IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A. Nos.2635 of 2015 & 1457 of 2017
and
C.M.P.No.7732 of 2017

CMA.No.2635 of 2015

1.Devi W/O Elangovan
2.Elangovan S/O Gurusamy ... Appellants/Petitioners

-vs-

1.Krysttal Motors Private Ltd.,
No.12, Meyyanur Main Road,
Selem District.

2.United India Insurance Company Ltd.,
No.1019, K.M.S. Complex,
Salem Main Road,
Attur - 636 102.
(Ex Parte before Lower Court)
... Respondents /Respondent

CMA.No.1457 of 2017

United India Insurance Co. Ltd.,
No.1019, K.M.S. Complex,
Salem Main Road,
Attur - 636 102. ...Second Respondent/ Appellant

-vs-

1.Devi W/O Elangovan
2.Elangovan S/O A.Gurusamy
3.Krystal Motors Pvt. Ltd.,
No.12, Meyyanur Main Road,
Salem District. ...Petitioners/ Respondents

PRAYER in CMA.No.2635 of 2015: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to enhance the award in the judgment and decree dated 14.08.2015 made in MCOP.No.74 of 2014 on the file of MACT/ Additional District Court at Namakkal.

PRAYER in CMA.No.1457 of 2017: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 14.08.2015 made in MCOP.No.74 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal.

For Appellants : Mr.MA.P.Thangavel in CMA.No.2635/15
Mr.S.Arun Kumar in CMA.No.1457/17

For Respondents: Mr.S.Arun Kumar for R2 in CMA.No.2635/15
R1 - No appearance in CMA.No.2635/15
Mr.MA.P.Thangavel for R1 and R2 in CMA.No.1457/17
R3 - No appearance in CMA.No.1457/17

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

1. Both these Appeals arises out of MCOP.No.74 of 2014 on the file of the Motor Accident Claims Tribunal, [Additional District Judge], Namakkal. The parents of one Ramya Gowri who died in a motor accident that occurred on 27.09.2013 are the claimants.

2. According to the claimants, when the said Ramya Gowri was walking on the left extreme of Rasipuram to Attur main road, an auto bearing registration No.TN-30-TCM-0003 owned by the 3rd respondent herein and insured with the appellant Insurance company was driven in a rash and negligent manner and dashed against her. As a result of the accident, the said Ramya Gowri suffered grievous injuries leading to her death on 09.10.2013. It is the contention of the claimant that the said Ramya Gowri has completed M.Sc., Computer Science and was working as Computer Operator in TCS Trade Links, Namakkal on a monthly salary of Rs.15,000/-. Contending that the claimant have lost their only daughter in the accident, the claimant sough for a compensation of Rs.50,00,000/-.

3. The Insurance Company resisted the claim contending that the accident occurred due to the negligence of the deceased only. The Insurance Company, apart from denying the compensation

claimed, also raised the statutory plea that it cannot be made liable for payment of compensation, inasmuch as the auto that was involved in the accident had only temporary registration and it was not supposed to ply on public road except for the purposes enumerated in Rule 41 of Central Motor Vehicles Rules, 1989.

4. The Tribunal found that the negligence was on the part of the auto driver. To come to the said conclusion, the Tribunal also took note of the evidence of PW1 and the FIR as well as charge sheet which is marked as Exs.P1 and P5.

5. On the quantum, the Tribunal fixed the monthly income of the deceased at Rs.15,000/-, taking into account the academic qualifications she had, the Tribunal added 50% towards future prospects and deducted 50% towards personal expenses and adopting the multiplier of '18', the Tribunal arrived at the total loss of dependency at Rs.24,30,000/-. The Tribunal granted a sum of Rs.2,00,000/- towards loss of love and affection to the appellants, Rs.25,000/- towards funeral expenses, Rs.2,32,050/- towards treatment based on medical bills, Rs.10,000/- towards transportation and Rs.10,000/- towards attender charges. The total compensation thus worked out to Rs.29,07,050/-. The Tribunal rejected the claim of the Insurance Company that it is not liable to pay the award amount, in view of the fact that the auto had only a temporary registration.

6. Aggrieved the Insurance Company has come forward with an appeal in CMA.No.1457 of 2017 and the claimants had filed an appeal in CMA.No.2635 of 2015 seeking enhanced compensation.

7. We have heard Mr.S.Arun Kumar, learned counsel appearing for the appellant, Insurance company and Mr.MA.P.Thangavel, learned counsel appearing for the claimants. The owner of the auto who figured as 3rd respondent in CMA.No.1457 of 2017 and 1st respondent in CMA.No.2635 of 2015 though served has not chosen to appear either in person or through counsel duly instructed.

8. Mr.S.Arun Kumar, learned counsel appearing for the appellant, Insurance Company would invite us to the provisions of Rule 41 of the Central Motor Vehicle Rules, 1989 and contend that inasmuch as the owner of the auto has not let in any evidence to show that the vehicle was plying for any one of the purposes enumerated under Rule 41 (a) to (h) of the Central Motor Vehicle Rules, 1989, the Insurance Company cannot be made liable to pay the compensation.

