IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2168 of 2015

1.Susila
2.Anitha

...Appellants/Petitioners

Vs

1.K.Kannan
2.United India Insurance Co. Ltd.,
No.70, NSC Bose Road,
Sowcarpet, Chennai-600 079.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 19.4.2011 passed in M.C.O.P.No.124 of 2008 by the Motor Accidents Claims Tribunal (Principal District Judge), Tiruvallur.

For Appellants : Mr.R.Ramesh

For Respondents : Mr.P.Sankaranarayanan for 2nd respondent

JUDGMENT

Aggrieved by the quantum of compensation of Rs.1,45,000/- as well as the liability fixed on the first respondent by the Tribunal in M.C.O.P.No.124 of 2008, dated 19.04.2011 the claimants have preferred the present Civil Miscellaneous Appeal for enhancement and to fix liability on the second respondent insurance company.

2. Brief facts are that on 24.9.2007 at about 24.00 hours, the deceased was travelling as a passenger in the auto bearing registration No.TN-21-M 5675 from Guduvancheri towards Chinglepet at GST Road and when the auto was nearing Mahendra City at Chettypunniyam, the driver of the auto drove the same in a rash and negligent manner and dashed against the unknown vehicle. As a result, the deceased Kandaswamy died on the spot. Regarding the accident, a criminal case in Crime No.579 of 2007

was registered by D-6, Maraimalai Nagar Police Station. At the time of accident, the deceased was aged 55 years and was earning Rs.8,000/- per month by working as auto-driver. The first respondent is the owner-cum-driver and the second respondent is the insurer of the auto. Stating that the accident occurred due to rash and negligent driving of the driver of the auto, the claimants who are wife and daughter have filed the claim petition claiming compensation of Rs.5,00,000/-.

3. Resisting the claim petition, the second respondent insurance company filed counter stating that even assuming the petition averments to be true, the second respondent cannot be saddled with any liability as the victims were not meant to be covered as they were neither passengers in the strict sense and the accident was caused by Kannan the insured cum driver who stands in a position of a son to the deceased and the claimant in O.P.No.125 of 2008. The second respondent denied the age, occupation and income of the deceased. It is stated that the compensation of Rs.5,00,000/- claimed is excessive and prayed for dismissal of the claim petition.

4. Before the Tribunal, the 1st claimant examined herself as P.W.1 and one Jeyaraman was examined as P.W.2 and Exs.P1 to P4 were marked. On the side of the second respondent, no oral evidence was let in. However, Ex.R1-copy of policy was marked.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the first respondent auto. Finding that since the first respondent, who is the driver cum owner violated the policy condition, the Tribunal fastened the liability on the first respondent. Taking the annual income of the deceased at Rs.24,000/- and adopting multiplier 5 and also adding conventional damages, the Tribunal awarded total compensation of Rs.1,45,000/- in favour of the first petitioner. Finding that the second claimant failed to prove that she is the adopted daughter, the Tribunal held that she is not entitled to get any compensation and awarded compensation only in favour of the first claimant. Challenging the award of the Tribunal, the claimants have filed the present Civil Miscellaneous Appeal.

6. The learned counsel for the appellants submitted that due to the negligence of the first respondent, the accident was happened and the deceased died. He would submit that the Tribunal failed to take into consideration the fact that at the time of accident, the offending auto was insured with the second respondent and that the second respondent instead of paying the compensation, they cleverly stated that since the first respondent is driver-cum-owner and necessary premium was not paid, they are not liable to pay the compensation. The learned

counsel further submitted that without appreciating the oral and documentary evidence, the Tribunal merely accepted the plea of the second respondent and exonerated them from the liability. Since the appellants have established that at the time of accident, the offending auto was insured with the second respondent, it is the bounden duty of the second respondent to pay the compensation.

7. As far as quantum of compensation is concerned, the learned counsel submitted that the Tribunal erred in adopting multiplier 5 instead it ought to have adopted multiplier 11. Further, the monthly income of Rs.2,000/- fixed by the Tribunal is also very low and the Tribunal atleast should have fixed the monthly income of the deceased at Rs.6,000/-. The learned counsel then submitted that the total compensation of Rs.1,45,000/- awarded by the Tribunal is very low and the same has to be enhanced.

