BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD) No.1473 of 2016
in
C.M.P(MD) No.12361 of 2016

The Branch Manager,
The Bharti AXA General Insurance Company Ltd.,
Sriram Center,
P.P.Chavadi, Theni Main Road,
Madurai 16. ... Appellant/Respondent No.3

Vs.

1.K.Sudharani
2.Rajalakshmi ... Respondents 1 & 2/ petitioners

3.G.Venkateswaran

4.Shriram General Insurance Company Ltd.,
Rep. Through its Manager,
Having branch office at No.130
Ground Floor, Theni Main Road,
Madurai-14. ...Respondents 3 & 4/ Respondents 1 & 2

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order, dated 25.11.2015 made in M.C.O.P.No.1133 of 2011, on the file of Motor Accidents Claims Tribunal (VI Additional District Judge), Madurai and allow this Civil Miscellaneous Appeal.

For Appellant :Mrs.K.R.Shiva Shankari for Mr.S.Srinivasa Raghavan

For R 1 & R2 :Mr.V.Nagendran

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 25.11.2015, made in M.C.O.P.No.1133 of 2011, passed by the Motor Accidents Claims Tribunal (VI Additional District Judge), Madurai.

2.The appellant is the 3rd Respondent in MCOP No.1133 of 2011, on the file of the Motor Accident Claims Tribunal-cum-(VI Additional District Judge) Madurai. The respondents 1 & 2 filed claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of husband of the first respondent and father of the second respondent. Originally, the fourth respondent was arrayed as Insurer and subsequently, the appellant was impleaded as Insurer of the vehicle.

3.According to the respondents 1 & 2, on 24.02.2010 the deceased was travelling along with his rice bags in TATA 207 goods vehicle bearing Registration No.TN 67 E 3801 belonging to the 2nd respondent as owner of goods. Due to rash and negligent driving of the driver of the third respondent, the said van capsized and deceased suffered serious injuries. He was taking treatment in Government Hospital, Virudhunagar and subsequently, he was taken in Hannah Joseph Hospital, Madurai for further treatment and admitted as Inpatient from 24.02.2014 to 25.02.2015. Subsequently, he was admitted in Government Rajaji Hospital, Madurai and he died on 28.02.2010. The deceased was doing cultivation and doing Painter work and was earning Rs.10,000/- per month. The deceased was 45 years at the time of accident and respondents 1 & 2 are the legal heirs and dependants of the deceased. Therefore, they filed claim petition claiming a sum of Rs.10,00,000/- as compensation.

4.The third respondent filed counter statement and submitted that the driver of the vehicle was driving the van slowly and cautiously and accident did not take place due to rash and negligent driving of the driver of the vehicle. Suddenly, the driver noticed that a cyclist crossed the road without taking note of the approaching vehicle, the driver raised the speed of the vehicle. While doing so, the vehicle capsized on the western side of the road. Therefore, there is no negligent on the part of the driver of the vehicle. The vehicle was insured with the fourth respondent and only fourth respondent is liable to pay compensation.

5.The fourth respondent filed separate counter and submitted that the vehicle was not insured with the fourth respondent at the time of accident.

6.The appellant filed counter affidavit and stated that the accident did not take place due to the rash and negligent driving of the driver of the van. Suddenly, one cyclist crossed the road and driver turned towards right and at that time van capsized. The deceased was gratuitous passenger and the vehicle involved is goods carrier and the seating capacity is only three including driver. At the time of accident, 7 persons including driver were travelling in the vehicle. There is a violation of policy condition and therefore, the appellant is not liable to pay any compensation.

7.Before the Tribunal, the first respondent examined himself as P.W.1 and eye witness was examined as P.W.2 and 14 documents were marked as Ex.P.1 to P.14. Appellant examined himself as R.W.1 and marked two documents as Ex.R.1 to Ex.R.2.

8.The Tribunal considering the pleadings, oral and documentary evidence came to the conclusion that accident took place only due to the rash and negligent driving of the driver of the vehicle. The deceased was travelling as owner of the goods and therefore, appellant is liable to pay compensation for the death of the deceased in the accident and awarded a sum of Rs.9,73,053/- as compensation. The Tribunal considering the age, income of the deceased awarded a total sum of Rs.9,73,050/- and the said compensation is just compensation.

9.Against the said award, the Insurance Company has filed the present Civil Miscellaneous Appeal.

10.The learned counsel for the appellant submitted that the deceased was unauthorised passenger. As per the permit condition, the seating capacity of the vehicle is only three including driver while so, seven persons travelled in the vehicle at the time of accident. The respondents 1 & 2 failed to prove the income, age of the deceased. The compensation awarded is excessive. The Tribunal ought to have held that the deceased was unauthorised passenger. The Tribunal erred in awarding compensation both head of loss of consortium and loss of love and affection to the first respondent.

11.Tribunal failed to consider the seating capacity of the van is only three, while at the time of accident 7 persons were travelled including driver. It is a statutory violation.

12.The learned counsel for the respondents 1 & 2 submitted that the respondents 1 & 2 proved that the accident took place only due to rash and negligent driving by driver of the vehicle and deceased was travelling as a owner of the goods. The Tribunal fixed Rs.6,000/- per month in consonants with various Judgments of this Court as well as the Hon'ble Apex Court and prayed for dismissal of the appeal.

13. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused all the materials available on record.

14. The learned counsel for the appellant contended that the appellant is not liable to pay any compensation on the ground that the deceased was unauthorised passenger and 7 persons were travelling in the van contrary to the permit condition. The respondents 1 & 2 have contended that the deceased was travelling as owner of the goods along with rice bags belonged to him. They let in any evidence to prove the same. Appellant has not produced any contra evidence to disprove there were no rice bags or any other goods in the van at the time of accident. In view of the same, I hold that the Tribunal has rightly held that the deceased was travelling as owner of goods. The issue whether the Insurance

Company is liable to pay compensation in case of death or injury to a passenger, who was travelling in a goods carriage as owner of goods, is no longer res-integra. In number of judgments, this Court and Hon'ble Apex Court has held that the Insurance Company is liable to pay compensation, when it is proved that the persons travelled as owner of goods in a goods carriage. Further, the third respondent has stated that he has paid extra premium to cover the person, who travelled in a vehicle as owner of the goods. This contention was not denied by the appellant. In the circumstances, the appellant is liable to pay compensation for the death of the deceased in the accident.

15. He relied on the judgment reported in *2012(1) TNMAC 89 (DB) Royal Sundaram Alliance General Insurance Co., Ltd., v. P.Ayyakannu* wherein in paragraph 10 it has been held as follows:-

> “10.Rule 236 provides that no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation. In the paragraph extracted above from Anjana Shyam's case, the Supreme Court held that Section 149, cannot be understood as imposing a liability on the Insurer to make payment even in respect of those who have been loaded into the vehicle against the terms of the permit and against the terms of the condition of registration of the vehicle and that though the Insurer is bound to cover the third party risks in respect of passengers, the risks can only be understood to mean risks of passengers authorized or permitted to be carried in the said vehicle. We are bound by this judgment and therefore, we hold that the Insurer is liable to indemnify the liability only with regard to Ayyakannu who sat in the cabin of the vehicle and along with the driver and whose liability alone the Insurer was bound to cover.”

16.As far as quantum of compensation is concerned age of the deceased is mentioned as 45 years. In the absence of any document with regard to income of the deceased, this Court as well as the Hon'ble Apex Court in number of judgments have held that the Courts can fix Notional income of the deceased. It is also held that Rs.6,000/- per month will be reasonable amount. Even though, in some cases Court has fixed monthly income more than 6000/-, in the present case, the Tribunal fixed at Rs.6,000/-. There is no reason to modify the said amount. The Tribunal taking into consideration the age of the deceased applied correct multiplier and awarded a compensation of Rs.7,56,000/- (4,500 x 12 x 14=7,56,000) towards loss of income. The same is confirmed.

17.The contention of the learned counsel for the appellant that the Tribunal erred in awarding compensation in both loss of consortium and loss of love and affection to the first respondent, has considerable force. The learned counsel for the appellant submitted that the petitioner has not filed any document to prove that there is a loss of estate. The Tribunal awarded a sum of Rs.50,000/- as loss of consortium and Rs.30,000/- for loss of love and affection. The sum awarded Rs.30,000/- towards loss of estate and Rs.30,000/- loss of love and affection is set aside and all other heads are confirmed.

18. In view of the settled position of law, this Court modifies the award of the Tribunal by reducing the compensation, as below:-

S.No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	**Transportation**	**5,000**	**5,000**	**confirmed**
2.	**Funeral Expenses**	**25,000**	**25,000**	**confirmed**
3.	**Loss of Love and Affection (30,000x2=60,000)**	**60,000**	**30,000 (Only to the 2nd respondent)**	**reduced**
4.	**Loss of Dependency**	**7,56,000**	**7,56,000**	**confirmed**
5.	**Loss of Estate**	**30,000**	**-**	**deducted**
6.	**Loss of Consortium of 1st petitioner**	**50,000**	**50,000**	**confirmed**
7.	**Medical expenses**	**47,043**	**47,043**	**confirmed**
	Total	**9,73,050**	**Rs.9,13,050**	**By reducing a sum of Rs.60,000/-**

19. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from Rs.9,73,050/- (Rupees Nine lakhs Seventythree Thousand and Fifty only) to a sum of Rs.9,13,050/- (Rupees Nine Lakhs Thirteen Thousand and Fifty only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The respondents 1 & 2/claimants are directed to submit their Savings Bank Account Detail along with the copy of their passbooks to the Tribunal forthwith;

(iii) The appellant/Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.1133 of 2011, on the file of the Motor Accident Claims Tribunal, VIth Additional District Court, Madurai within a period of twelve weeks from the date of receipt of a copy of this judgment;

(iv) On such deposit, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the respondents 1 & 2/claimants, through RTGS/NEFT system, after getting his Account Details, within a period of two weeks thereafter; and

(vi) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub-Assistant Registrar

To

1.The VIth Additional District Judge,
The Motor Accidents Claims Tribunal,
Madurai

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.S.Srinivasa Raghavan, Advocate, SR.No.13281

+One cc to Mr.V.Nagendran, Advocate, SR.No.13223

Am/Mrn
RL/5C/6P/SV/MMS/25.4.2017

C.M.A(MD) No.1473 of 2016

08.03.2017