IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2625 of 2015

1.Angammal
2.Vadivelan
3.Banumathi
4.Sivabalan
5.Suguna ..Appellants/Petitioners

Versus

1.Ramkumar

2.The New India Assurance Co.Ltd.,
Vellore. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed against the order dated 01.08.2015 made in M.C.O.P.No.221 of 2009 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Villupuram.

For Appellants : Mr.AK.Rajaraman
For Respondents : Mr.R.Sree Vidhya [for R2]
For Respondent 3 : No Appearance

J U D G M E N T

The appellants/petitioners have filed this appeal against the order dated 01.08.2015 made in M.C.O.P.No.221 of 2009 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Villupuram.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners is that on 16.05.2008, while the deceased Mayavan was travelling with his co-business man from Vellore to Thirukoilur in Mini door vehicle bearing Registration No.TN-23-L-2515 along with mango fruits as load man, while the vehicle was going between Virudhuvilangeenan and Atthipakkam Village in Thirukoilur Taluk at about 8.30p.m., due to high speed the driver of the mini door vehicle lost control

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and the vehicle capsized, causing fatal injuries to the said Mayavan, resulting in her death on the spot. The rash and negligent driving by the 1st respondent vehicle driver alone caused the accident. At the time of the accident, the deceased Mayavan was aged 50 years and by doing fruit business and agricultural work was earning Rs.10,000/- per month. The petitioners, who are the wife and children of the deceased were dependents on his income. Due to the demise of Mayavan they have lost the love and affection of the carrying husband and father and also her monitory contribution to the family. Thus, the petitioners sought for a sum of Rs.10,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim petition, by filing counter, the 2nd respondent/Insurance Company contended that the age, occupation and monthly income of the deceased as claimed by the petitioners is not true and the same is to be proved. The place, date and time of the accident is not admitted. The claim of the petitioners that the deceased travelled along with a co-business man in the Mini door vehicle belonging to the 1st respondent with goods is not true. The claim of the petitioners that the Mini door vehicle bearing Registration No.TN-23-L-2515 was insured with the 2nd respondent/Insurance Company is not true. The driver of the Mini door vehicle did not possess valid license and as the deceased travelled in the goods vehicle top, the same amounts to violation of policy condition and as such the 2nd respondent/Insurance Company is not liable to pay any compensation. Hence, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined P.W.1 and 2 and produced documents Exs.P.1 to P.7 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. On the basis of available evidence, the Tribunal found that negligence of the 1st respondent vehicle driver alone caused the accident and passed an award for a sum of Rs.5,38,000/- payable by the 1st respondent owner of the vehicle, when exonerating the 2nd respondent/Insurance Company on the ground that there is violation of policy condition. Thus, the 1st respondent owner alone was held to be liable to pay compensation. Aggrieved over the same, the petitioners have come forward with the present appeal.

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6. The learned counsel for the petitioners contends that the Tribunal erred in dismissing the petition against the 2nd respondent, on the ground that there was violation of policy condition, which is against the settled principle of law. The evidence of P.W.2 clearly proves that the deceased did not travel as unauthorized passenger, but the same was not considered by the Tribunal. Further, the Tribunal wrongly fixed

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the notional income of the deceased at Rs.4,000/- instead of Rs.4,800/- without assigning any valid reason. The amount awarded under different heads is very low. Thus, the petitioners sought for enhancement of the quantum of the award passed by the Tribunal and also to make the 2nd respondent/Insurance Company liable to pay the amount of compensation by allowing the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that they are not liable to pay any amount as rightly held by the Tribunal and the appeal has no merits. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal on the ground that violation of policy condition committed by the 1st respondent were dis-entitle, the petitioners from claiming any compensation from the 2nd respondent/Insurance Company. Thus, the respondent pleads to dismiss the appeal.

8. Heard both sides and perused the available evidence on records.

9. The 1st petitioner who deposed as P.W.1 has spoken about the accident, in which her husband suffered fatal injuries and passed away. Admittedly, she is not an eye-witness to the occurrence. However, the petitioners examined P.W.2 – Vaiyapuri, who witnessed the accident and he categorically stated that himself and deceased Mayavan were going in the 1st respondent vehicle as a load man on the fateful day and the deceased was travelling along with fruits in the top of the vehicle and only due to rash and negligent driving of the vehicle by the driver, the Mini door vehicle in which they travelled capsized and the deceased suffered grievous injury and died in the spot itself.