8. Per contra, the learned counsel for the second respondent submitted that since the first respondent violated the policy condition, the Tribunal has rightly fastened the liability on the first respondent. Regarding the quantum of compensation of Rs.1,45,000/- awarded by the Tribunal, the learned counsel contended that the total compensation awarded by the Tribunal is just and reasonable and the same need not be interfered with.

9. I have herd Mr.R.Ramesh, learned counsel for the appellants and Mr.P.Sankaranarayanan, learned counsel for the 2nd respondent and also perused the materials available on record.

10. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent. It is for the reason that these things are recorded in favour of the claimants and secondly, none of those findings are under challenge. Though the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the offending auto, it had exonerated the second respondent from liability and directed the first respondent to pay the compensation.

11. According to the appellants, on 24.9.2007 at about 24.00 hours, the deceased Kandaswamy was travelling in the auto bearing registration No.TN-21-M 5675 from Guduvancheri to Chengalpattu and when the auto was nearing Mahindra City at Chettipunniyam, the driver of the auto drove the same in a rash and negligent manner and hit against another vehicle thereby caused the accident. Due to the impact, the deceased sustained fatal injuries and died on the spot.

12. According to the second respondent, the accident was

caused by one Kannan (first respondent), the insured cum driver, who stands in a position of a son to the deceased and therefore, if any compensation is payable, it should only from the first respondent.

13. There is no dispute that at the time of accident, the first respondent drove the offending auto where the deceased was travelling. There is also no dispute that the offending auto was insured with the second respondent insurance company and the policy number is 010804/31/07/01/00012041 valid from 09.09.2007 to 08.09.2008.

14. On a perusal of Ex,R1-copy of policy, it is seen that the offending auto bearing registration No.TN-21 M 5675 was insured with the second respondent from 09.09.2007 to 08.9.2008 mid-night. The further perusal of Ex.R1 would reveal that in the schedule of premium, the total premium amount has been stated in the following manner:

Own Damage	Liability
A: OD Basic 1,150.20 NCB 25% - 287.55 Gross (A) : Rs.863.00	B: T.P. Basic 510.00 ADD: Liability to Passenger(s) 3 945.00 Compulsory PA to Owner-Driver Amount 200000 100.00 WC to employee 1 25.00 Gross (B) : Rs.1,580.00 Gross OD & TP : Rs.2,443.00 (A) + (B)

15. Thus, it is clear from Ex.R1-policy that the owner of the offending auto has paid the total premium of Rs.2,443.00 covering the policy to three passengers and also premium to owner-driver. As long as the offending Auto was insured with the second respondent insurance company, the second respondent cannot escape from its liability. In fact, as per the policy,

the second respondent is bound to pay the compensation as in the present case, it is admitted by the second respondent insurance company that the accident was happened due to the negligence of the driver of the offending auto. There is also no dispute that the deceased died due to fatal injuries sustained in the accident.

16. In the case on hand, the Tribunal has failed to note that at the time of accident the deceased Kandaswamy was a passenger and the offending auto was driven by the first respondent. Since the offending auto belongs to the first respondent, who is owner cum driver and at the time of accident, the offending auto was duly insured with the second respondent, the second respondent as insurer of the offending auto is liable to be pay compensation. Merely because the first respondent is the son of the deceased, it cannot be said that the dependents are not entitled to get compensation. Considering the fact that at the time of accident, the offending auto was duly insured with the second respondent covering the policy for passengers as well owner-driver, this Court is of the view that the Tribunal erred in fixing the liability on the first respondent instead fixing liability on the second respondent. Therefore, the second respondent insurance company who is the insurer of the offending auto is liable to pay compensation to the dependents of the deceased.

17. In the claim petition, it has been stated that at the time of accident the deceased was aged 55 years and was earning Rs.8,000/- by doing self-employment. In her evidence, P.W.1 deposed that her husband was doing auto driver work at the time of accident. Admittedly, P.W.1 has not filed any proof to establish the avocation of the deceased. However, the Tribunal has fixed the notional daily income of the deceased at Rs.100/- and deducting one-third towards personal expenses, fixed the monthly income of the deceased at Rs.2,000/- per month.

