IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM

THE HONOURABLE DR.JUSTICE.S.VIMALA

C.M.A.No.2019 of 2017

1. P.Kumar
2. Minor Santhya Kumari
3. Minor Santhosh Kumar ... Appellants/Petitioners

Vs

1. Mohanraj
2. P.Manikandan
3. United India Insurance Co. Ltd.,
   Divisional Office-II,
   E.P.Buildings, No.24, Mill Road,
   Coimbatore-1. .. Respondents/Respondents
   (R1 remained ex parte before the Tribunal)

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the fair and decreetal order dated 28.12.2005 in M.C.O.P.No.408 of 2003 on the file of the Motor Accident Claims Tribunal (First Additional District Judge's Court), Coimbatore.

For Appellants : Mr.C.P.Prasannan
For R2 : No appearance
For R3 : Mr.T.Ravichandran

JUDGMENT

The petitioners/claimants have challenged the order passed by the First Additional District Judge, Coimbatore, in M.C.O.P.No.408 of 2003, in and by which the claim made by the claimants was dismissed.

2. The appellants are the husband, daughter and son of the deceased Shanthi. The deceased Shanthi died in the accident that took place on 17.10.2001. While the deceased was proceeding in the moped bearing Reg.No.TN38K 9164 on the bridge, the lorry, bearing Reg.No.TN63 0968, driven in a rash and negligent manner, hit the deceased which resulted in her death.

3. Though the claimants claimed compensation in a sum of

Rs.5,00,000/-, the Tribunal quantified the compensation at Rs.3,40,000/-, but, however, has chosen to dismiss the claim petition, on the ground that the claimants have not proved the relationship with the deceased, there was no valid insurance policy for the vehicle at the time of accident and that the involvement of the vehicle has not been established.

4. Challenging the dismissal of claim petition, this appeal has been filed on the following grounds:

> a) Ignoring Exs.P-1 to P-10, the Tribunal erred in holding that the vehicle belonging to the second respondent was not involved in the accident;
>
> b) Ignoring the fact that no oral or documentary evidence was adduced to hold that there is no valid policy, the Tribunal erroneously held that the vehicle was not covered at the time of accident;
>
> c) the relationship between the deceased and the legal representative is not established.

On the above grounds, the claimants have assailed the order passed by the Tribunal contending that the order passed by the Tribunal deserves to be set aside.

5. Learned counsel appearing for the appellants submit that despite filing of legal heirship certificate, it is unfortunate that the claims Tribunal has chosen to dismiss the claim petition on the ground that the parties have not proved the relationship to the deceased. It is further submitted that without properly appreciating the materials available on record, the Tribunal has erroneously held that the vehicle was not covered under a valid policy and that the vehicle was not involved in the accident.

6. This Court has given its anxious consideration to the materials available on record and also perused the order passed by the Tribunal and the findings and reasonings recorded thereto.

7. A perusal of the records reveal that the claimants have filed the legal heir certificate. It is to be pointed out that though it is not necessary for the claimants to prove their relationship to the deceased by filing legal heir certificate, however, the claimants have taken the additional responsibility of producing the legal heir certificate to establish their relationship to the deceased. Despite the filing of the

certificate, which is shown to be on record as Ex.P-8, however, the Tribunal has recorded a finding that the claimants have not established their relationship with the deceased. The said finding of the Tribunal is contrary to the records and, the said finding is liable to be set aside and, accordingly, the same is set aside.

8. Insofar as the valid insurance Policy is concerned, the Insurance Company has produced the policy, which is marked as Ex.R-1. It is seen from the records that the policy was taken on the date of the accident at about 10.00 a.m. It is not in dispute that the accident happened at 10.00 a.m. on 17.10.2001. It is to be pointed out that though the insurance policy has been issued at 10.00 a.m. on the date of the accident, a careful perusal of the policy will reveal that the operation/commencement of risk on the policy starts from 12.00 a.m., i.e. from midnight, i.e. 10 hrs. prior to the accident. That being the case, it cannot be said that the vehicle was not covered through a valid policy. Therefore, for all practical purposes, the vehicle in question was covered under a valid insurance policy. The said fact has been totally lost sight of by the Tribunal, which has dismissed the claim on the ground that the vehicle was not having a valid insurance policy at the time of the accident. Accordingly, the said finding of the Tribunal is liable to be set aside and, accordingly, the same is set aside.

