IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE M.S.RAMESH

Civil Miscellaneous Appeal No.3453 of 2009

1.Soumila

2.Minor S.Srithik
Minor Rep by his next friend
guardian and mother Soumila

3.K.Kandaswamy
4.K.Vijayalakshmi ... Appellants/ Petitioners

Vs.

United India Insurance Co., Ltd.,
Branch Office,
8/1-31-A, Salem Road,
Puduchampalli,
Mettur Dam 636 403,
Salem District. ... Respondent/Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.230 of 2004 dated 01.06.2006 on the file of the Motor Accidents Claims Tribunal, (Additional Sub Judge, FTC IV) Bhavani.

For Appellants : Mr.P.Jagadeeswaran

For Respondents : Mr.T.Ravichandran

JUDGMENT

(Judgment of the Court was delivered by M.S.RAMESH,J

Being dissatisfied with the quantum of compensation of Rs.2,00,000/- awarded by the Tribunal in M.C.O.P.No.230 of 2004 dated 01.06.2006 on the file of Motor Accident Claims Tribunal (Additional Sub Judge, FTC IV) Bhavani for the death of one K.Saravanakumar in a road accident which occurred on 21.11.2002, the claimants have preferred the present Civil Miscellaneous Appeal for enhancement.

2.Brief facts of the case are as follows:

On 21.11.2002, the deceased K.Saravanakumar and one N.Subramaniam were proceeding from Pollachi to Chinnapallam in a Ford Icon car bearing Registration No.TN-34-D-0999 belonging to the deceased K.Saravanakumar. The vehicle was driven by his driver K.Mohanan. Enroute, the driver had dashed the car over a tamarind tree and owing to the accident, K.Saravanakumar sustained grievous fatal injuries over his left chest, nose and chin. While the driver K.Mohanan died on the spot, the injured K.Saravanakumar and N.Subramaniam died at the Government Hospital, Bhavani.

3.The car had package insurance policy. The deceased K.Saravanakumar was aged about 31 years and the appellants-claimants are the wife, minor child, father and mother of the deceased. The appellants-claimants had claimed a sum of Rs.99 lakhs towards compensation. The Tribunal had taken a view that under the policy of insurance, the insurance company is liable to indemnify the insured, if there was a claim by third parties and that since insured paid extra premium of Rs.100/- towards personal accident to the insured, the insurance company was liable to pay only a sum of Rs.2 lakhs to the appellants-claimants. Aggrieved against the same, the present Civil Miscellaneous Appeal has been filed.

4.Heard both the learned counsel appearing for the appellants as well as the learned counsel for the respondent.

5.After the judgment and decree passed by the Tribunal, the law relating to the liability of an insurance company for the death of a person travelling in a private car with a package policy has been defined to fasten unlimited liability on the insurer, in a case reported in 2012 (2) TN MAC 637 (SC) (National Insurance Co., Ltd., Vs.Balakrishnan and another). The Hon'ble Supreme Court while analysing the scope of a comprehensive/package policy had held as follows:-

> "21.In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a

"Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

22.In view of the aforesaid legal position, the question that emerges for consideration is whether in the case at hand, the policy is an "Act Policy" or "Comprehensive/Package Policy". There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a "comprehensive policy" but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a "package policy" to cover the liability of an occupant in a car.

23. In view of the aforesaid analysis, we think it apposite to set aside the finding of the High Court and the tribunal as regards the liability of the insurer and remit the matter to the tribunal to scrutinize the policy in a proper perspective and, if necessary, by taking additional evidence and if the conclusion is arrived at that the policy in question is a "Comprehensive/Package Policy", the liability would be fastened on the insurer. As far as other findings recorded by the tribunal and affirmed by the High Court are concerned, they remain undisturbed."

6.In view of the change to the scope of law for a package policy, the impugned judgment and decree, in the present appeal requires interference. Since the Hon'ble Supreme Court has held categorically that a package policy would cover the liability of occupant in a car accident, we hold that the finding of the Tribunal that the petitioners are entitled to a total compensation of Rs.2 lakhs alone cannot be countenanced.

7.In this background, the next point that arises for consideration is as to the quantum of compensation which the appellants-claimants are entitled to. It is not in dispute that the deceased was aged 31 years and that he was a B.E. Graduate with an M.B.A post graduation. He was also a partner of Sri Vijayalakshmi & Co., K.Rajagopalan & Co., sole Proprietor of K.R. & Co., Bus Service, Mettur Dam, owner of Cinema Theatre and owned 30 acres of lands.