9. On the quantum, Mr.S.Arun Kumar, would submit that adoption of Rs.15,000/- as income and 50% towards future prospects is on the higher side.

10. Per contra, Mr.MA.P.Thangavel, learned counsel appearing for the claimants would submit that inasmuch as the deceased was a third party and was not a passenger in the auto, the Insurance Company cannot deny its liability to the deceased. May be the Insurance Company would be at liberty to recover the money from the owner of the vehicle after paying the same to the claimants.

11. On the quantum, Mr.MA.P.Thangavel, would contend that the fixation of a sum of Rs.15,000/- towards monthly income is too low, considering the fact that the deceased was a post graduate, the Tribunal should have taken the income at atleast Rs.20,000/-.

12. We have considered the rival submissions. Since the Insurance Company has not chosen to examine the driver of the auto or the owner to establish the absence of negligence on them, the finding of the Insurance Company regarding negligence cannot be questioned.

13. As regards liability of the Insurance Company, we find some force in the arguments of Mr.S.Arun Kumar, learned counsel appearing for the Insurance Company. Rule 41 of the Central Motor Vehicle Rules, 1989 reads as follows:-

> Purposes for which motor vehicle with trade certificate may be used.—
>
> The holder of a trade certificate shall not use any vehicle in a public place under that certificate for any purpose other than the following:—
>
> (a) for test, by or on behalf of the holder of a trade certificate during the course of, or after completion of, construction or repair; or
>
> (b) for proceeding to or returning from a weigh bridge for or after weighment, or to and from any place for its registration; or
>
> (c) for a reasonable trial or demonstration by or for the benefit of a prospective purchaser and for proceeding to or returning from the place where such person intends to keep it; or

> (d) for proceeding to or returning from the premises of the dealer or of the purchaser or of any other dealer for the purpose of delivery; or
>
> (e) for proceeding to or returning from a workshop with the objective of fitting a body to the vehicle or painting or for repairs; or
>
> f) for proceeding to and returning from airport, railway station, wharf for or after being transported; or
>
> (g) for proceeding to or returning from an exhibition of motor vehicles or any place at which the vehicle is to be or has been offered for sale; or
>
> (h) for removing the vehicle after it has been taken possession of by or on behalf of the financier due to any default on the part of the other party under the provisions of an agreement of hire-purchase, lease or hypothecation.

13. The Insurance Company has taken a specific stand that the vehicle was not used for any of the purposes mentioned in Rule 41. The Insurance Company also let in evidence to that effect by examining the Assistants from RTO offices at Namakkal and Salem as RW1 and RW2.

14. The owner of the vehicle has participated in the proceedings and it was for the owner to have let in evidence to show that the vehicle was used for any one of the purposes enumerated in Rule 41, in the absence of such evidence, we are of the considered opinion that the Insurance Company is entitled to an order for pay and recovery.

15. On the quantum, we find that the fixation of income at Rs.15,000/- is just and reasonable. The claimant has also produced Ex.P21, salary certificate which shows that the deceased was receiving a salary of Rs.15,000/- per month. We therefore, do not think that the finding of the Tribunal fixing the salary at Rs.15,000/- should be interfered with. The Tribunal has adopted 50% towards future prospects. As per the judgment of the larger Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331, the future prospects should be taken only at 40%, in view of the fact that the deceased was working in a private concern. If 40% is taken as future prospects, the total compensation payable under the head of loss of dependency would be Rs.22,68,000/- (10,500 x 12 x 18).

16. The Tribunal has granted a sum of Rs.2,00,000/- towards loss of love and affection, the same is reduced to Rs.80,000/-, in view of the judgment of the larger Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others referred to supra. The awards towards, funeral expenses, medical expenses, transportation are confirmed. The Tribunal has granted a sum of Rs.10,000/- towards attender charges. Considering the period of hospitalization, the same is increased to Rs.17,000/-. The Tribunal has not granted any amount towards loss of estate, we grant a sum of Rs.15,000/- towards loss of estate. Thus worked out, the total compensation comes to Rs.26,47,050/- and the same is rounded of to Rs.26,50,000/-. The award amount will carry interest at 7.5% per annum from the date of petition till date of payment. In fine, CMA.No.2635 of 2015 stands dismissed and CMA.No.1457 of 2017 is partly allowed.

17. The Insurance Company has already deposited a sum of Rs.25,000/- in the Bank. The Insurance Company is directed to deposit the balance amount within a period of six (6) weeks from the date of receipt of a copy of the order. On such deposit the claimants would be entitled to withdraw the compensation. The compensation is apportioned as follows:-

(i) the 1st claimant, mother will be entitled to Rs.17,00,000/- with proportionate interest and costs and

(ii) the 2nd claimant, father would be entitled to Rs.9,50,000/- with proportionate interest and costs.

18. On such deposit the claimants are permitted to withdraw the entire amount. The Insurance Company will have the right to recover the award amount form the owner after making payment to the claimants. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Additional District Judge, Namakkal.

2.The Section Officer,
  VR Section, High Court, Chennai-104.

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srg 12/11/2018