IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2079 of 2014

1. Kavitha
2. Minor Akalya
minor represented by her next friend
and mother Kavitha

.Appellants/petitioners

vs.

1. Raj Sivakumar
2. Saminathan (deceased)
3. The Branch Manager
Oriental Insurance Co., Ltd.,
Divisional Office, Chamunty
114-Omalur Main Road,
4 Roads, Salem 7.

4. Perumal Reddy
5. Lakshmi ..Respondents/Respondents 1 to 5
6. Sabari
7. Viji
8. Lakshmi

(Respondents 6 to 8 brought on record as LRs of the deceased R2 vide order dated 18.06.2014 in M.P.Nos.1 to 4 of 2012 in CMA Sr.Nos.53003 of 2012)

.Respondents 6 to 8/ LRS of deceased R2

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 21.06.2011 in M.C.O.P.No.438 of 2007 passed by the Motor Accidents Claims Tribunal, (Fast Track Court No.II), Gobichettipalayam.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.Siva Kannankumar (R1)
Mr.N.Vijayaraghavan (R3)
R2-died
Mr.I.C.Vasudevan (R4&5)
Mr.R.Murugan (R6 to 8)

JUDGMENT

(Judgment of the Court was delivered by S.VAIDYANATHAN,J.)

This Civil Miscellaneous Appeal is filed by the claimants, seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal, (hereinafter referred to as "the Tribunal"), (Fast Track Court No.II), Gobichettipalayam in the Judgment and decree dated 21.06.2011 in M.C.O.P.No.438 of 2007, whereby, the Tribunal has awarded a sum of Rs.8,47,772/- with 7.5% interest per annum.

2. On 23.11.2003 at about 18.00 hours, when the deceased Chandran, who was working as Senior Operator in IOCL, was riding his motorcycle TN-30-C-3097 at Yercard near Yercard bus stand (Opposite to old State Bank) on the extreme left side of the road in a slow speed along with one Raj, at that time, one S.Balachandran drove the Yamaha motorcycle TN-27-C-2550 in a rash and negligent manner and dashed against the deceased motorcycle. Due to the said accident, the deceased fell down on the road and sustained injuries all over the body. Due to severe head injury, after taking treatment as an inpatient in more than two hospitals at various spells, he died at Sri Gokulam Hospital on 02.09.2005. The wife and daughter of the deceased filed a claim petition before the Motor Accidents Claims Tribunal, (Fast Track Court No.II), Gobichettipalayam, Chennai, claiming compensation to the tune of Rs.30,00,000/-.

3. In support of the claim, the first claimant was examined as P.W.1; One Shankar was examined as P.W.2; Dr.Natarajan was examined as P.W.3 and a Judge was examined as P.W.4; and Ex.P-1 to Ex.P.11 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of FIR
P2	Medical prescription
P3	Certified copy of the MVI report
P4	Copy of Final report
P5	Legal heir certificate
P6	Medical treatment details
P7	Discharge summary- medical treatment certificate
P8	Authority Letter given by IOC Ltd.,
P9	Salary certificate
P10	Death certificate
P11	School certificate

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal.

4. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income	Rs.16,85,544/-
2	Funeral Expenses	Rs. 5,000/-
	Total	Rs.16,90,544/-

However, considering the fact that there was contributory negligence on the part of the deceased, the Tribunal by apportioning the liability as 50:50 between the deceased and the offending Yamaha motorcycle driver on negligence, directed the owners of the respective vehicles viz., 1st and 2nd respondents herein, to pay half of the compensation granted viz., Rs.8,47,772/- to the claimants and the 4th respondent and 5th respondents herein with interest at 7.5% p.a. Challenging the same, this Civil Miscellaneous Appeal is filed.

5. According to the learned counsel appearing for the appellants/claimants, the Tribunal, fixed the liability as 50:50 between the deceased and the offending Yamaha Motorcycle driver on account of negligence, which is not sustainable, even though the driver of the offending Yamaha motorcycle did not have a valid driving licence. Further, according to him, the Tribunal exonerated the Insurer from the liability on the ground that both the drivers did not have a valid driving licence. The learned counsel for the claimants further submitted that the Tribunal, taking into account the salary of the deceased at Rs.15,050/-, based on Ex.A9, arrived at a compensation of Rs.16,90,544/- which is highly unreasonable. The Tribunal has failed to consider that at the time of accident, the deceased was working as Senior Operator (Field) in Indian Oil Corporation at Salem, receiving a monthly salary of Rs.20,000/-. Further, according to him, the Tribunal has erred in deducting 1/3rd of the monthly income of the deceased towards personal expenses without appreciating the fact that the claimants are 4 in number. Further, according to him, the grant of Rs.5,000/- towards funeral expenses is very low. Besides, there is no amount granted for loss of consortium and for the loss of love and affection.

6. On the other hand, the learned counsel appearing for the Insurance Company submitted that the Tribunal has rightly fixed the liability on the drivers of both the vehicles as 50:50, since they did not possess a valid driving licence, which is violative of the terms of the policy. Hence, the exoneration of the Insurance Company from the liability is justified.

7. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. It is a case of fatal. The accident had occurred on account of head on collision. As far as the contributory negligence aspect is concerned, this Court is of the view that the Tribunal is right in fixing the liability on both the deceased as well as the driver of the other vehicle. However, it is settled law that even though non possession of a valid driving licence is violative of the terms of the policy, the Insurer, with whom the vehicle is insured cannot be absolved of its liability. The Tribunal, at the most, ought to have ordered the Insurance Company to pay 50% compensation to the claimants and thereafter ought to have directed to recover from the owner of the offending vehicle. Hence following the dictum laid down by the Hon'ble Apex Court in the case of Kamala Mangalal Vayani and others vs. United India Insurance Company Limited and others reported in 2010 ACJ 1441; judgment rendered by this Court in the case of Velammal and others vs. P.Kanagu and others reported in 2006 ACJ 1039 and yet another Judgment of this Court in the case of Divisional Manager, United India Insurance Co. Ltd., vs. S.Sowkath Ali and others reported in 2010 ACJ 1726, we hold that the Insurance Company is liable to pay 50% of the compensation to the claimants, however, it will be entitled to recover the same from the owner of the offending vehicle.

9. As far as quantum of compensation awarded by the Tribunal is concerned, the Tribunal, taking note of the monthly salary of the deceased at Rs.15,050/-, deducting 1/3rd towards his personal expenses and applying the multiplier of 14, arrived at a compensation to the tune of Rs.16,85,544/- towards loss of income. On a perusal of the judgement, it is crystal clear that future prospects of 30% has not been added, since the age of the deceased is 40 years and there is no deduction for income tax.

10. Accordingly the compensation that is to be awarded after deducting appropriate tax is as under:-

Monthly income of the deceased	Rs.15,050/-
Annual income of the deceased	Rs.15,050 x 12 =Rs.1,80,600/-
Less: Standard Deduction u/s 16(1) at 40% of gross total income or Rs.30,000/- whichever is less if the gross total income does not exceed Rs.5 lakhs	Rs.30,000/-
Taxable income	Rs.1,50,600/-
Tax upto Rs.50,000/-	Nil

Monthly income of the deceased	Rs.15,050/-
Tax from Rs.50,000/- to Rs.60,000/- @ 10%	Rs. 1,000/-
Tax from Rs.60,000/- to Rs.1,50,000/- @ 20%	Rs. 20,000/-
Tax from Rs.1,50,000/- to Rs.1,50,600/- @ 30%	Rs. 180/-
Tax on income	Rs. 21,180/-
Surcharge @ 2%	Rs. 424/-
Total income per year after deducting tax	Rs.1,50,600/- - Rs.21,604/- = Rs/1,28,996/-
Less: 1/3rd towards personal expenses of the deceased	Rs.1,28,996/- x 1/3=Rs.42,998/-
Loss of annual income of the deceased (after deducting tax)	Rs.1,28,996/- - Rs.42,998/- =Rs.85,998/-
Add: 30% towards future prospects	Rs.25,799/-
Loss of Annual pecuniary benefits to the family of the deceased	(Rs.85,998/- + Rs.25,799/- = Rs.1,11,797/-
Applying multiplier '14' Total loss of pecuniary benefits to the family of the deceased	Rs.1,11,797/- x 14 = Rs.15,65,158/-

11. That apart, we find that no amount has been awarded under the head loss of consortium to the spouse. Hence, we are inclined to award a sum of Rs.1,00,000/- towards loss of consortium. As per the dictum laid down by the decision of the Hon'ble Supreme Court, we are inclined to grant a sum of Rs.25,000/- towards funeral and transportation expenses instead of Rs.5,000/-.

12. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs.16,85,544/-	Rs.15,65,158/-
2	Loss of Consortium	Rs.----	Rs.1,00,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
3	Loss of love and affection	Rs.-------	Rs.1,00,000/-
4	Funeral and transportation expenses	Rs. 5,000/-	Rs. 25,000/-
	Total	Rs.16,90,544/-	Rs.17,90,158/-

13. Since the liability of the insurer is fixed only at 50%, the Insurance Company is liable to pay compensation to the tune of Rs.8,95,079/- to the claimants. There is no serious objection in respect of the interest granted at 7.5% per annum.

14. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.17,90,158/- from Rs.16,90,544/-.

(ii) Since the liability of the Insurer is fixed at 50%, the Insurance Company is liable to pay compensation to the tune of Rs.8,95,079/-

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The third respondent Insurance Company is directed to deposit the entire award amount as ordered by this Court, to the credit of M.C.O.P.No.438 of 2007 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.II, Gobichettipalayam, within a period of eight weeks weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the major claimants are permitted to withdraw their respective share amount as apportioned by the Tribunal on filing necessary applications before the Tribunal.

(v) As far as the share of the minor is concerned, the same shall be deposited in a Nationalized Bank in Fixed Deposit Scheme initially for a period of three years and thereafter to be renewed periodically till attains majority. The first claimant is permitted to withdraw the interest accrued therein once in three months.

(vi) There will be no order as to costs in this appeal.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

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

1 cc to Mr.R. Nalliappan, Advocate, Sr. 19024
1 cc to Mr.M. Vijayaraghavan, Advocate, SR. 19554

KS (CO)
kk 18/5