IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 06.12.2018

DELIVERED ON 12.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2751 of 2011 and
CMP No.1 of 2011

M/s United India Insurance company Limited
represented by Division Manager,
Chennai-50. ... Appellant/2nd respondent

Vs.

1. Sivagami
2. Iswariya (minor), aged 14 years
3. Ramkumar (minor), aged 12 years
Minors 2 & 3 rep by Mother & next friend Sivagami
... Respondents 1 to 3/Claimants

4. J.Paneerselvam
5. V.Janaki
... Respondents 4 and 5/Respondents 1 & 3
(Respondents 4 and 5 remained exparte in the tribunal)

6. ICICI Lombard General Insurance Company Limited,
Walltax Road, Chennai.
... 6th Respondent /Respondent 4

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 20.01.2011 passed in M.C.O.P.No.152 of 2009 by the Principal District Judge, Motor Vehicle Accidents Claims Tribunal, Villupuram.

For Appellant	:Mrs.R.Rathna Thara
For Respondents 1 to 3	: Mr.C.Munusamy
For 6th respondent	: M/s.R.Sreevihya
Respondents 4 and 5	: No appearance

J U D G M E N T

The appellant United India Insurance Company Limited represented by its Divisional Manager, Chennai has filed this present appeal against the order dated 20.1.2011 passed by the Principal District Judge, Motor Accident Claims Tribunal, Villupuram in MCOP No.152 of 2009.

2. The respondents 1 to 3/ claimants filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.20,00,000/- for the death of one Narasimman, the husband of the first claimant and father of the claimants 2 and 3, in a road accident that took place on 16.08.2008.

3. The case of the claimants are briefly as follows. On 16.08.2008, at about 1.30 a.m., when the deceased Narasimman was travelling in a lorry bearing registration No. TDF 2350 belonging to the first respondent and insured with the present appellant, the said lorry hit a parked lorry bearing registration No.TN-21- AZ-5539 near Melandi Gounder Mill on Rasipuram-Athur Main Road. According to the claimants, the deceased was a spare driver in the said lorry and that he died due to the rash and negligent driving of the driver of the lorry. In the claim petition, the owners of both the lorries and their respective insurers were shown as parties.

4. The tribunal after analysing the evidence on record, fixed the negligence on the part of the driver of the lorry bearing registration No. TDF 2350 belonging to the 4th respondent herein and directed both the IV respondent and the appellant, insurer of the above said vehicle to pay jointly and severally a compensation of Rs.6,38,500/- to the claimants 1 to 3.

5. Mrs. R.Rathina Thara, learned counsel appearing for the appellant would contend that since the lorry bearing registration No. TN-21-AZ-5539 was parked on the left hand side of the road, instead of right hand side, the owner and the insurer of the said vehicle alone are liable to pay compensation to the claimants. Her further contention is that since the deceased was closely related to the first respondent and was not a spare driver in the lorry as alleged by the claimants, the appellant/Insurance Company is not liable to pay any compensation to the claimants. She would further contend that the permit given to the lorry being a "State Permit" and not "National Permit", the owner of the lorry should not have allowed the deceased to travel in the lorry as a spare driver. Reliance was also placed on the decision in Manager, National Insurance Company Limited vs. Saji P.Paul reported in 2013(1) tn mac 25 (SC) .

6. The contention that any motor vehicle should be parked only on the right hand side of the road is nowhere specified. The appellant/insurance company did not adduce any ordinance of police or District Collector showing that on Rasipuram-Athur Main Road any motor vehicle can be parked only on the right hand side of the road. Further, in the instant case, the evidence of the driver of the lorry bearing registration No.TN-21-AZ-5539 is that, since he heard some loud noise while driving his vehicle, he parked his lorry on the left extreme side of the road to check the vehicle and at that time, the lorry bearing registration No.TDF 2350 hit his lorry from behind, as a result of which, one of the inmates of the lorry died on spot. Therefore, the manner of accident speaks for itself that only the driver of the lorry belonging to the first respondent was rash and negligent in driving his vehicle.

