IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM:

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.No.3750 of 2004

1.Gowramma
2.Mallamma
3.Chandramma
4.Minor.Uma
5.Minor.Nagamma
6.Minor.Mahesh
(Appellants 4 to 6 are being minors represented by natural guardian and mother Mallamma)

... Appellants/Claimants

Versus

1.Sampath

2.The Branch Manager,
The Oriental Insurance Company,
25C, Arunagiri Complex,
3rd Floor, Bye Pass Road,
Hosur, Dharmapuri District.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.01.2004 made in M.C.O.P.No.163 of 2001 on the file of the Motor Accidents Claims Tribunal (Sub Court), Hosur.

For Appellants : Mr.Mukund R.Pandian
For 2nd Respondent : Mr.M.Rajasekhar

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 23.01.2004 made in M.C.O.P.No.163 of 2001 on the file of the Motor Accidents Claims Tribunal (Sub Court), Hosur.

2. The brief facts of the case are as follows :-

On 11.05.2001, the deceased, who is the husband of the second petitioner, along with 20 persons, while travelling in the Tempo bearing Registration No.KA-01-5219 after attending the marriage and when the said tempo was near in Samanappalli Junction, at that time, since the driver of the said tempo drove the vehicle in a rash and negligent manner, it got capsized and the deceased Mathavappa died in the said accident. It is stated that due to the said accident, the claimants family sustained loss of support and mental agony and hence claimed a sum of Rs.5,00,000/- as compensation.

3. The second respondent, in the counter statement, has stated that the said tempo, at the time of accident was not registered with the Insurance Company and the driver of the said vehicle also did not possess any valid license. However, the respondents has stated that when the driver of the said tempo was driving the vehicle, saw another vehicle coming in the opposite direction and while trying avoid hitting against the same, the accident occurred. Further it is stated that the said tempo is only for taking the goods and there is no permit for taking passengers in the said vehicle. Hence the persons travelled in the said vehicle are unauthorized passengers, which is against the conditions of policy. Hence, there is no locus-stand for seeking any compensation. Further, the compensation claimed by the claimants is also highly excessive.

4. The Tribunal, after analysing the evidence and documents placed on both sides, has observed that there is no evidence and witness to prove that the said tempo was driven carefully and also observed that the said vehicle is only a goods carrying vehicle and as per the R1 policy, only the driver, cleaner and the owner of the goods alone are permitted to travel. Whereas, it is seen that 25 persons were travelled in the said vehicle, hence, the Tribunal has given finding that the accident occurred due to the rash and negligent driving on part of the driver of the tempo and further observed that the persons travelled in the said vehicle is against the policy condition, since the vehicle is permitted for taking goods. Thus, the Tribunal has fixed the liability on the first respondent/owner of the tempo alone and determined the sum of Rs.2,92,400/- as compensation.

5. It has been stated in the appeal that the finding of the Tribunal is not correct, it ought to have fixed the liability both on the owner of the vehicle and also on the Insurance Company. Aggrieved against the said liability and quantum, the appellants have preferred this appeal.

6. On the side of the Appellants, it is argued that the deceased who travelled in the vehicle, may not be aware of the policy conditions and therefore the claimants have to be properly compensated because they have lost their sole bread winner. It is argued by the Appellants that by fixing the liability on the owner/1st respondent, the purpose of legislation is not served and further the Insurance Company and the owner has to be jointly and severally liable. Hence, the order of the Tribunal has to be properly modified.

7. On the side of the 2nd respondent/Insurance Company, it is argued that the vehicle involved in the accident is the tempo, in which there were 25 persons were travelling at the time of accident, which is against the policy conditions and hence the Insurance Company is no way liable to pay any compensation and the order of the Tribunal is appropriate.

