasi.

For Appellant	:	Mr.J.S.Murali
For Respondents 1 to 4	:	Mr.J.C.Rathnavel Pandian
For Respondents 5 to 7	:	Dismissed on 13.03.2013

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the judgment and decree, dated 28.04.2004, in M.A.C.O.P.No.204 of 2002 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Tenkasi.

2. The appellant is the Insurance Company and the second respondent in M.A.C.O.P.No.204 of 2002. The respondents 1 to 6 filed M.A.C.O.P.No.204 of 2002, claiming compensation for the death of husband of first respondent, father of respondents 2 to 4 and son of respondents 5 and 6. 7th respondent is the owner of the vehicle involved in the accident. The Tribunal, by the order dated 28.04.2004, awarded compensation of Rs.10,75,000/-. Against the said order, the appellant/Insurance Company has preferred this appeal.

3. Facts of the case

On 06.12.2001, one Natarajan was travelling in a Tempo Lorry, bearing Registration No.TN 72 X 9433, belonging to 7th respondent along with marbles purchased for construction of his house. Due to rash and negligent driving by the driver of 7th respondent, an accident occurred and he sustained injuries and died in the accident. The respondents 1 to 6 stated that the deceased was carrying on business of selling cycle spare parts and was earning agricultural income also. The accident occurred due to rash and negligent driving by driver of 7th respondent and the vehicle was insured with appellant. They claimed a sum of Rs.50 lakhs, as compensation.

4. The 7th respondent denied all the allegations and stated that only the appellant is liable to pay compensation, if any awarded by the Tribunal.

5. The appellant/Insurance Company, in the counter, denied their liability on the ground that deceased travelled in a goods carrier as a gratuities passenger and did not travel as owner or representative of owner of goods. The 7th respondent has violated the conditions of policy and hence, the appellant is not liable to pay any compensation.

6. Before the Tribunal, the third respondent was examined as P.W.1, one Subramanian eye-witness was examined as P.W.2, one Durai Murugan was examined as P.W.3 and marked Exs.A1 to A33. Appellant examined one Chandran as R.W.1 and marked Exs.B1 to B5. Tribunal considering the pleadings and evidence, concluded that the accident took place due to rash and negligent driving by driver of 7th respondent and awarded a compensation of Rs.10,75,000/-, directing the appellant and 7th respondent to pay the amount.

7. Against the said order, dated 28.04.2004, the appellant has filed the present appeal.

8. The learned counsel for the appellant contended that the impugned order of the Tribunal is liable to be set aside for the following reasons:

(i) The deceased travelled in a goods carriage as a gratitious passenger.

(ii) Respondents 1 to 6 failed to prove that the deceased travelled in the vehicle in question as owner or representative of owner of goods transported.

(iii) Tribunal did not give a finding as to whether the deceased travelled as owner of goods or as representative of owner.

(iv) Respondents 1 to 6 produced Ex.A9 - Bill, for having purchased the marbles. The said bill shows that one Kumar purchased marbles worth Rs.3,368/- only, whereas the third respondent has stated that he purchased the marbles worth Rs.2 lakhs. The explanation given by third respondent that he is also known as Sukumar @ Kumar, is unbelievable.

(v) The Tribunal erred in accepting the contention of third respondent that he is known as Sukumar and also as Kumar. The Tribunal did not accept the claim of respondents 1 to 6 that marbles worth Rs.2 lakhs were transported, but granted Rs.20,000/- as compensation, for loss of marbles without any basis.

vi. The Tribunal failed to see that agricultural income and business income cannot be taken into account for determining loss of income.

vii. The Tribunal without any basis, has fixed income at Rs.1,00,000/- and Rs.80,00,000/- as contribution to the family.

9. For the above reasons, the learned counsel for the appellant prayed for setting aside the order of Tribunal.

10. Per contra, the learned counsel for the respondents 1 to 4 contented that respondents 1 to 6 proved that

(a) Accident occurred only due to rash and negligent driving by driver of 7th respondent.

(b) they have proved by cogent evidence that third respondent and deceased purchased marbles and the deceased travelled along with goods.

© The Tribunal appreciating the evidence, has correctly fixed the income of the deceased to arrive at the loss of income.

(d) The amount awarded by the Tribunal for loss of love and affection is very low and the Tribunal has not awarded any amount for loss of consortium and prayed for enhancement of compensation.

11. I have carefully considered the submissions made by the learned counsel for the appellant and the learned counsel for the respondents and perused all the materials on record.

12. The points for consideration in this appeal are

(i) whether the deceased travelled in the goods carriage as owner or representative of owner or as gratitious passenger.

(ii) whether the quantum of compensation is excessive or low or just and proper.