18. In the present case, the accident occurred in the year 2007. During 2007, even an ordinary coolie would have earned atleast Rs.150/- per day. Though the claimants have not filed any proof to show the self-employment of the deceased, considering the fact that at the time of accident, the deceased would have earned atleast Rs.150/- per day by doing coolie work. Accordingly, this Court fixed the notional income of the deceased at Rs.4,500/- per month. Deducting one-third towards personal expenses, the deceased would have contributed to the family a sum of Rs.3,000/- per month.

19. While determining the compensation, the Tribunal has adopted multiplier “5”. According to the claimants, at the time of accident, the deceased was aged 55 years. To prove the

age of the deceased, the claimants have produced Ex.P3-death certificate issued by the Headquarters Deputy Tahsildar, Chengalpattu. On a perusal of Ex.P3-death certificate, this Court finds that the age of the deceased has been mentioned as 55 years. To disprove Ex.P3, the second respondent has not adduced any evidence. In the absence of any rebuttal evidence, taking note of Ex.P3, this Court fixed the age of the deceased as 55 years at the time of accident. For the age group 51 – 55, the multiplier to be adopted is "9". This Court is of the view that the Tribunal erred in adopting multiplier "5" instead it ought to have adopted multiplier "9". Adopting multiplier "9", the loss of dependency is calculated at Rs.3,24,000/- (Rs.3,000 x 12 x 9 = Rs.3,24,000/-).

20. Insofar as conventional damages are concerned, the Tribunal awarded Rs.5,000/- towards funeral expenses, which appears to be very low and the same is enhanced to Rs.10,000/-.

21. The Tribunal awarded Rs.10,000/- towards loss of consortium to the first claimant, which also appears to be very low. In a catena of decisions, this Court as well as the Hon'ble Supreme Court granted Rs.40,000/- towards loss of consortium. Therefore, this Court feels that it would be appropriate to award a sum of Rs.40,000/- towards loss of consortium in the place of Rs.10,000/- awarded by the Tribunal.

22. The Tribunal awarded Rs.10,000/- towards loss of estate and the same is maintained. Thus, the total compensation of Rs.1,45,000/- awarded by the Tribunal is enhanced to Rs.3,84,000/- as under:

Loss of dependency	..	Rs.3,24,000.00
Funeral expenses	..	Rs. 10,000.00
Loss of consortium	..	Rs. 40,000.00
Loss of estate	..	Rs. 10,000.00
Total	..	Rs.3,84,000.00

23. In the claim petition, it has been stated that the 1st claimant is the wife and the 2nd claimant is the adopted daughter. The claimants have marked Ex.P2-legal heir certificate to prove that they are the legal heirs of the deceased Kandaswamy. However, the Tribunal in its award held that though the claimants have stated that the 2nd claimant is the adopted daughter of the deceased, no proof has been filed to prove the same. The Tribunal also held that in Ex.P2, the 2nd claimant name was not found place and therefore, she is not entitled to get compensation for the death of the deceased. Since in Ex.P2-legal heir certificate, the name of the 2nd claimant was not mentioned and also nothing has been produced to

show that the 2nd claimant is the adopted daughter of the deceased, the Tribunal was right in dismissing the claim petition as far the 2nd claimant is concerned and this Court does not want to take a different view.

24. In the result,

(a) The Civil Miscellaneous Appeal is partly allowed with proportionate cost.

(b) The compensation of Rs.1,45,000/- awarded by the Tribunal in M.C.O.P.No.124 of 2008, dated 19.4.2011 is enhanced to Rs.3,84,000/- payable by the second respondent insurance company with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(c) The 1st appellant/claimant alone is entitled to get the enhanced compensation with interest as stated supra.

(d) The second respondent insurance company is directed to deposit the enhanced compensation of Rs.3,84,000/- with interest as aforesaid before the Tribunal within a period of twelve weeks from the date of receipt of a copy of this judgment.

(e) On such deposit, the 1st appellant/claimant is permitted to withdraw the entire amount with accrued interest on filing cheque application before the Tribunal.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
1.The Principal District Judge,
The Motor Accident Claims Tribunal,
Tiruvallur.

2.The Section Officer,
VR Section High Court,
Madras.

+1cc to Mr.R.Ramesh, Advocate, S.R.No.69071

+1cc to Mr.P.Sankaranarayanan, Advocate, S.R.No.69237

Civil Miscellaneous Appeal No.2168 of 2015

EV(CO)
GSP(01/02/2019)