

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2017

CORAM:

THE HONOURABLE MRS. JUSTICE. PUSHPA SATHYANARAYANA

CMA.No.847 of 2014

1. Chellam
2. Lakshmi
3. Gandhimathi
4. Arasu @ Arassammal ... Appellants/Petitioner

//vs//

1. Senthilkumar
2. The National Insurance Company Limited,
Manojappa Street,
Tanjur-9. ... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.12.2011 made in MCOP.No.251 of 2008 on the file of the MACT/Subordinate Judge, Ariyalur.

For Petitioner : Ms.R.Shase
for M/s.M.Guruprasad
For 1st Respondent : Mr.C.Prabakaran
For 2nd Respondent : Ms.N.B.Surekha

J U D G M E N T

Challenging the quantum of compensation awarded by the Subordinate Judge, Motor Accidents Claims Tribunal, Ariyalur, in M.C.O.P.No.251 of 2008, dated 22.12.2011, the claimants have come forward with this Civil Miscellaneous Appeal for enhancement of compensation.

2. On 23.05.2008, at about 05.00 p.m., the deceased Manivel was proceeding towards his house in Ariyalur-Jamin Athur Main Road, a Splendour Plus Motor Cycle bearing Registration No.T.N.46-7006 driven by the 1st respondent, who is the driver-cum-owner of the said vehicle, which came behind him, in a rash and negligent manner, at a high speed, without observing the traffic rules, dashed against the deceased and caused the accident. Due to the said impact, the deceased sustained

grievous injuries and died, while taking treatment at hospital. Hence, the claimants, who are the wife and daughters of the said deceased filed a claim petition in M.C.O.P.No.251 of 2008, seeking compensation for a sum of Rs.10,00,000/-.

3. The Tribunal, on consideration of oral and documentary evidence, has awarded a sum of Rs.1,90,000/-, with interest @ 7.5% per annum from the date of petition till the date of deposit.

4. The break-up details of the same are as follows:

1. Loss of income	- Rs. 1,20,000
2. Loss of Consortium	- Rs. 35,000
3. Loss of love and affection	- Rs. 15,000
4. Transportation	- Rs. 10,000
5. Funeral Expenses	- Rs. 10,000

Total award of compensation	Rs. 1,90,000/-

5. The learned Counsel for the appellants/claimants would contend that the Tribunal was erred in fixing the liability on the part of the 1st respondent and the 2nd respondent had not taken any steps to prove their contention that the 1st respondent was not having any valid licence. The learned counsel for the Claimants would further contend that the amount of compensation awarded by the Tribunal is very low and the same needs to be enhanced. He has also submitted that the Tribunal has not considered the fact that the alleged violation of policy relate to the contract between the insurance Company and the owner of the vehicle for which the claimants cannot be penalized and therefore the learned Counsel prays to direct the Insurance Company to deposit the entire award amount with a direction to recover the same from the owner of the vehicle.

6. A perusal of the award would go to show that no documentary evidence was produced to show the monthly income of the deceased and hence the tribunal has correctly fixed the monthly income of the deceased at Rs.3,000/- and after deducting 1/3rd towards personal expenses, fixed a sum of Rs.2,000/- per month and by applying the multiplier 5, awarded a sum of Rs.1,20,000/- towards Loss of dependency which is reasonable. The amount awarded towards Loss of Consortium to the 1st respondent and the Loss of love and affection to other claimants are reasonable. A sum of Rs.10,000/- awarded towards funeral expenses and a sum of Rs.10,000/- awarded towards transportation are also reasonable, which does not warrant any interference.

7. The Hon'ble Supreme Court, in a case of National Insurance Company Ltd., Vs. Swarn Singh, reported in 2004 (1) TNMAC 104

(SC) has taken note of various decisions including that of the decision in Sohan Lal Passi V. P.Sesh Reddy reported in 1996 (5) SCC 21, and their Lordships held as follows:

"102. The summary of our findings to the various issues raised in these petitions are as follows:

(iv) The Insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle, the burden of proof wherefor would be on them.

(v) The Court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow defences available to the insurer under Section 149 (2) of the Act.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149 (2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be

reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of the claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal."

8. In the instant case, the rider of the vehicle has no valid driving license. Mere absence or invalid licence or disqualification of driver are not the defences available to the insurer, either the insured or their parties. The burden is on the insurer to prove that the insured was guilty of negligence and failed to exercise reasonable care in fulfilling the policy conditions regarding use of vehicle by licensed driver. The insurance company has not established the breach on the part of the insured.

9. The Motor Accident Claims Tribunal failed to apply the principles laid down by the Hon'ble Supreme Court in the decision referred supra. In Paragraph 99 of the decision of the Hon'ble Supreme Court in National Insurance Co.Ltd. Vs. Swaran Singh & others reported in 2004 (1) TNMAC 104 SC, it is held as follows:

"99. We may, however, hasten to add that the Tribunal and the Court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, regard to provisions of Sections 165 and 168 of the Act. However, in the

event, having regard to the limited scope of inquiry in the proceedings before the Claims Tribunal it had not been able to do so, the insurance company may initiate a separate action therefore against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to knowledge of the insurer at a later stage."

10. Considering the same, the Insurance Company is directed to deposit the award amount granted by the Tribunal and recover the same from the owner of the vehicle.

11. In the result, this appeal is partly allowed confirming the Judgment and decree of the Claims Tribunal, in M.C.O.P.No.251 of 2008, on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Ariyalur. The Insurance Company is directed to deposit the entire award amount, within a period of four weeks from the date of receipt of a copy of this order and recover the same from the owner of the vehicle i.e. the first respondent herein. The claimants are also permitted to withdraw the award amount with interest accrued thereon. No costs.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

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

2. The Section Officer
VR Section
High Court, Madras

+1 CC to M/s. N.B. Surekha, Advocate sr 18414

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