9. Insofar as the quantum is concerned, the Tribunal, while fixing the age of the deceased at 36 years, taking the monthly income at Rs.2,500/- p.m., and deducting 1/3rd towards the personal expenses, by adopting the multiplier of '16', has quantified the loss of dependency at Rs.3,20,000/-. However, this quantification done by the Tribunal has been challenged by the claimants on the ground that the monthly income of the deceased has not been properly fixed and that the future prospective increase in income has not been taken into consideration while fixing the monthly income. It is the further contention of the claimants that the compensation awarded under the heads loss of love and affection and loss of consortium are grossly inadequate.

10. The fixation of monthly income by the Tribunal, on the records available, is erroneous. The Tribunal has neither fixed the proper income, nor considered the future prospective increase in income of the deceased. On an overalll consideration of the materials available on record, this Court is of the considered opinion that the monthly income of the deceased could safely be fixed at Rs.3,000/=. Adding 40% towards the prospective increase in income, the monthly income is quantified at Rs.4,200/= (Rs.3000/- + Rs.1200/-). Deducting

1/3rd towards the personal expenses and adopting multiplier of '15', the loss of dependency is quantified at Rs.5,37,600/= (Rs.2800 X 12 X 16), which is rounded off to Rs.5,40,000/-.

11. Insofar as loss of consortium is concerned, this Court is of the considered opinion that a sum of Rs.40,000/- under the said head would be a just and reasonable compensation. Further, as is evident from the order, no compensation has been awarded under the heads loss of estate and funeral expenses. This Court, accordingly, awards an amount of Rs.15,000/- each under the heads loss of estate and funeral expenses. The compensation awarded under the head loss of love and affection to the children is enhanced to Rs.50,000/- to each child. In all, the total compensation is quantified at Rs.7,10,000/-.

12. The learned counsel appearing for the insurance company seriously disputed its liability to pay interest. It is specifically contended that when it is a case of dismissal of the claim petition, the appellants should have taken earnest and sincere efforts to have the matter disposed off on merits at an early date. It is further submitted by the learned counsel for the insurer that the appeal has been pending consideration of the delay condonation petition for more than a decade. Therefore, the insurer should not be fastened with the liability to pay the interest.

13. Though the contentions raised by the learned counsel for the insurance company relating to grant of interest is justifiable, however, the fact remains that despite the claimants filing all relevant documents, the Tribunal has erroneously dismissed the claim petition. At the initial stage before the Tribunal, the claimants cannot be found fault with. Even before this Court, the record reveals that the claimants have taken earnest efforts to get the appeal listed on priority basis. The plight of the claimants have also to be kept in mind while this Court decides on granting interest. But, for the system, which has caused the delay, the claimants cannot be fastened with the liability, so also the insurer. However, both the claimants and the insurer should be given some via-media relief in the matter of interest so that interest of both the parties get secured.

14. In such view of the matter, considering the totality of circumstances and the reasons for the long delay in disposal of the appeal, this Court is of the considered opinion that a consolidated amount can be granted to the claimants, which would meet the ends of justice. Accordingly, this Court directs that a consolidated amount of Rs.2,00,000/- would be payable by the insurer as interest on the claim amount.

15. For the reasons aforesaid, this appeal is allowed and the order passed by the Tribunal in MCOP No.408 of 2003 is set aside. The claimants would be entitled to a consolidated sum of Rs.9,10,000/=, which includes interest of Rs.2,00,000/=. However, there shall be no order as to costs.

16. Of the award amount, this Court directs that the first claimant would be entitled to a sum of Rs.3,10,000/=, claimants 2 and 3 would be entitled to a sum of Rs.3,00,000/= each.

17. The insurance company is directed to deposit the amount, as awarded by this Court above, which includes interest, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the share of the 1st claimant as apportioned above, directly to the bank account of the 1st claimant through RTGS, within a period of two weeks thereafter. Insofar as the share of claimants 2 and 3 is concerned, though claimants 2 and 3 were minors on the date of the accident, which happened in the year 2001, by now, both the claimants would have attained majority. In such view of the matter, the claimants 2 and 3 are directed to produce relevant documents to establish their attaining majority. On the claimants producing proof of their attaining majority, the Tribunal is directed to transfer the share of claimants 2 and 3 to their respective bank accounts through RTGS forthwith. The court fee due by the claimants shall be paid before obtaining copy of the Judgment.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(First Additional District Judge's Court),
Coimbatore.

+1cc to Mr.C.P.Prasannan, Advocate, S.R.No.80823
+1cc to Mr.T.Ravichandran, Advocate, S.R.No.80622

C.M.A.No.2019 of 2017

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