BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.04.2017
Delivered on : 05.06.2017
CORAM :
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.(MD)No.734 of 2011

The New India Assurance Company Limited
Through its Senior Divisional Manager,
242-B, Kamarajar Salai,
Madurai. ... Appellant/ 2nd Respondent

Vs.

1.Rohini Mohanraj
2.Minor M.Shreenidhi
3.Minor M.Shreepradaa ... Respondents 1 to 3 /Petitioners
[Minor Respondents 2 & 3 are represented through their Mother & Guardian, the first respondent herein]

4.L.Sankar ... 4th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against Order and decreetal Order in M.C.O.P.No.875 of 2009, dated 13.12.2010, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.1, Madurai.

For Appellant : Mr.J.S.Murali
For R1 to R3 : Mr.I.Suthakaran
For R4 : No Appearance

J U D G M E N T

(Judgment of the Court was delivered by **P.VELMURUGAN,J.**)

This Civil Miscellaneous Appeal has been filed by the appellant/second respondent, against judgment and decree, dated 13.12.2010, passed in M.C.O.P.No.875 of 2009, by the learned Additional District and Sessions Judge [Fast Track Court No.I], Motor Accidents Claims Tribunal, Madurai.

2.The case of the respondents 1 to 3/claimants, as per the claim petition, is that on 18.07.1998 around 18.00 hours, the deceased N.Mohanraj was travelling in a TATA Sumo Car, bearing Registration No.TN-58-A-8422 belonging to the fourth respondent from Madurai to Theni. When the vehicle was nearing Chekkanoorani Sivan Kovil, the driver of the vehicle was driving the vehicle in a rash and negligent manner, slightly turned the vehicle towards left without noticing loose soil. Due to which, the vehicle suddenly dragged on towards left side and the driver could not control the vehicle. All of a sudden, the car dashed against a Tamarind Tree. As a result of which, the deceased sustained grievous injuries and succumbed to death. Other passengers, who were travelling in the Car also sustained grievous injuries and they were taken to the Government Rajaji Hospital, Madurai, where the Doctor confirmed the death of deceased Mohanraj. The accident occurred only due to rash and negligent driving of the driver of the fourth respondent and a criminal case in Crime No.198 of 2008 was also registered against him in Chekkanoorani Police Station. The first claimant is the wife of the deceased and the second and third claimants are the minor daughters of the deceased. The deceased was a B.Sc.,Chemistry Graduate and worked in Glaxo Laboratories (India) Limited Company between 1985 and 1996, as Sales Representative. Later, the deceased joined as Partner in the fourth respondent's Company in December 1996 and was earning Rs.7,500/- per month, apart from the partnership business. Therefore, they lost approximate income of Rs.12,00,000/- per annum from the deceased and it was likely to be increased 25% every year. Therefore, they moderately estimated the loss of profits as Rs.37,00,000/- and restricted the same to Rs.20,00,000/-.

3.The accident occurred due to the rash and negligent driving of the driver of the Car, bearing Registration No.TN-58-A-8422, which is insured with the appellant Insurance Company and the insurance was in force at the time of the accident. Therefore, both the respondents are liable to pay compensation to the claimants.

4.The case of the appellant/second respondent, as per the counter filed, before the Tribunal is that, the accident did not occur due to rash and negligent driving of the driver of the Car, bearing Registration No.TN-58-A-8422. Actually the driver of the car carefully drove the car in a moderate speed and at the same time, unexpectedly one pedestrian made a sudden cross from one side of the road to other side of the road and on noticing the same, the driver, in order to avoid hitting the pedestrian, further swerved his car and as it was very slippery due to raining, the Car went beyond the control of the driver and dashed against the Tamarind tree and as such, the accident had occurred due to the Act of God, but not due to negligence of the driver of the car. As a result of which, the deceased Mohanraj had sustained and succumbed to the injuries at Government Rajaji Hospital, Madurai. Since the accident had not occurred due to the rash and negligent act the driver of the fourth respondent, the appellant is not liable to pay any compensation to the claimants.

5.Before the Tribunal, on the side of the respondents 1 to 3/ claimants, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.18 were marked. On the side of the appellant, R.W.1 was examined and Ex.R1 and Ex.R.2 were marked.

6.The Tribunal after considering the oral and documentary evidence, has awarded the compensation as follows:-

Sl. No.	Head	Amount
1	Loss of Income	11,52,000
2	Loss of love and affection [Each Rs.50,000/-]	1,50,000
3	Loss of consortium	1,00,000
4	Funeral expenses	5,000
	Total	**14,07,000**

7.Aggrieved by the said impugned award passed by the Tribunal, the appellant/second respondent Insurance Company has filed this Civil Miscellaneous Appeal, stating that they are not liable to pay compensation and the Tribunal has wrongly fixed the liability and also the compensation awarded by the Tribunal is excessive and the same is not just and reasonable.

