IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 28.11.2016
Judgment Pronounced on: 21.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.2112 of 2008
and MP.No.1 of 2008

Royal Sundaram Alliance Insurance Co., Ltd.,
Branch Office, 46, Whites Road, Chennai.
.. Appellant/3rd respondent

Vs.

1. V.Krishnaveni
2. Yasodhapriya - Minor
3. V.Gayathri - Minor
(2 & 3 minors rep. by their mother & next friend Krishnaveni)
4. S.Samiyathal
5. D.Thangavel
6. K.Viswanathan .. Respondents/petitioner 1 to 4 and respondents 1 & 2

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment dated 16th day of July, 2007, made in M.C.O.P.No.160 of 2005 on the file of Motor Accident Claims Tribunal (Sub Court), Dharapuram.

For Appellant : Mr.S.Manohar
For R1 to R4 : Mr.MA.P.Thangavel
RR5 & 6 : Exparte

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J U D G M E N T

The Insurance Company, which is arrayed as third respondent before the Tribunal has preferred this appeal challenging its liability fixed on it, in the award of Motor Accident Claims Tribunal (Sub Court), made in M.C.O.P.No.160 of 2005.

2. One Venkatachalam, aged 42 years, died when a moped bearing no.TN 33 AZ 1847 in which he is riding as a pillion rider met with an accident on 18-11-2004. He left behind him surviving his wife, aged 39 years, his mother and two young daughters.

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They approached the MACT seeking a compensation of Rs.9,00,000/- under various heads against which the Tribunal passed an award for Rs.3,20,000/-. The victim, at the relevant time was stated to be a Secretary of a Co-operative Society and was said to be earning Rs.6,000/- per month and to prove it Ex.P11-Certificate issued by the Society was produced. Besides this, he was also said to be earning additional income from his agricultural activity. The Tribunal fixed his income notionally at Rs.2,500/- and applied a multiplier at 15 and arrived at loss of support at Rs.3,00,000/-.

3. Before the Tribunal, the Insurance Company took two defences:- (a) the rider of the vehicle had no driving license at the relevant time; (b) That there was no policy cover for the pillion rider.

4. Before this Court, the learned counsel for the appellant fairly conceded that the policy was a comprehensive policy and insurance is covered for the pillion rider. As to the other defence viz., absence of driver's license, the Trial Court has only applied the doctrine of pay and recover. As law stands today, vide the authority in Iffco Tokyo General Insurance Co. Ltd., Vs. A.Jafer Sadiq & Others [2012(1) TN MAC 394 (DB)], the doctrine of pay and recover is firmly established and it is futile for the insurance Company now to contend that it is not so available, necessarily, the appeal fais.

5. The learned counsel for the respondents 1 to 4 however would contend that notwithstanding the fact that the appellant has not challenged the quantum of compensation awarded, it is still necessary for this Court to render a finding as to whether the compensation awarded by the Tribunal is just and fair. He argued that when claimants have produced EX.P11, the Tribunal has not even entered a discussion as to the evidenciary value of the said document in order to enter a finding either approving or otherwise on the consequnces that flow out of that document. Further the law as settled by the Supreme Court in Sarala Varma & Other Vs. DTC & another [2009(2) TNMAC 1]: [2009 ACJ 1298] reflects a realistic approach in understanding the phrase “just and fair” compensation and the same shall not be denied to the claimant.

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6. Evidently the claimant/respondents 1 to 4 have not preferred any cross objection. Notwithstanding the same there is some merit noticeable in the contention of their counsel when he argued that the Tribunal has not appreciated Ext.P-11 salary certificate as well as Ext.P-12 sale deed and P-13 land tax receipt as concerning the agricultural land that the deceased possessed and that the Tribunal had grossly under estimated his monthly income. True, the award is silent on these documents and

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necessarily evidentiary impact they leave. When however, Ext.P-11, a certificate issued by the Secretary, Pachapalayam Milk producers Co-operative Soceity, was perused, it discloses that the deceased had worked as a Secretary of the said Society from 16-05-2004 to 18-11-2004 and that for the month of October, 1994, he had received a salary of Rs.841.95. Even if it is considered that the year was wrongly handwritten as 1994 instead of 2004, still this document is hardly of any assistance to consider enhancing the notional monthly income of the deceased since the Tribunal has determined the same not at or near the amount reflected in Ext.P-11 but at thrice the said amount.

7. If the award is now considered for its justness and fairness of the quantum of compensation it granted, I find that couple of heads of general damage is shockingly low. On the head of loss of support the Tribunal has quantified the compensation at Rs.3,00,000/- and if it is reworked based on Sarla Varma dictum, then the loss of support has to be reckoned on a consideration that there were four family members that he was supporting which implies that the only 1/4 is deductible towards the personal expenses of the deceased, and he being 42 years at the relevant time, the choice of the multiplier ought to be 14. Accordingly the amount arrivable on this head is (2500 x 12 x 3/4 x 14) Rs.3,15,000/-. For loss of love and affection a meagre Rs.5,000/- alone is paid and this is enhanced to Rs.10,000/- per claimant thus the total amount payable on this head is Rs.40,000/- For loss of consortium, the amount awarded is Rs.5,000/- which is too low by any standards and this has to be reasonably refixed and accordingly the same is enhanced to Rs.40,000/-. On other heads, the award is confirmed. The total compensation payable is thus enhanced from Rs.3,20,000/- to Rs. 4,05,000/-.

8. Appeal is dismissed however, without costs. Compensation however, is suo motu enhanced from Rs.3,20,000/- to Rs.4,05,000/- and the appellant is directed to deposit it with interest at 7.5% per annum at the first instance and then to recover it from the owner of the vehicle upon which the claimants are entitled to withdraw the same forthwith. The claimants would be entitled to share the enhanced portion of the award in the same ratio in which award was apportioned by the Tribunal. Consequently, connected miscellaneous petition is closed. Claimants are directed to pay court fees on the enhanced compensation.

Sd/-
Assistant Registrar(CS-III)
//True Copy//

Sub Assistant Registrar

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To:

1. The Subordinate Judge,
    Motor Accident Claims Tribunal,
    Dharapuram.

2. The Record Keeper,
    V.R.Section, High Court,
    Madras.

+1cc to Mr.S.MANOHAR, Advocate, S.R.No. 74599

+1cc to Mr.MA.P.THANGAVEL Advocate, S.R.No. 74571

C.M.A.No.2112 of 2008

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