IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2794 of 2014

National Insurance Company Ltd.,
C/o.Khivraj Motors Limited,
No.623, Anna Salai,
Chennai-6. ..Appellant/2nd Respondent

Versus

1. Madurayee ..1st and 2nd Respondents/Petitioner
2. Raji @ Rajagopal
3. Ellammal ..3rd Respondent/1st Respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 28.01.2014 and made in M.C.O.P.No.4000 of 2008 on the file of Motor Accident Claims Tribunal (Special Sub Court No.II to deal with MCOP Cases), Chennai.

For Appellant : Mr. S.Vadivel
For Respondents : Mr. A.N.Viswanatha Rao
Ms. Ramya V.Rao [for R1 & R2]

J U D G M E N T

The appellant/Insurance Company has come forward with this appeal to set aside the judgment and decree dated 28.01.2014 made in M.C.O.P.No.4000 of 2008 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.11 to deal with MCOP Cases), Chennai.

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 23.12.2007 at about 10 hours, when the deceased was travelling in load auto bearing Registration No.TN-22-AZ-7139, at Madambakkam Main Road, Selaiyur, Chennai, as the vehicle was driven at high speed in rash and negligence manner, while turning near Periyar nagar, the auto capsized causing grievous injury to the deceased and he died subsequently on the way to the hospital. The negligence of the 1st respondent auto driver alone was the cause of the accident. At the time of death, the deceased was aged 17 years and working as Mason was earning Rs.200/- per day. The

petitioners who are the parents of the deceased lost the love and affection of the son and also his contribution to the family. Hence, they seek compensation of Rs.10,00,000/- from the 1st respondent/2nd respondent who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petition, the 2nd respondent/Insurance Company contends that there is a will full violation of policy condition by the 1st respondent who permitted the passenger to travel in the goods vehicle and as such the deceased was a gracious passenger in the vehicle involved in the accident and 2nd respondent/Insurance Company is not liable to pay any compensation to him. The 2nd respondent/Insurance Company also disputed the age, avocation and income of the deceased and the manner of the accident alleged by the petitioners. Thus, the 2nd respondent/Insurance Company seeks dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Exs.P1 to P5. On the side of the 2nd respondent/Insurance Company R.W.1 was examined and document Exs.R1 to R2 was produced. Further, the Court witness C.W.1 was examined and documents Exs.C1 and C2 was also marked. On the basis of available evidence on record, the Tribunal found the 3rd respondent driver is responsible for the accident and awarded a sum of Rs.6,84,000/- as compensation and further directed the 2nd respondent/insurer to deposit the entire amount and to realize the same the 1st respondent/owner since there is violation of policy condition. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

6. The learned counsel for the 2nd respondent/Insurance Company contends that the offending vehicle was covered under the insurance policy wherein no liability can be claimed for gracious passenger who were allowed to travel in a goods vehicle. The Tribunal also erred in awarding compensation under various heads and the petitioners are not entitled to seek any compensation as the deceased was travelling in a goods vehicle in violation of policy condition. Hence, the 2nd respondent/Insurance Company seeks to entertain the appeal and to set aside the award passed against them.

7. Per contra, the learned counsel for the petitioners/claimants contended that the Tribunal has properly appreciated the evidence on record and arrived at just and proper conclusion and there is no ground made out to interefere

with the same. Hence, the petitioners/claimants seek for dismissal of the appeal.