8.The learned counsel for the appellant would submit that the accident had not occurred due to the negligent act of the driver of the fourth respondent and the same had occurred due to the Act of God. Hence, the appellant Insurance Company is not liable to pay compensation.

9.Further, he would submit that the deceased is the owner of the Car and the policy does not cover the owner of the vehicle, who met with an accident in his own Car. So, there is no liability to pay compensation.

10.In support of his contention, the learned counsel for the appellant referred to the decisions, in the cases of **Dhanraj Vs. New India Assurance Company Ltd. and another**, reported in **2005 ACJ 1 (SC)**, **Oriental Insurance Company Ltd., Vs. Jhuma Saha and Others**, reported in **2007 ACJ 818** and **New India Assurance Co. Ltd. Vs. Meera Bai and Others**, reported in **2007 ACJ 821**.

11.The learned counsel appearing for the respondents 1 to 3/ claimants would submit that the Car belonged to the first respondent only, not to the deceased. The deceased was neither owner of the vehicle nor driver of the vehicle at the time of accident. The accident occurred due to the rash and negligent driving of the driver of the Car, bearing Registration No.TN-58-A-8422 and the deceased was only a passenger. Since the accident occurred due to the rash and negligent driving of the driver of the fourth respondent car, which was insured with the appellant, both the fourth respondent and the appellant are liable to pay compensation to the respondents 1 to 3/claimants. The Tribunal has correctly fixed the liability and there is no reason to interfere with the award passed by the Tribunal and the appeal may be dismissed and the award passed by the Tribunal may be confirmed.

12.Heard both sides and perused the materials placed before the Tribunal and the award passed by the Tribunal.

13.Considering all the facts, oral and documentary evidence, the following points arise for consideration.

(i)Whether the accident occurred due to the rash and negligent driving of the driver of the fourth respondent's Car bearing Registration No.TN-58-A-8422?

(ii)Whether the deceased was travelling as a gratuitous passenger in the Car at the time of accident?

(iii)Whether the deceased is the owner of the vehicle and if so, whether the claimants are entitled to get compensation?

(iv)Whether the award passed by the Tribunal is just and reasonable?

(v)To what relief the claimants are entitled to?

14. <u>Point Nos. i to iii :-</u>

Though, the accident is not disputed, according to the claimants, the accident occurred due to rash and negligent driving of the driver of the Car, bearing Registration No.TN-58-A-8422 belonging to the fourth respondent and the said car was insured with the appellant. Therefore, the claimants/dependants of the deceased are entitled to get compensation from the appellant. According to the appellant Insurance Company, in order to avoid hitting against a pedestrian, the driver of the Car swerved the Car and unfortunately, the Car dashed against the Tamarind Tree, which is an Act of God. Further, the deceased as the owner of the Car, not covered under policy and therefore, the appellant Insurance Company is not liable to pay compensation to the dependants of the owner of the Car.

15.On a Perusal of the counter, oral and documentary evidence produced before the Tribunal, as already stated, the accident and manner of the accident were not seriously disputed.

(ii)The point to be decided here is that whether the accident occurred due to the rash and negligent act of the car driver and the deceased, who was travelling in the Car also was an owner of said the car, if it is so, as to whether the appellant Insurance Company is liable to pay compensation. From the evidence of P.W.1, the copy of F.I.R, the evidence of P.W.2 and Ex.P.1 and in the absence of contra evidence, the Tribunal has come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Car and there is no reason to interfere with the said finding of the Tribunal.

16.The stand taken by the Insurance Company before the Tribunal was that the deceased was a gratuitous passenger and he is not covered under the policy and not entitiled to claim compensation. A perusal of Ex.R.2 - Insurance Policy, shows that gratuitous passenger is also covered under the policy. Therefore, the Tribunal has given findings based on the following decision, in the case of, **Royal Sundaram Alliance, Insurance Co.Ltd. Vs. Meenakshi and others**, reported in **2009 (1) TN MAC 249 (DB)**. Now in this case on hand also, the EX.R.2 Insurance package policy, it covers the risks of the gratituous passengers also. Therefore, the appellant Insurance Company is liable to be indemnified to the loss caused to the claimants.

17.The learned counsel for the appellant would submit that the car belonged to partnership firm and deceased was one of the partners in the firm and hence, the deceased was also one of the owners of the vehicle and the policy does not cover the owner of the vehicle, thus, the Insurance Company is not liable to pay compensation. Further, the learned counsel would refer to a certified copy of the R.C. Book of the Car of the fourth respondent.

