IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.07.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.1538 of 2015

1.Thulasiammal
2.P.thangavel @ Angusami
3.P.Ravichandran
4.P.Karthik .. Appellants/Petitioners

Vs.

1.Ilavarasan
2.Reliance General Insurance Co., Ltd.,
570, Rectifier House,
Naigaum Cross Road,
Wadala(W) Mumbai .. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 27.07.2010 passed in M.A.C.T.O.P.No.242/2009, on the file of the Motor Accident Claims Tribunal (I Additional District Judge), Erode.

For Appellant : Mr.V.Kadhirvelu
For R2 : Mr.N.Manokaran

JUDGMENT

Having been not satisfied with the award of the Tribunal to the extent of Rs.2,79,000/- as against the claim of Rs.7,00,000/-, the appellants being the claimants have approached this Court with this appeal under Section 173 of the Motor Vehicles Act seeking enhancement of compensation.

2. Appellants 1 to 4 are the wife and children of the deceased. That on 30.11.2008, at about 6.30 p.m., a Maruthi Omni Van bearing Registration No.TN.28.2080 had hit against the deceased Ponnusamy, when he was proceeding by walking at Kovai-Salem NH 47 Main road after alighting from the bus.

3. At the time of accident, the deceased was aged about 53 years and was working as a commission agent in a Textile shop and thereby earning a sum of Rs.10,000/- per month. The Tribunal had also ascertained the age of the deceased as 53 years at the time of his death. However, the monthly income

was fixed at Rs.3,000/- p.a.as there was no concrete proof for his income. Since he was aged about 53 years, the multiplier of 11 was selected and after giving 1/3rd deduction towards his personal and living expenses, the Tribunal had calculated the pecuniary loss of family at Rs.2,64,000/- . Apart from this, the Tribunal had also awarded compensation under the following heads.

i) Loss of love and affection	Rs, 5,000/-
loss of consortium to the first appellant:	Rs. 5,000/-
pecuniary loss of income	Rs.2,64,000/-
Transport expenses	Rs. 2,000
Funeral expenses	Rs. 3,000
	Rs.2,79,000

4. Mr.V.Kadhirvel, learned counsel appearing for the appellants has submitted that the award passed by the Tribunal was insufficient when comparing with the loss to the family of the appellants. Further the learned counsel has projected his arguments on the following three grounds.

i)Though it was substantiated by the claimants that the deceased was working as a commission agent in a textile shop and earning a sum of Rs.10,000/-, it was not appreciated by the Tribunal while fixing the monthly income of Rs.3,000/-.

ii)Besides this, the first appellant, being a widow of the deceased was aged about 52 years at the time of occurrence. This fact was not at all considered by the Tribunal and the award of Rs.5,000/- towards loss of consortium is disproportionate and therefore, the compensation towards "loss of consortium" is to be enhanced.

iii)iii) Since the claimants are four in number, the Tribunal ought to have given deduction of 1/4 instead of 1/3 towards personal and living expenses of the deceased.

5. On the other hand, Mr.N.Manokaran, learned counsel appearing for the first respondent has contended that the award of the Tribunal was in consonance with the pecuniary loss of family and therefore, there is no need for the enhancement.

6. When the appeal was taken up for hearing, there is no representation for the second respondent. The second respondent/insurance company had taken a definite stand that the first respondent, who was on the steering of the appellants' vehicle was not having the driving licence, to drive the said

vehicle, which is required under Section 3 of the Motor Vehicles Act. He should have possessed a valid driving licence to drive the class of vehicle and since he was not in possession of the driving licence to drive the offending vehicle at the time of occurrence, the Insurance company is not liable to indemnify the loss of the insured. The Tribunal had also found that the second respondent/Insurance Company had issued a notice to the first respondent and requested him to say as to whether he was in possession of the effective and valid driving licence at the time of occurrence to drive the offending vehicle. The said notice was marked under Ex.R4. The first respondent had also received the said notice and the acknowledgement card was marked as Ex.R5. Even, after the receipt of notice, the first respondent did not give any reply or cause the production of the driving licence. The first respondent was also charged for the offence of non possession of driving licence. Under these circumstances, the Tribunal had found that it should be presumed that the first respondent had no valid and effective driving licence at the time of occurrence. The Tribunal had also found that the first respondent had violated the terms of the policy. With reference to Ex.P4, certified copy of the Motor Vehicle Inspectors Report, the Tribunal had found that the second respondent was noted as insurer and the insurance police was expired only on 13.02.2009. But the accident was taken place on 30.11.2003. In this connection, the Tribunal had also found that the second respondent had taken all efforts, on his side and then only had repudiated the claim stating that he was not in a position to indemnify the loss of the first respondent, as he did not produce the driving licence.

