IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.04.2018
CORAM
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE R.PONGIPPAN

C.M.A.No.1343 of 2016
&
C.M.P.No.10377 of 2016

The Oriental Insurance Co. Ltd.,
A.A. Complex, 1st Floor, 159,
Kumaran Road, Tiruppur. ..Appellant/3rd Respondent

Vs.

1. Kalaivani
2. Minor Bharani Priya
3. Minor Sri Muthu Venkatachalapathy
4. Muthusamy
5. Saraswathi
(Minors represented by their mother/guardian 1st respondent)
6. Udayakumar
7. Lakshmi ..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 09.12.2014 passed in M.C.O.P. No. 505 of 2011 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur.

For Appellant :: Mr.S. Arunkumar
For Respondents:: Mr.Ma.P. Thangavel for R1 to R5

J U D G M E N T

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.19,21,000/- granted in favour of the claimants, for the death of one Manikandan, aged about 29 years, working as Cutting Master in Tirupur Banian Company, allegedly earning about Rs.8800/- per month, in the accident, which occurred on 01.02.2010, when the two-wheeler driven by him was hit down by a Minidor Auto, coming in the opposite direction, driven rashly and negligently.

2. Heard Mr.S. Arunkumar, learned counsel for the

appellant and Mr.Ma.P. Thangavel, learned counsel for respondents 1 to 5.

3. Though Mr.S. Arunkumar, learned counsel for the appellant would submit that the driver of the Minidor Auto did not possess an effective driving licence to drive the said vehicle and he was having only LMV licence, however, in view of the Larger Bench judgment of the Honourable Supreme Court in Mukund Dewang Vs. Oriental Insurance Company Limited reported in 2017 (2) TN MAC 145, the contention of the learned counsel for the appellant has to be rejected. In the said decision, the Honourable Apex Court has categorically stated that no separate endorsement on the licence is required to drive the transport vehicle of LMV class and a licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 dated 28.03.2001. Paragraph No.46 of the said judgment is extracted as follows:

> "46.Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2 (21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2) (e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to
>
> (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:
>
> (i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed

in section 2(21) read with section 2(15) and 2 (48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued undersection 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g)and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

4. The next question is with regard to the quantum of compensation. Though respondents 1 to 5/claimants contended that a sum of Rs.8800/- was the salary drawn by the deceased, the Tribunal taking into consideration, Ex-P9, the Salary Certificate, which has been marked through P.W.1 and the evidence of P.W.3, a co-worker of the deceased, took Rs. 8000/- as the monthly income of the deceased instead of Rs.8800/- and this Court also confirms the said amount as the monthly income of the deceased.

5. Though Rs.3,67,000/- has been awarded towards "Future Prospects", as per the judgment of the Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and Others reported in 2017 ACJ 2700, 40% has to be added towards "Future Prospects" if the deceased is aged below 40 years. In the case on hand, the age of the deceased is 28 years. Therefore, adding 40% towards "Future Prospects", the "Total Monthly Income" would be,

Monthly Income :: Rs.8000/-

ADD: 40% towards "Future Prospects":: Rs.8000/- +40%(Rs.8000/-)

Total Monthly Income :: Rs.11,200/-

The size of the family is five and therefore, one-fourth deduction has to be made towards "Personal Expenses" as rightly done by the Tribunal. Deducting one-fourth, "the Monthly Contribution of the deceased to his family" would be,

Total Monthly Income :: Rs.11,200/-
LESS:1/4th towards "Personal Expenses"
:: Rs.11,200/-(-) ¼ (Rs.11,200/-)
:: Rs.11,200 - Rs.2800/-
:: Rs.8400/-
Annual Contribution :: Rs.8400 x 12

6. As per the age of the deceased, namely, 28 years, which is proved by Ex-P4, postmortem certificate, the appropriate multiplier to be applied is 17. Applying the same, "Loss of Income" is calculated as hereunder:
Loss of Income :: Rs. 8400 x 12 x 17
:: Rs.17,13,600/-

Since the wife was aged about 27 years, this Court considers the said circumstance and awards a sum of Rs.40,000/- towards "Loss of Consortium". The amount awarded towards "Funeral

Expenses" is reduced to Rs.15,000/- . The amount of Rs.15,000/- awarded towards "Loss of Estate" is confirmed. For minor respondents 2 and 3, who were hardly aged 2 years and 7 years respectively, at the time of accident, a sum of Rs. 1,00,000/- totally has to be awarded considering their tender age, towards "Loss of Love and Affection". The parents of the deceased are entitled to Rs.30,000/- altogether under the said head. A sum of Rs.7000/- is awarded towards "Transport Expenses". Hence, the total compensation payable to the claimants comes to Rs.19,20,600/- rounded off to Rs.19,21,000/-. Thus, the award of the Tribunal is confirmed in the above manner. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

7. The appellant Insurance Company is directed to deposit the entire award amount, with interest and costs, before the Tribunal, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal shall transfer the respective shares of the major claimants, as per the apportionment of the Tribunal, to their respective bank accounts through RTGS within a period of one week thereon. The share of the minor claimants shall be deposited in any one of the Nationalised Banks in interest bearing Fixed Deposit, till they attain majority. The 1st respondent/mother is permitted to withdraw interest accruing on such deposit once in three months.

8. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nv

To

The Chief Judicial Magistrate
MACT, Tiruppur.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.28574
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.28673

C.M.A. No. 1343 of 2016

KS(CO)
CS/12/09/18