8.On a perusal of the income-tax returns filed by the deceased K.Saravanakumar which were marked as Exs.P.15 to 18, it is seen that the deceased was having an annual income of Rs.46,620/-. Taking into account the annual income of the deceased as well as his qualification and his various business activities, his future income could safely be arrived at Rs.70,000/-, out of which Rs.17,500/- could be his personal income earned. By applying multiplier '16', the deceased K.Saravanakumar's loss of future prospects is calculated at Rs.8,40,000/- [Rs.17,500/-x'16'=Rs.8,40,000/-].

9.The appellants 1 and 2 are the wife and minor child and the third and fourth appellants are the parents of the deceased K.Saravanakumar. The deceased who died at a very young age would have left an unbearable loss of consortium on the first appellant and loss of love and affection on the other appellants. Hence, in our view, a sum of Rs.2,50,000/- could be awarded for loss of consortium and love and affection, out of which, the first appellant shall be entitled to Rs.1 lakh for loss of consortium; the minor child shall be entitled to Rs.1 lakh for loss of love and affection and the parents shall be entitled to Rs.50,000/- for the loss of love and affection. Further, we deem it appropriate to award a sum of Rs.50,000/- towards funeral expenses of the deceased. In total, we award a sum of Rs.11,40,000/- as compensation payable by the respondent insurance company to the appellants in the following manner:-

Sl. No.	Heads	Amount in Rs.
1	Loss of income (Rs.17,500/-x'16')	8,40,000/-
2	Loss of Consortium & Loss of Love and Affection	2,50,000/-
3	Funeral Expenses	50,000/-
	Total	11,40,000/-

10.With regard to the disbursal of the enhanced compensation amount, this Court, in a Judgment dated 11.03.2016 passed in CMA.No.428 of 2016,(the Divisional

Manager, The Oriental Insurance Co., Ltd., Kannur vs. Rajesh and two others) had formulated guidelines /directions to serve the cause of justice, more particularly to innocent and illiterate victims/claimants. We deem it appropriate that the said guidelines also have to be adopted for this case for disbursing the enhanced compensation amount, so as to reach the claimants at the earliest. Paragraph 11 (vii) and (xv) of the above said Judgment dated 11.03.2016, are extracted hereunder:

> " viii)The Claims Tribunal shall, as a matter of rule, direct the insurance companies or transport corporations or such other entities held liable to pay the compensation, to deposit the award sum to the credit of the bank account of the Claims Tribunal directly by NEFT or RTGS mode. The Registry will issue appropriate directions in this regard enabling the respective Claims Tribunal or the District Court concerned to open separate account, which will bear a suffix " MACT" to identify that the account is in relation to motor accident claims.
>
> The Claims Tribunals shall ensure that as and when order is passed for disbursal of compensation amount, it will ensure that such disbursal of compensation shall be made directly to the credit of the bank account of the claimant/victim as the case may by NEFT or RTGS. The bank account details of the claimant/victim(s) shall be stated in the award/order of the Claims Tribunal."

11.With regard to the apportionment of the total compensation, we deem it appropriate to direct apportionment of the total compensation in the following manner:-

> "(i)The wife and minor child of the deceased K.Saravanakumar will be entitled to 30% each of the total compensation.
>
> (ii)The parents of the deceased K.Saravanakumar will be entitled to 20% each of the total compensation."

12.The total compensation ordered above shall carry interest at the rate of 7.5% per annum from the date of the claim petition till the date of realisation.

13.In the result, it is ordered as follows:-

(i)The Civil Miscellaneous Appeal is partly allowed.

(ii)The respondent shall pay a sum of Rs.11,40,000/- towards compensation to the appellants together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

(iii)Out of the total compensation of Rs.11,40,000/-, the first and second appellants shall be entitled to 30% each and third and fourth appellants shall be entitled to 20% each.

(iv)The respondent/Insurance Company is directed to deposit the enhanced award amount within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of Bank Account of the Claims Tribunal directly by NEFT or RTGS mode. The Motor Accidents Claims Tribunal shall ensure that as and when the enhanced amount is deposited to the bank account, the same shall be disbursed directly to the credit of the bank account of the appellant/claimant by NEFT or RTGS. There shall be no order as to costs.

sd/
Assistant Registrar(CS VI)

/true copy/

Sub Assistant Registrar

sms

To

The Motor Accidents Claims Tribunal,
(Additional Sub Judge, FTC IV) Bhavani.

+1cc to Mr.T.Ravichandran, Advocate SR.No.70443
+2cc to Mr.P.Jagadeeswaran, Advocate SR.No.70408

Civil Miscellaneous Appeal No.3453 of 2009

PA(CO)
GN(08/03/2017)