IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN

C.M.A.No.977 of 2012

and M.P.No.1 of 2012

The Branch Manager,
M/s.Oriental Insurance Co.,Ltd.,
Branch Office,
No.3-L, Sidhaveerappa Chetty Street,
Dharmapuri 636 701 ...Appellant/Respondent II

Vs

1.Sathya ...Respondents I
2.Murugammal ...Respondents II
3.Murugan ...Respondents III
4.Minor.Sridevi ...Respondents IV
5.Minor.Raman ...Respondents V
6.Minor.Lakshmanan ...Respondents VI
(4th minor rep.by next friend Murugan and minors 5 & 6 rep.by next friend mother Sathya, 1st petitioner)
7.A.Kannamma ...Respondent VI /Respondent I

Prayer in both C.M.As: This Civil Miscellaneous Appeals filed against the Judgment and Decree dated 10.10.2011 passed in M.C.O.P.No.622 of 2008, on the file of the Motor Accidents Claims Tribunal / Principal District Court, Krishnagiri District.

For Appellant : M/s.J.Chandran

For Respondents 1 to 6 : Mr.M.Sriram

J U D G M E N T

The fate was so cruel to take away the life of father even before the birth of two children. This heart breaking accident occurred on 05.03.2007. No money could compensate the father's love, affection, care and guidance. The respondents 5 and 6 did not even have the benefit of seeing their father's face and they lost love and affection of their father through out their life.

This case only demonstrates as to many avoidable road accidents, take away the precious lives, every day on Indian Roads. If the drivers and riders are careful in driving, accidents can be avoided and similarly many precious lives can be saved. People lost their lives as well as become disabled because of the negligence of the driver. Therefore, it should be endeavour of everyone to see that the motor vehicles are driven with care avoiding rash, negligent driving to safe guard the interest of the general public.

2. The appeal has been preferred by the appellant / Insurance Company, against the award of Rs.7,64,000/- towards compensation, for the death of one Govindarajan, in the accident, occurred on 05.03.2007.

3. While the deceased was travelling as a pillion rider in the motor cycle along with one Chandrasekar, it was hit by a tractor-trailer insured with the appellant/Insurance Company, belonging to the 7th respondent driven rash and negligently. In the claim petition filed by the respondents, the Tribunal awarded a sum of Rs.7,64,000/-. The said award is being challenged before this Court by the insurance company.

4. Heard Mr.J.Chandran, learned counsel appearing for the appellant and Mr.R.Sriram, learned counsel appearing for the respondents/claimants.

5. Mr.J.Chandran, learned counsel appearing for the appellant would submit that the rider of the two wheeler drove the vehicle rash and negligently. However, the negligence was wrongly fixed on the part of the driver of the tractor-trailer by the tribunal. Moreover, he would point out that at the time of accident, there was no valid driving licence possessed by the driver of the tractor-trailer and it will amount to order pay and recover without fastening the liability on the Insurance Company.

6. On the other hand, Mr.R.Sriram, learned counsel appearing for the respondent would support the award passed by the Tribunal.

7. Heard the parties and perused the records.

8. It is seen from the records that the deceased Govindarajan was travelling as a pillion rider and one Mr.Chandrasekar, was riding his two wheeler from Kokkarapatty to Santhur Cross Road, near Kalaimagal kalalaya School, Krishnagiri District, and the tractor-trailer, which was coming in the opposite direction, dashed against the two wheeler and the deceased Govindarajan fell down on the road and died on the spot.

9. Taking into consideration of Ex.P.1-FIR, which was registered against the driver of the tractor-trailer, based on P.W.2 eye witness, the Tribunal rightly concluded that the

driver of the tractor-trailor alone drove the vehicle in a rash and negligent manner and caused the accident. Therefore, the finding of the Tribunal in this regard cannot be interfered with.

10. However, the contention of the learned counsel for the appellant/Insurance Company that at the time of accident, the driver of the tractor-trailer did not have any valid driving licence and was having only Learner's License (LLR) has got force. Once it was proved by R.W.1 that the driver of the tractor-trailer Ponnusamy, had only Learner's Driving Licence Ex.A4 and did not have valid driving licence with Badge to drive the tractor-trailer, the insurance company should have been exonerated. As the non-possession of valid driving License, amounts to violation of policy condition, the insurance company is liable to pay the compensation and recover the same from the owner (insurer). However, this fact was not taken into consideration by the Tribunal and erroneously gave direction to the appellant/Insurance company to pay the compensation amount and therefore, such portion of the award is set aside and direction is given to the appellant/Insurance company to pay the compensation and recover the same from the owner, namely, the 8th respondent.