7.Keeping in view of the above fact, the Tribunal had directed the first respondent to pay the award amount of Rs.2,79,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation and the claim petition as against the second respondent/Insurance Company was dismissed.

8.Insofar as this case is concerned, the learned counsel for the appellant has argued that the award itself is very meagre. Considering the materials available on record, this court finds that the monthly income of the deceased can be fixed at Rs.4,500/-. Accordingly, the annual dependency of the family would be Rs.54,000/-. Since there are four dependants, 1/4 of deduction would be appropriate. After giving 1/4 deduction towards the personal and living expenses the 3/4 remainder would be Rs.40,500/-p.a. Since the deceased was aged about 52 years, the Tribunal had selected the multiplier of 11. Accordingly, " loss of dependency" of the family would be Rs.4,45,500/- (Rs.40,500/- x 11 = Rs.4,45,500/-). Since the first claimant was aged about 53 years at the time of death of her husband, a sum of Rs.40,000/- towards consortium can be awarded.

9. Having regard to all the related facts and circumstances, this Court finds that a reasonable compensation may be awarded as detailed under:

Loss of dependency	: Rs.4,45,500
Consortium to the first appellant	: Rs. 40,000/-
loss of Love and affection (appellants 2 to 4 each 10,000)	: Rs. 30,000/-
transport expenses	: Rs. 15,000/-
funeral expenses	: Rs. 20,000
	Rs.5,35,500

10. Based on this calculation, the award of the Tribunal at Rs.2,79,000/- has been enhanced to Rs.5,35,500/-. The first respondent is liable to pay this amount to the appellant with interest at the rate of 7.5% p.a. from the date of claim petition.

11. As decided by the Division Bench of the Apex Court in S.IYYAPPAN vs. M/s.United India Insurance Company Ltd and another, Civil Appeal No.4834 of 2013 dated 1st July 2013, his Lordship Mr.Justice M.Y.Eqbal, in paragraph Nos.17 & 18 has observed as under:

> 17. The heading "Insurance of Motor Vehicles against Third party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.
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> 18. Reading the provisions of Sections 146 & 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurers right is safeguarded but in any event the insurer has to pay compensation when a valid certificate is issued notwithstanding the fact that the insurer may proceed against the insured

for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, ii) it was being driven by a person who was not having a duly granted licence, and iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

12. In view of the fact and in the light of the decision of the Apex Court as cited above, since the vehicle was insured with the second respondent Insurance Company at the time of occurrence, the Insurance company may be directed to pay this amount to the claimant and they can recover the same from the first respondent at a later stage by way of execution proceedings, without actually filing a suit for recovery of money. Accordingly, the second respondent is directed to pay this amount with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order and recover the same from the first respondent at a later stage through execution proceedings without actually filing a suit for recovery of money. On such deposit being made, the first appellant is entitled to Rs.2,35,000/- and the appellants 2 to 4 are entitled to Rs.1,00,000/- each. They are also permitted to withdraw along with accrued interest and cost and apportion the same as directed above.

13. With the above observation, this appeal is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kkd

To

The Motor Accident Claims Tribunal
(I Additional District Judge), Erode.

Copy to: The Record Keeper, VR Section, High Court, Madras.

+ 1 cc to Mr.V. Kadhirvelu, Advocate Sr.41133
+ 1 cc to Mr.N. Manokaran, Advocate SR.40917

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AK(CO)
Eu 18.10.16