8. The petitioners state that on 23.12.2007 at 10 hours, when the deceased Loganathan was travelling in the load auto rickshaw bearing Registration No.TN-22-AZ-7139 and as auto approached Periyar nagar, near Madambam Main Road, the auto capsized, resulting in grievous injuries to the said Loganathan, which ultimately caused his death on the way to the hospital. The petitioners examined Eye-Witness to the occurrence as P.W.2 and he categorically stated that the rash and negligence driving of the auto caused the accident. The Tribunal also found that Ex.P.1 - F.I.R indicates that the case was registered by the Selaiyur Police against the driver of the load auto only. On the other hand, the respondent has not let in any contra evidence to disprove the claim of P.W.2 and the averments in Ex.P.1-F.I.R. As such, on the basis of P.W.2, evidence as well as Ex.P.1 - F.I.R., it is clear that the negligence of the driver of auto rickshaw alone caused the accident. The Tribunal, on the basis of evidence let in by the petitioners found that the deceased died due to injury suffered in the accident and also held that Ex.P.2 - Post Mortem certificate, clearly prove the same. The deceased was stated to be 17 years old and the same is established by Ex.P.2 - Post Mortem certificate and Ex.P.3 - Death Certificate. The petitioners state that the deceased earning Rs.200/- per day by working as a Mason. However, to prove the occupation of the deceased, no document is produced by the petitioners. Hence, the notional income of the deceased is fixed at Rs.4,000/- by the Tribunal and the same is in order. Further, it will be appropriate to add 40% towards Future Prospectus. As such the loss of dependency due to the death of the petitioner's son is calculated as follows:-

Monthly Income = Rs.4,000/-

40% towards future Prospectus = 1600

Total (4000 + 1600) = Rs.5,600/-

Since the deceased was a bachelor, 50% of his earning is to be deducted towards Personal expenses. Considering the age of the deceased the multiplier should be applied as '18'.

Rs.5,600 x 50% = Rs.2,800/-

By applying multiplier of 18,

Rs. 2,800 x 12 x 18 = Rs. 6,04,800/-

Thus, a sum of Rs.6,04,800/- is awarded under the head “loss of dependency” to the petitioners.

9. The main contention of the 2nd respondent/Insurance

Company is that the deceased has travelled in the goods vehicle as a gracious passenger and as such he is not covered under Ex.R.2 - Insurance Policy and as per the terms of Ex.R.2 - Insurance Policy, the Tribunal is not correct in ordering the 2nd respondent/Insurance Company to pay the award amount and then to recover from the 1st respondent/owner of the vehicle.

10. Refuting the same, the learned counsel for the petitioners relying upon the judgment of the Supreme Court reported in AIR 2017 SC 1204 [Manuara Khatun and Others Vs. Rajesh Kr.Singh and Others], contended that even for a gracious passenger the Insurance Company is liable to pay and recover the amount from the owner of vehicle.

11. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], towards funeral expenses, this Court is inclined to award Rs.15,000/-. Further, considering the attendant circumstances, this Court is inclined to grant Rs.20,000/- towards transportation. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of pecuniary benefits to the dependents of the deceased (Rs.2800x12x18)	4,59,000.00	6,04,800.00
2.	Loss of Love and Affection for both the petitioners (each Rs.1,00,000/-)	2,00,000.00	-
3.	Funeral expenses	25,000.00	15,000.00
4	Transportation	-	20,000.00
5	Loss of Estate	-	15,000.00
6	Total	6,84,000.00	6,54,800.00

12. In the light of the foregoing discussion, the award of the Tribunal is modified on the above terms. In the result, the Civil Miscellaneous Appeal filed by the 2nd respondent/Insurance Company is disposed of as follows:-

(1) The award granted by the Tribunal is reduced to Rs.6,54,800/- from Rs.6,84,000/-.

(2) The award amount will carry interest at the rate of 7.5% per annum.

(3) In view of the above modified reduced award amount, the appellant/ 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.

(4) The apportionment of the modified award amount is as under:-

1st petitioner	= Rs.50%
2nd petitioner	= Rs.50%

(5) On such deposit, the petitioners/claimants/respondents 1 and 2 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 supra on the filing of such application.No Costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

bri
To
1.The Judge Motor Accidents Claims Tribunal,
Special Sub Court No.II to deal with MCOP Cases,
Chennai.

Copy to
The Section Officer,
V.R.Section, High Court, Madras.

+1 CC to Mr.S. Vadivel, Advocate sr 3573.

VGI(CO)
SP(25/05/2018)