10. The police also registered Ex.P.1 – F.I.R against the driver of the 1st respondent vehicle only. It is evident from Ex.P.2 – M.V.I report that there is no mechanical defect in the vehicle. It is therefore clear from the above said document and oral evidence of P.W.2 that the accident occurred due to rash and negligent driving of the 1st respondent vehicle driver only. On the other hand, the respondent failed to examine either the driver of the offending vehicle or any other person to disprove the claim of the petitioners about the manner, in which the accident took place. In such circumstances, it is clear that the accident occurred only due to the negligence of the 1st respondent vehicle driver. The petitioners stated that the vehicle belongs to 1st respondent as evidenced by Ex.P.4 – Registration certificate and the same was insured as per Ex.P.5 with the 2nd respondent/Insurance Company for the period of 31.08.2007 to 30.08.2008. It is also clear from Ex.P.6 – Driving License, the driver of the 1st respondent vehicle possessed valid driving license up to 21.12.2020. As such, it is clear that the

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1st and 2nd respondents who are the owner and insurer of the offending vehicle involved in the accident are liable to pay compensation.

11. The Tribunal, on the basis of available evidence held that the deceased travelled in the vehicle as unauthorized passenger and as the same amounts to violation of Insurance policy condition dismissed the petition against the 2nd respondent/Insurance Company. However, P.W.1 categorically stated that her husband/deceased/mayavan came in the tempo van along with mango fruits and the eye-witness who deposed as P.W.2 also stated that himself and the deceased Mayavan came along with mango fruits in the vehicle arranged by the shop owner. Further, P.W.2 also stated that the deceased who was sitting over the fruits to ensure safe transportation of the same, fell down from the vehicle due to the rash and negligent driving by the 1st respondent vehicle driver and suffered injuries in his head, resulting in the death on the spot. It is clear from the above said evidence that the deceased person travelled in the Mini Door Lorry along with goods and not as a gracious passenger. There is no contra evidence let in by the respondents or any report filed by the 2nd respondent/Insurance Company to prove that the deceased travelled as a gracious passenger. In such circumstances, it is clear that the deceased along with P.W.2 travelled in the Mini Door Lorry with their goods, but admittedly the deceased travelled on the top of the lorry instead of going in the cabin and the same will amounts to violation of policy condition. In such circumstances, it is appropriate to direct the 2nd respondent/Insurance Company to pay the compensation and to recover the same from the owner of the vehicle as violation of policy condition is commited. Thus, the finding of the Tribunal dismissing the claim petition against the 2nd respondent/Insurance Company is unsustainable and the same is modified as stated above.

12. The petitioners contended that the deceased was aged 50 years and was earning Rs.10,000/- per month by doing fruit wending and agricultural work. However, there is no proof for the avocation and income of the deceased. Likewise, no document was filed to prove the age of the deceased. It is clear from Ex.P.3 - Post mortem report, he was aged 50 years. As such, the correct multiplier to be applied is '13'. In the absence of any proof of income, it will be appropriate to fix Rs.4,000/- per month as notional income. Since, the number of dependents on him is 5, it will be proper if 1/4th income is deducted towards his personal expenses. Further, being a 50 year old person 10% of the income is to be add towards future prospects. Thus, loss of dependency is calculated as under:-

Rs.4,000 * 10 % = Rs.400/-

Rs.4000 + Rs.440 = Rs.4,400/-

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By deducting 1/4th towards personal expenses,

Rs.4,400 * ¼ = Rs.1,100/-

Rs.4,400 – Rs.1,100 = Rs.3,300/-

Correct multiplier to be applied is 13,

Rs.3,300 * 12 *13 = Rs.5,14,800/-

Thus, a sum of Rs.5,14,800/- is granted as compensation under the head "Loss of Income".

13. In respect of awarding compensation under conventional heads, as per the judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation has to be awarded towards loss of estate, loss of consortium and funeral expenses and hence, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses and for loss of consortium a sum of Rs.40,000/- is awarded.

14. Accordingly, the compensation awarded by the Tribunal stands modifies as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court(Rs.)
1	Loss of Income	4,68,000.00	5,14,800.00
2	Funeral Expenses	10,000.00	15,000.00
3	Loss of Consortium	10,000.00	40,000.00
4	Loss of Estate	-	15,000.00
5	Love and Affection	50,000.00	-
6	Total	5,38,000.00	5,84,800.00

15. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.5,84,800/- from Rs.5,38,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment. The 2nd respondent/Insurance Company is entitled to recover the same from the owner of the vehicle.

(iv) Since there is enhancement in the award amount the petitioners/claimants are entitled to 20% each.

(v) On such deposit, appellants/petitioners are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated

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supra on the filing of such application.

(vii) Appellants/petitioners shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bri
To

1.ThePrincipal District Judge,
Villupuram.

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

+1cc to Mr.A.V.B.Krishnakanth, Advocate Sr.No.27445

SKS(CO)
sm:4.7.2018

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