13. Point No.I

The third respondent as P.W.1 has deposed that he and his father purchased marbles under Ex.A9 and his father travelled in the vehicle accompanying the goods as owner. He also explained the name in Ex.A9, as that he is known as Sukumar as well as Kumar. To substantiate this explanation, P.W.3 was examined. P.W.3 deposed that the third respondent is known as Kumar @ Sukumar. Further, the respondents 1 to 6 have marked Ex.A26 - the permission given by Town Panchayat for construction of superstructure.

14. The appellant did not let in any evidence to show that the marbles transported did not belong to deceased or third respondent. The appellant did not examine 7th respondent or driver of 7th respondent or owner of marbles shop to disprove the version of respondents 1 to 6. R.W.1, in his evidence, admitted that owner or representative of owner travelling in the goods carriage accompanying the goods is covered by the policy.

15. Considering the evidence of P.Ws.1 and 3 and Exs.A9 and 26, I hold that deceased travelled in the vehicle as owner of goods and as per evidence of R.W.1, the appellant is liable to pay compensation.

16.Point No.2

The respondents 1 to 6 produced Exs.A13 to A16 – Income Tax Returns of the deceased and Exs.A17, 18, 20 and 21 to substantiate their claim that the deceased was carrying on cycle business as well as running canteens. Ex.A16 – Income Tax Returns of the deceased for the year 2000-2001 reveals that deceased had declared a total income of Rs.65,219/- comprising of Rs.14,149/- as agricultural income and other income of Rs.51,070/-. The Tribunal held that the respondents 2 to 4 are students and therefore, respondents 1 to 6 cannot carry on agricultural work and included the agricultural income also to arrive at loss of income to respondents 1 to 6.

17. The reasons given by the Tribunal, for inclusion of agricultural income to the total income of deceased, is not correct. The respondents 1 to 6 can carry on agricultural activities through agricultural workers

and earn income. Therefore, agricultural income of Rs.20,000/- has to be deleted to arrive at a loss of income to respondents 1 to 4.

18. Ex.A16 - Income Tax Returns shows that deceased was earning Rs.51,071/- for the year 2000-2001. Considering the nature of business carrying on by the deceased, adding future prospects a notional income of Rs.75,000/- per year will be proper amount to arrive at the loss of income to respondents 1 to 6. After deducting 1/3rd of the same towards personal expenses, deceased would have contributed Rs.50,000/- to family members. Applying the multiplier of 13, the respondents 1 to 6 are entitled to compensation of 50,000/- x 13 = 6,50,000/-.

19. The respondents 1 to 6 have stated that marbles worth Rs.2 lakhs was damaged in the accident. They produced Ex.A9 - bill for Rs.3,368/- only for having purchased the marbles. Tribunal has granted a sum of Rs.20,000/- towards loss of marbles on surmises and assumptions. The said compensation is modified as Rs.3,368/- instead of Rs.20,000/-.

20. The Tribunal did not grant any compensation for loss of consortium. The first respondent is entitled to compensation on this ground. A sum of Rs.50,000/- is granted to first respondent for loss of consortium. The Tribunal has granted totally Rs.10,000/- to the respondents 1 to 6 towards loss of love and affection. This amount is modified as Rs.10,000/- each to the respondents 2 to 6.

21. The break-up details of the award thus modified by this Court as under:

S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1.	Loss of income	Rs.10,40,000/-	Rs.6,50,000/-	Modified
2.	Value of the marbles	Rs.20,000/-	Rs.3,368/-	Modified
3.	Loss of love and affection (Rs.10,000/- each to R2 to R6)	Rs.10,000/-	Rs.50,000/-	Enhanced by Rs.40,000/-
4.	Funeral expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
5.	Loss of Consortium	-	Rs.50,000/-	Granted Rs.50,000/-
Total		Rs.10,75,000/-	Rs.7,58,368/-	

22. In the light of the above modification in the award amount, the appellant / Insurance Company is directed to deposit the compensation amount now modified by this Court viz., Rs.7,58,368/- with interest @ 9% p.a. from the date of claim petition till the date of deposit, less the amount already deposited within a period of eight weeks from the date of

receipt of a copy of this judgment. On such deposit being made, the respondents 1 to 6 / claimants are entitled to their share amounts as per the apportionment made by the Tribunal and accordingly, the respondents 1 to 6 / claimants are permitted to withdraw their respective share amounts, less the amount, if any already withdrawn.

23. In fine, this Civil Miscellaneous appeal is allowed in part. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
The Assistant Registrar(AE)

/True copy/

Sub-Assistant Registrar

To
The Motor Accident Claims Tribunal,
Additional Sub Court,
Tenkasi

+1cc to Mr.J.S.Murali, Advocate SR.No.38444
+1cc to Mr.J.C.Rathnavel Pandian, Advocate SR.No.38280

akv
sm:20.8.2015:5P/4C

C.M.A.(MD)No.286 of 2005
14.07.2015