IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.2533 of 2004
and CMP.Nos.8898 of 2016

1.Jessil Kaitor
2.Neero Jesil .. Appellants
[Minor petitioner Neero Jessil has delcared as major and to discharge the guardianship of Mr.Jessil Kaitor as per order dated 28.4.2016 made in CMP.Nos.5749 and 5750 of 2016 in CMA.No.2533 of 2004]

Vs.

1. Madras Roadlines
Having Office at: Komarapalayam Main Road
(Near Meena Theatre)
Pallipalayam, Agraharam P.O.
Thiruchengodu Taluk.

2. The National Insurance Co.,
Rep. by its Branch Manager,
Having Office at Erode Branch
Thiruchengodu. .. Respondents
(1st Respondent having been set exparte in the lower court)

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 18.11.1999 made in MCOP.No.95 of 1993 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge of Chengalpattu.

For Appellants : Mr.G.Mani Prabhu
For Respondents : Ms.N.B.Sureka [for R2]

JUDGMENT

On 03.1.1992 at about 6.45 a.m., the petitioners and deceased Shiney Jessil were travelling in the car on their way from Chennai to Ernakulam, until their journey was halted due to an unforeseen accident when a lorry bearing registration No.TDL 7972 belonging to the first respondent and stated to have been insured with the second respondent, collided with the car. In the accident, Shiney Jessil, the wife of the first petitioner and mother of the second petitioner died.

2. Seeking a compensation of Rs.10,00,000/-, the claimants moved the Tribunal and after appraising the evidence before it, the Tribunal passed an award for Rs.3,00,000/-. The tribunal found that the accident took place solely due to the negligence of the lorry driver. In arriving at the said sum, the Tribunal accepted the contention of the claimant that the deceased was running a dry cleaners and based on Ext.P-4, her Income Tax Returns for 1991-1992, the Tribunal reckoned the annual income of the deceased at Rs.28,416.50, and proceeded to strain itself much to arrive at the monthly income, and then what it calculated as the accurate amount the deceased might have spent for herself, and finally awarded a sum of Rs.2,89,924.80 as compensation for loss of support to the family of the victim . It awarded Rs.5,000/- towards loss of consortium to the first petitioner; Rs.2,500/- towards loss of estate and another Rs.2,000/- towards funeral expenses. In total, the compensation awarded was determined at Rs.2,99,424.80 and was rounded off to Rs.3.0 lakhs and directed its payment with interest at 11% per annum.

3. Before the Tribunal, the insurance company took up a plea that the offending vehicle in question was not insured with it. The Tribunal took note of this defence and has held that inasmuch as the claimants before it have not produced any materials regarding insurance, it absolved the insurance company of the liability.

4. This is now in challenge. Before this Court, the appellants have produced the copy of the cover note of the offending lorry Vide CMP.No.8898 of 2016. When the case came up before this Court on 19.01.2017, this Court directed the learned counsel appearing for the second respondent/insurance company to verify the said documents. After few adjournments granted for the said purpose, the learned counsel for the insurance company submitted before this Court that the second respondent could not trace necessary records from its office to provide any facts either supporting or opposing the genuineness of the insurance policy now produced.

5. On the face of the insurance policy now produced by the appellant/claimant, this Court does not find anything unnatural to suspect its genuineness. It might be that several years might have passed, still it would have been appreciable if a body corporate that the insurance company is, has spared greater efforts to ascertain the genuineness of the copy of the insurance policy now produced. With nothing on record to negate it, this Court chooses to act on it. Accordingly, it holds that the offending lorry is insured with second respondent insurance company and holds that it is jointly and severally liable along with the insured to pay the compensation amount.

6. It is also contended by the learned counsel for the appellants that in terms of the grounds raised in the memorandum of appeal, loss of consortium for the first petitioner was inadequately compensated. So far as the second claimant is concerned, nothing was awarded for loss of love and affection. Since the accident had taken place in the year 1992, this Court chooses to enhance the compensation amount for loss of consortium from Rs.5,000/-to Rs.10,000/-; for loss of love and affection for the second respondent, a sum of Rs.10,000/- is awarded. Towards funeral expenses and loss of estate, I retain the same as fixed by the Tribunal. Accordingly, the total compensation amount payable is enhanced from Rs.3,00,000/- to Rs.3,14,500/-. The break-up details of the enhanced award of compensation reads as follows:

Heads of Compensation	Enhanced Amount (Rs.)
Loss of support	2,89,924.80
Loss of consortium	10,000.00
Loss of love and affection	10,000.00
Loss of estate	2,500.00
Towards funeral expenses	2,000.00
	3,14,424.80 (rounded off to) Rs.3,14,500.00

7. In the result, the appeal is partly allowed. The second respondent is directed to deposit Rs.3,14,500/- herein awarded with interest at the rate of 9% per annum throughout, less any amount already awarded, within a period of six weeks from the date of receipt of a copy of this order. The sum awarded shall be apportioned in the same ratio as fixed by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

ds

To:

1. The Principal Sub Judge
   Motor Accidents Claims Tribunal
   Chengalpattu.

Copy to
   The Section Officer
   VR Section,
   High Court, Madras.

+1 CC to Ms.N.B. Surekha, Advocate sr 54225.
+2 Ccs to Ms.G. Mani Prabhu, Advocate sr 54223.

CP(CO)
SP(26/10/2017)