IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3154 of 2017

1.K.Jayalakshmi
2.Minor V.Sangeethkumar
3.Minor Dhivakar
Minors 2 and 2 are represented
by their next friend and mother
Jayalakshmi, the 1st appellant.

4.Nagammal ..Appellants/Petitioners

vs

1.S.Sameer

2.The Reliance General Insurance Company Ltd.,

T.V.Samy Road, Keejay Arcot Building

R.S.Puram, Coimbatore-49. ..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 13.02.2017 made in M.C.O.P.No.579 of 2011 on the file of Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

For appellants : : Mr.R.Nalliyappan
For Respondents : : Mr.S.Arun Kumar for R2.
R1-Set exparte before the Tribunal.

J U D G M E N T

The Appellants, who are the claimants before the Tribunal, has filed this appeal, challenging the order and decree dated 13.02.2017 made in M.C.O.P.No.579 of 2011 on the file of Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 19.10.2009 at about 9.00 p.m., while the deceased Vijayakumar was travelling in his motor cycle bearing Reg.No.TN-40-A-4772 from south to north, at Sirumugai, another two wheeler

bearing Reg.No.TN40-C-1801 coming from east to west, turned towards north in a negligent manner, dashed against the two wheeler of the deceased, causing him to fall down and he sustained fatal injuries. Inspite of treatment given, he subsequently died in the hospital on 22.10.2009. The deceased was aged 35 years and by working as Welder, was earning Rs.10,500/- per month. The Petitioners who are the wife, children and mother of the deceased were depending on his earnings. The accident occurred due to negligence of the 1st respondent two wheeler rider only. As such, the respondents who are the owner and insurer of the said vehicle are liable to pay compensation. The Petitioner sought for a sum of Rs.20,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioners. As two vehicles were involved in the accident, the owner and insurer of the other vehicle bearing Reg.No.TN-40-A-4772 are necessary parties and failure to implead them is fatal to the Petitioners' claim. The deceased was not having valid driving licence and his negligence alone caused the accident. The claim of the Petitioners about the age, avocation and income of the deceased is denied. Only due to negligence of the deceased, the accident occurred. The amount claimed under different heads is very excessive. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 to P.W.3, produced documents Ex.P.1 to Ex.P.21 to prove their claim. On the side of the 2nd respondent, R.W.1 and R.W.2 was examined, documents Ex.R.1 to Ex.R.4 was marked.

5. The Tribunal, after considering the evidence on record, passed award for a sum of Rs.15,42,133/- and directed the 2nd respondent/insurer to satisfy the award and then recover the amount from the 1st respondent/owner, who committed violation of Policy condition.

6. Being not satisfied with the quantum of the award, the petitioners/claimants have come forward with the present appeal.

7. Heard both sides and perused the records carefully.

8. The learned counsel for the Petitioners/appellants/claimants contends that the tribunal failed to consider the evidence on record properly and wrongly fixed the monthly earning of the deceased at Rs.9,100/- . The amount provided under the head "loss of love and affection" is

very low. No amount is provided for future prospects. Thus, the Petitioners sought for enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the amount awarded by the Tribunal itself is very excessive and there is no need to enhance the amount of compensation. The accident occurred only due to the negligence of the deceased and therefore, the Petitioners are not entitled for enhancement of the compensation. Thus, the 2nd respondent sought for dismissal of the appeal.

10. It is only quantum appeal. The 1st Petitioner who deposed as P.W.1 stated about the manner in which the accident occurred. The eye witness to the occurrence who deposed as P.W.2 clearly stated about the accident. The Police registered Ex.P.1-FIR against the 1st respondent driver only. After completion of investigation, the Police laid Ex.P.2 –charge sheet against the 1st respondent two wheeler driver only. To corroborate the same, the petitioners produced Ex.P.3-Rough Sketch of the occurrence spot and Ex.P.4-Observation Mahazar. It is clear from the same that the accident occurred due to negligence of the 1st respondent vehicle driver. The MVI report relating to the 1st respondent vehicle and the vehicle driven by the deceased are produced as Ex.P.5 and Ex.P.6 respectively. On the other hand, there is no contra evidence let in by the 2nd respondent about the nature of accident. As such, on the basis of P.W.1 and P.W.2 evidence as well as the contents of Ex.P.1-FIR, Ex.P.2-Charge sheet, the tribunal has correctly concluded that the negligence of the 1st respondent vehicle rider alone resulted in the accident. As the owner and insurer of the said vehicle, the respondents are liable to pay compensation.