11. The deceased Govindarajan was aged about 23 years and was working as a mason and claimed to have earned a sum of Rs.7,000/- p.m. However, in the absence of any proof regarding monthly income, the Tribunal took Rs.4,500/- as monthly income and deducted 1/4th towards personal expenses and by applying multiplier 18, a sum of Rs.7,29,000/- was awarded towards loss of income. However, considering the period of the accident, which occurred on 05.03.2007, it is appropriate to determine the monthly income at Rs.6,000/-, as no manual labour would be available at that point of time for less than Rs.6,000/-, which amount is inconsonance with the Judgment of the Hon'ble Supreme Court in Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459, wherein the Apex Court determined a sum of Rs.6,500/- as monthly income for a vegetable vendor with regard to the accident occurred in the year 2008 and added 50% towards future prospects and determined the monthly income at Rs.9,750/-. Therefore, the income of the deceased is fixed at Rs.6000/- per month. As the deceased was aged about 23 years, as per the Judgments of the Hon'ble Supreme Court in Santhosh Devi v. National Insurance Co., Ltd., and Others reported in 2012 ACJ 1428 and Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1, 50% is added towards future prospects and the monthly income would be Rs.6,000/- +50%= Rs.9,000/-. The size of the family is four excluding the father and sister of the deceased and therefore, 1/4 is required to be deducted

towards personal expenses. The loss of monthly income is determined as follows:-

Rs.6,000/- + 50%-1/4= Rs.6,750/-

12. The age of the deceased as per Ex.P.2 is 23 years and therefore, the appropriate multiplier to be applied is 18. The loss of dependency is modified as follows:

Rs.6,000/- + 50% _ ¼ x 12 x 18 = Rs.14,58,000/-

The Tribunal awarded only a sum of Rs.15,000/- towards loss of consortium. The first respondent/wife, in the age of 19 years, lost her husband and she has to undergo both physical and psychological pain and also she has to suffer mental agony, sorrow, loss of companionship through out her life, apart from bad stigma through out her life. She has to live in the society as widow and she is not welcomed during important festivals and celebrations as in auspicious. Inspite of fight for the rights of widows by our great leaders like Rajaram Mohan Rai, Mahatma Gandhi and Periyar etc, it is a sorry state of affairs prevailing in the society regarding widows for which, we have to head down with shame. It is hoped that the situation would change soon. Therefore, following the judgment of the Honourable Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, this Court awards a sum of Rs.2,00,000/- towards loss of consortium to the 1st respondent considering her young age.

13. The respondents 5 & 6 twins, were not even born, when they lost their father and therefore, they were impleaded subsequently as claimants 5 and 6 in the claim petition. As observed earlier, God has not been merciful to the twins who did not have opportunity to see their father and enjoy love, affection and guidance. Therefore, this Court awards a sum of Rs.1,00,000/-each towards loss of love and affection to the respondents 5 & 6/claimants. The Tribunal did not award any amount towards loss of love and affection to respondents 2 to 4 and therefore, a sum of Rs.75,000/- is hereby awarded towards loss of love and affection. Rs.15,000/- awarded towards loss of estate is too low and the same is hereby enhanced to Rs.50,000/-. Rs.5,000/- awarded towards transportation and funeral expenses is very meager and hence, this Court awards a sum of Rs.25,000/- towards funeral expenses and Rs.10,000/- is awarded towards transportation. A sum of Rs.7,64,000/- awarded by the Tribunal is hereby enhanced to Rs.18,58,000/- rounded of to Rs.18,60,000/-.

14. Though the appeal has been preferred by the Insurance company against the award of Rs.7,64,000/-, based on the very peculiar circumstances of the facts, by re-appreciating the evidence on record invoking under Order 41 Rule 33 of C.P.C., this Court has enhanced the compensation to Rs.18,60,000/- to

endeavor just and reasonable compensation, as the Tribunal did not award just compensation. Moreover, the provisions of motor Vehicle Act shall be beneficial in nature.

15. The appellant/Insurance Company is directed to deposit the entire award amount along with interest at the rate of 6% per annum and costs within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first respondent/wife and respondents 5 and 6/children are entitled to each Rs.5,00,000/-. The second respondent/mother is entitled to Rs.1,60,000/-. The third respondent/father is entitled to Rs.1,00,000/- and the 4th respondent/sister is entitled to Rs.1,00,000/-. The respondents 1 to 3 are permitted to withdraw their respective shares within one week. The minor shares shall be deposited in interest bearing fixed deposit in anyone of the Nationalized bank till they attain majority. The first respondent/wife is permitted to withdraw the accrued interest once in two months.

16. In view of the above, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connects miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Motor Accidents Claims Tribunal
   Principal District Court,
   Krishnagiri District.

2. The Section Officer,
   V.R. Section,
   High Court, Chennai-104.

+1cc to Mr.Mukund Pandian, Advocate, S.R.No.69477

RSK(CO)
RS(03/02/2017)

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and
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