8.On hearing both sides, it is seen that the claimants have lost their sole bread winner and the case of the innocent claimants have to be properly considered. Further, on the side of the appellants, it is argued by citing the case law in 2018 (2) TN MAC 273 (SC) stating that "High Court ought to have directed Insurer to pay and recover in consonance with view taken in Swaran Singh, Mangla Ram, Rani and Manuara Khatun". The relevant portion of the Judgment reads as follows :-

> At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the Compensation amount to the Claimants (Appellants) with liberty to recover the same from the Tractor Owner, in view of the consistent view taken in that regard by this Court in National Insurance Co. Ltd., Vs Swaran Singh & Others 2004 (3) SCC 297; Mangla Ram Vs Oriental Insurance Co. Ltd., 2018 (1) TN MAC 681 (SC) : 2018 (5) SCC 656; Rani & Others Vs National Insurance Co. Ltd., & Others., 2018 (9) SCALE 310; and including Manuara Khatun and Others Vs Rajesh Kumar Singh and Others, 2017 (4) SCC 796. In other words, the High Court should have partly allowed the Appeal preferred by the respondent No.2. The Appellants may, therefore, succeed in getting relief of direction to respondent No.2-Insurance Company to pay the Compensation Amount to the Appellants with liberty to recover the same from the Tractor Owner (Respondent No.1)

Considering the loss suffered by the claimants and also in view of the decisions quoted by the appellants, this Court finds proper if the Insurance Company is directed to pay the compensation with liberty to recover the same from the owner of the vehicle. The other point argued by the appellants is that the sum awarded by the Tribunal is very meagre. When the claimants are six in numbers and the sum awarded by the Tribunal is not at all a reasonable one, since the claimants have lost their sole breadwinner of the family.

9. On a perusal of the records, it is seen that the deceased was aged 35 years at the time of accident and was doing contract in catering business. The first claimant is the mother of the deceased, second claimant is the wife of the deceased and claimants 3 to 6 are the children of the deceased Mathavappa, hence, it is clear that the deceased was the only supporter of the family.

10. The Tribunal, by taking into consideration the age and income of the deceased, has fixed the monthly income at Rs.1,800/- and after deducting the one third towards the personal expenses, arrived the annual income of the deceased at Rs.2,30,400/- While considering the number of claimants, the sum deducted towards personal expenses has to be re-considered. Hence, without deducting the personal expenses, this Court fix monthly income at Rs.1,500/-. Further, the second claimant Mallamma, who is the wife of the deceased has lost her husband at the age of 32. Hence it would be appropriate to award a the sum of Rs.10,000/- towards loss of consortium. Accordingly, the claimants 1, 3, 4 to 6 are awarded each Rs.20,000/- for the loss of love and affection. This Court finds that the sum arrived under the head 'funeral expenses' is very meagre and hence enhanced the amount to Rs.15,000/-.

11. Accordingly, this Court modifies the award under various heads as follows :

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
For Funeral expenses	2,000.00	15,000.00
For loss of income (1500*12*16)	2,30,400.00	2,88,000.00
For loss of love and affection, pain and suffering and consortium	60,000.00	-
Consortium for the second claimant	-	10,000.00
Loss of love and affection for the claimants 1, 3, 4, 5 & 6 (Each Rs.20,000)	-	1,00,000.00

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Total Compensation	2,92,400.00	4,13,000.00

12. Hence, the award of Rs.2,92,400/- granted by the Tribunal in MCOP. No.163 of 2001 is enhanced to Rs.4,13,000/-. The said amount shall carry the same rate of interest at 7.5% and the apportionment shall be as ordered by the Tribunal.

13. In view of the above said enhancement, this Civil Miscellaneous Appeal is allowed. No costs. The appellants are directed to pay necessary Court fee for the enhanced amount.

14. The second respondent/Insurance Company is directed to deposit the modified amount along with interest after deducting the amount already paid by the 1st respondent/owner of the vehicle within a period of four weeks from the date of receipt of copy of this order. The rate of interest to the modified amount is 7.5% per annum. On such deposit being made, the Tribunal is directed to transfer the respective shares of respective claimants to their bank accounts through RTGS within one week thereon as apportionment by the Tribunal. The Insurance Company is permitted to recover the amount deposited by them from the 1st respondent/owner of the vehicle by filing appropriate application.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

lpp/arb

To

1.The Motor Accident Claims Tribunal,
(Sub Judge),
Hosur.

Copy to:

The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.Mukund R.Pandian, Advocate sr.no.70655
+1cc to Mr.M.Rajasekhar, Advocate sr.no.70640

ssi(co)
nr 20/03/2019