18.One of the contentions raised by the appellant herein is that, the claimants had admitted that the deceased was one of the partners of the Modern Scientific Company, in which, the fourth respondent was also a Partner. The Car belongs to the Modern Scientific Firm and therefore, the deceased falls under the category of owner of the vehicle. The Insurance policy does not cover the owner of the vehicle. Therefore, the Insurance Company is not liable to pay Compensation. On a careful perusal of the R.C. Book of the Car, the name of the owner of the Car is mentioned as 'Sankar', who is none other than the fourth respondent and the address is mentioned as Modern Scientific Company, 29, Thottian Kinaru Street, South Masi Street, Madurai and the temporary address is also mentioned as above. It shows that the car is registered in the name of the fourth respondent and not in the name of the partnership firm. It is needless to say that the Partnership Firm is a legal entity. In the R.C. Book, only the name of the fourth respondent is mentioned as owner, but not the partnership firm. At the time of Registering the Car, the fourth respondent might have given the address of the Firm as his address for communication purpose. In the absence of any specific evidence that either the vehicle belonged to partnership firm or the deceased or policy taken in their name, we can not accept the stand taken by the Insurance Compnay that too first time before this Court. Therefore, the contention of the learned counsel for the appelant is not sustainable under law.

19.As already stated, he made an attempt before the Tribunal, that the deceased was a gratitious passenger, not covered under the policy and the claimants are not entitled to claim any compensation. On a perusal of the Policy, it is seen that the Policy covers for gratuitous passengers also. Since the deceased was not owner of the vehicle and at the time of accident, he was travelling in the Car, which is insured with the appellant Insurane Company/ the appellant is liable to pay compensation to the claimants. The citation referred to by the learned counsel for the appellant shows that the owner of the vehicle is not covered under the policy and not entitled to claim any compensation, since the policy in that case, had not covered the owner of the vehicle and admittedly, in this case, as already held, the deceased is not the owner of the vehicle and was travelling as a gratuitous passenger in the vehicle at the time of accident and therefore, as per policy, as a gratuitious passenger, he is covered under the policy and the Insurance Company is liable to pay the compensation to the claimants.

Therefore, the citation relied on by the learned counsel for the appllant will not help them in this present appeal. So, the contention of the appellant is rejected and these points are answered accordingly.

20.**Point Nos iv and v: -**

As far as the quantum of the compensation is concered, the claimants have stated that the deceased was a Gradutate in B.Sc., Chemistry and soon after compeltion of the degree, he joined in M/s.Buckingal and Carnatic Mills as Supervisor and later, he joined in Glaxo Fine Chemicals Division as Sales Representative between 1985 and 1996 and thus, was earning Rs.7,500/- per month. Then, he joined in the fourth respondent's Firm as Partner in the year 1996. Apart from the Partnership Firm, he was earning Rs.7,500/- per month and due the acccident, the deceased died and they lost the income.

21.The learned counsel for the appellant would submit that the claim petition has been filed under Section 166 of Motor Vehicles Act and it is the duty of the claimants to prove the liablity. But, they have not proved the same and the income of the deceased was also not proved. Therefore, the quantum of award passed by the Tribunal is highly excessive and liable to be set aside.

22.On a careful perusal of the documents, it is noted that the deceased was a B.Sc., Chemistry Graduate and he joined in Glaxo Fine Chemicals Division as Sales Representative between 1985 and 1996 and Exs.P.4, P.5 and P.6 proved the same and as per Ex.P.8 - Salary Slip of the deceased for the month of May 1996, he received a sum of Rs. 8,430/-. It is an admitted fact that the deceased left the job and joined in the fourth respondent's Firm *viz.,* Modern Scientific Company as a partner. Ex.P.11 is the Partnership Deed executed on 01.04.1997, but, the accident took place on 18.07.1998. Except Ex.P.11 - Partnership Deed, no other documents like, Registration Certicate of the Firm, have been produced to show that the deceased was a partner of the Firm. Ex.P.12 – Auditor's Report regarding Profit and Loss Account of the Firm has not been proved is the manner known to law. No documents have been produced to show that he was earning from the Partnership Firm. Therefore, the income of the deceased fixed by the Tribunal at Rs.9,000/- per month is excessive.

23.In the absence of any proof of earning from the partnership firm and considering his educational qualification and his employment in the above said Company, it would be appropriate to fix notional income of Rs.7,500/- per month and as per Ex.P.14 - Income Tax Returns, his date of birth is 21.02.1960. So, on the date of accident, the deceased was aged about 38 years and the multiplier applicable in this case would be '16'. Therefore, the loss of income would be Rs.7,500 X 16 x 12 =Rs.14,40,000/-.