7. The police have also registered the First Information Report (Ex.P1) against the driver of the lorry bearing registration TDF 2350. The xerox copies of Motor Vehicle Inspection reports (Ex.P2 and Ex.P3) of both the vehicles also state that the accident was not due to any mechanical defects in the vehicle. In the facts and circumstances, it can be easily inferred that the accident took place only due to the rash and negligent driving of the driver of the lorry bearing registration No TDF 2350, belonging to the first respondent. Further more, neither the appellant nor the IV respondent examined the driver of the lorry bearing registration No.TDF- 2350 to prove that the driver of the lorry bearing registration No. TN-21-AZ5539 was also responsible for the accident.

8. The policy of insurance (Ex.P9) is a package/comprehensive policy and since PW1 has contended that her deceased husband was working under the first respondent as spare driver in the lorry bearing registration No.TDZ 2350, the appellant/Insurance company is liable to pay compensation. Merely because the first respondent/owner of the lorry bearing registration No.TDZ 2350 happens to be the relative of the deceased, it cannot be held that he was only a gratuitous passenger in the lorry and nothing prevents a person to have a spare driver in a lorry for which "State Permit" alone was issued. Therefore, the ruling in Manager, National Insurance Company Limited V. Saju P.Paul reported in 2013(1) TN MAC 25 (SC) would not apply to the facts of the present case and hence, I do not find any merits in the arguments advanced by the learned counsel appearing for the appellant.

9. As far as the quantum of compensation is concerned, the tribunal has rightly fixed the monthly income of the

deceased as Rs.4,500/-. However, the tribunal had failed to add future prospects at 40%. Since the age of the deceased was 38 years on the date of accident, the proper multiplier is 16, as per the decision in Sarla Verma and other Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. After deducting 1/3 towards his personal expenses, the loss of dependency is calculated as (4200 x 12 x 16) Rs.8,06,400/-.

= 4500 + 1800 = 6300
6300 x 1/3 = 2100
6300-2100 = 4200
4200 x 12 x 16 = Rs.8,06,400/-

Apart from this, the claimants are entitled to Rs.40,000/-, Rs.15,000/-, Rs.15,000/- towards "loss of consortium", "Funeral Expenses " and "Loss of Estate" respectively. The revised compensation under various heads is extracted here under.

Sl.No.	Heads	Amount
1	Loss of dependency	8,06,400
2	Loss of consortium	40,000
3	Funeral Expenses	15,000
4	Loss of Estate	15,000
	Total	8,76,400

The said amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

10. Though the claimants did not file any cross objection/appeal for enhancement of compensation, considering the age of the deceased and his 2 minor children, who were depending on his income, I am of the opinion that a "just compensation " should be awarded. In fact, a Division Bench of this court in National Insurance Company Vs. Rani reported in 2006 ACJ 122 has held that the court is duty bound to fix the just compensation and also held that wide powers are conferred upon the court under Order XLI Rule 33 CPC to do complete justice between the parties.

11. In Nagappa Vs. Gurdayal Singh (2003) 3 SCC 274, a three bench decision of the Honourable Supreme Curt has ruled that the court is required to determine the just compensation and there is no limitation or restriction for awarding such

compensation.

12. In the instant case, unfortunately, the tribunal has not added any amount towards future prospects, especially when the deceased was aged just 38 years on the date of accident. Further more, a very meagre amount was awarded towards loss of consortium and funeral expenses. Therefore, enhancement of compensation in this case is warranted, even in the absence of cross objection/ appeal.

13. In the result,

(i) The appeal is dismissed. No costs. The connected miscellaneous petition is closed.

(ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.6,38,500/- to Rs.8,76,400/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The claimants are directed to pay deficit court fee for the enhanced compensation amount.

(iv) The appellant/2nd respondent is directed to deposit the enhanced compensation, less the amount already deposited, within a period of 4 weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the appellant/2nd respondent, the claimants are at liberty to withdraw the same, as per the apportionment made by the tribunal and after following due process of law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Judge,
Motor Vehicle Accidents Claims Tribunal,
Villupuram

+1cc to Mr.C.Munusamy, Advocate sr.no.86013
+1cc to M/s.R.Sreevidhya, Advocate sr.no.87040

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nr 06/03/2019