24.In the case of, ***Rajesh and Others Vs. Rajbir Singh and others,*** reported in, ***2013 ACJ 1403 (SC),*** the Hon'ble Apex Court has held that even in a case where persons are not having any permanent income, future prospects will have to be taken into consideration and in the age group upto 40, future prospects has to be taken as 50%. In the case on hand, on the date of accident, the deceased had completed 38 years of age, hence, 50% of monthly income is taken for future prospects. Accordingly, future prospects works out to Rs.3,750 X 16 X 12 = Rs.7,20,000/-.

25.In view of the law laid down by the Hon'ble Apex Court, in the case of, **Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another**, reported in **2009 (6) SCC 121** and upheld by a Larger Bench of the Hon'ble Apex Court, in the case of, **Reshma Kumari and others Vs. Madan Mohan and others**, reported in **2013 ACJ 1253 (SC) : 2013(1) TN MAC 481 (SC)**, in the case on hand, since there are three dependants, 1/3 of the income has to be deducted towards personal expenses. So, the loss of income is Rs.9,60,000/- [Rs.14,40,000 - 1/3] and future prospects would be Rs. 4,80,000/- [Rs.7,20,000 -1/3].

26.The Tribunal has awarded Rs.1,50,000/- towards loss of love and affection and Rs.1,00,000/-towards loss of consortium and the same seems to be reasonable and needs no interference.

27.The Tribunal has not awarded any amount under the head of 'Transportation and Damage to Articles'. Considering the the facts and circumstances of the case, Rs.10,000/- is awarded towards Transportation and Damage to Articles.

28.Further, the Tribunal has awarded only a sum of Rs.5,000/- towards funeral expenses and the same is enhanced to Rs.25,000/-.

29.The Tribunal has not awarded any amount under the head 'Loss of Estate'. Considering the the facts and circumstances of the case, Rs.5,000/- is awarded towards loss of estate. In all other aspects, the award of the Tribunal is confirmed. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

30.The compensation awarded by the Tribunal is modified and apportioned as hereunder:-

HEAD	AMOUNT CLAIMED BY THE CLAIMANT (Rs.)	AMOUNT AWRDED BY THE TRIBUNAL (Rs)	AMOUNT AWARDED BY THIS COURT (Rs.)
Loss of income	12,00,000/-	11,52,000/-	9,60,000/-
Loss of future prospects	24,66,666/-	-	4,80,000/-
Transportation and Damage to clothing	-	-	10,000/-
Loss of love and affection	3,00,000/-	1,50,000/-	1,50,000/-
Damages to clothing and articles	1,000/-	-	-
Loss of consortium	1,00,000/-	1,00,000/-	1,00,000/-
Funeral expenses	-	5,000/-	25,000/-
Loss of Estate	-	-	5,000/-
Total	**40,67,666/-**	**14,07,000/-**	**17,30,000/-**
Claims is restricted to	**20,00,000/-**		

31. In the result,

(i) This Civil Miscellaneous Appeal in C.M.A.(MD)No.734 of 2011 is dismissed and the award passed by the Tribunal is modified as shown above. No costs.

(ii) The appellant Insurance Company is directed to deposit the compensation amount now modified by this Court along with proportionate interest and costs from the date of petition till the date of realisation, less the amount already deposited, if any, to the credit of M.C.O.P.No.875 of 2009 on the file of the Additional District & Sessions Court [Fast Track Court No.I], Motor Accident Claims Tribunal, Madurai, within a period of six weeks from the date of receipt of a copy of this judgment. The first respondent/first claimant, being the wife of the deceased as well as the dependant of the deceased is entitled to Rs.7,30,000/- and the second and third respondents, minor daughters of the deceased are entitled to each Rs.5,00,000/-. Since the accident occurred in the year of 1998, the first respondent/first claimant is permitted to withdraw her share, that would be deposited by the appellant, less the amount already withdrawn, if any, with proportionate interest and costs, through RTGS by filing necessary Application before the Tribunal and the Tribunal is directed to deposit the share of the respondents 2 and 3, who are minors, in a Fixed Deposit in any one of the Nationalized Banks, renewable periodically until they attain majority. The first respondent/first claimant is permitted to withdraw the interest amount once in six months, if she wants, for maintaining the minor children.

Sd/-
Assistant Registrar(CS-III)

/ True Copy /

Sub Assistant Registrar(C.S.)

To
1. The Additional District and Sessions Juge,
Motor Accidents Claims Tribunal,
Fast Track Court No.1, Madurai.
2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.
+1cc to M/S.J.S.MURALI, Advocate SR.No.58460
+1cc to M/S.I.SUTHAKARAN, Advocate SR.No.58405
smn2/dsk
MAS/MR-KKR/SAR2:14.07.2017:8P-5C

Judgment made in
C.M.A.(MD)No.734 of 2011
05 .06.2017