11. It is contended by the Petitioners counsel that the insurer is liable to pay the compensation. However, the learned counsel for the 2nd respondent/insurance company contended that the rider of the 1st respondent vehicle did not possess valid driving licence and as the same amounts to violation of policy condition, the 2nd respondent is not liable to pay any compensation. It is clear from Ex.P.5-MVI report that the rider of the 1st respondent vehicle was not having valid driving licence. The 2nd respondent also examined R.W.1 and R.W.2 and produced Ex.R.1 Investigation Report which clearly establish the fact of 1st respondent vehicle rider not possessing valid driving licence. It is an admitted fact by the 2nd respondent that the Policy was in force on the date of the accident. As such, the 1st respondent violated the policy condition by permitting a person without valid driving licence to drive the vehicle and

therefore, the 2nd respondent as insurer is bound to satisfy the award at first instance and then in view of Policy violation committed by the 1st respondent, the insurer/2nd respondent is entitled to recover the award amount from the 1st respondent/owner of the vehicle.

12. The Petitioners who are the wife, children and mother of the deceased stated that the deceased was aged 35 years and by working as a Welder, earned Rs.10,500/- per month. On the basis of Ex.P.7-Post Mortem Report, it is clear that the deceased was aged 37 years . For that age group, the multiplier to be applied is ''15''. According to the Petitioners, the deceased was earning Rs.10,500/- per month, by working as a welder. It is clear from P.W.3 evidence and also Ex.P.11-Salary certificate and Ex.P.21-Letter that the deceased was earning Rs.350/- per day. As such, the Tribunal, on the basis of attendance register marked as Ex.P.16 to Ex.P.19, fixed the monthly income of the deceased after deducting 4 days salary as Rs.350 x 26 days = Rs.9100/-. The same is appropriate and there is no need to modify the same. As the deceased was aged 37 years, 40% of the income has to be added towards future prospects. Thus, his monthly income including future prospects comes to Rs.12,740/- [9100 + 40% (3640) = Rs.12,740/-].Considering the number of dependants are four in number, 1/4th of the income has to be deducted towards personal expenses of the deceased. Thus the monetary contribution by the deceased to the family will be as follows:-

Monthly salary = Rs.9100

40% addition towards future prospects (3640)

9100 + 3640 = 12, 740

1/4th deduction towards personal expenses.

12,740 – 3185/- = Rs.9555.

9555 x 12 x 15 = Rs.17,19,900/-.

Following the Apex Court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as under:-

Loss of consortium – 40,000/-

Funeral expenses - 15,000/-

Loss of Estate - 15.000/-

13. The learned counsel for the claimants contended that the amounts granted under the head “loss of love and affection” is

to be confirmed. Refuting the same, the learned counsel for the 2nd respondent/Insurance company contends that no amount need be provided for loss of love and affection and stated that the amount provided by the Tribunal is highly excessive. However, considering the rival contentions, following the Ruling of Kerala High Court in the case of 1.Valsamma and others Vs. V.A.Baiju, 2.Rev.F.R.Joseph Vattakalam, and 3. The National Insurance Co.Ltd., and the Ruling 2018(1) TN MAC 289 [Branch Office, New India Assurance Co.Ltd., Vs. Meenkashi and others], this court is of the view that it would be appropriate to award Rs.50,000/- each for the claimants 2 to 4 towards loss of love and affection. The sum of Rs.33,633/- provided under medical expenses and Rs.5000/- towards transport charges by the Tribunal, is confirmed.

The modified award amount is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of dependency	12,28,500	17,19,900
2.	Loss of consortium	1,00,000	40,000
3.	Loss of love and affection to Petitioners 2 and 3	1,00,000	1,00,000
4.	Loss of love and affection to 4th Petitioner	50,000	50,000
5.	Medical expenses	33,633	33,633
6.	Transport charges	5,000	5,000
7.	Funeral expenses	25,000	15,000
8.	Loss of estate	--	15,000
	Total	15,42,133/-	19,78,533/-

14. In the result, the Civil Miscellaneous Appeal is Allowed.

(i) The award amount is enhanced to Rs.19,78,533/- from Rs.15,42,133/-.

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

Appellants/Claimants 1 to 3 – 30% each

4^{th} appellant/4^{th} claimant/mother -10%.

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) As observed in Paragraph 11 of this judgment, the 2^{nd} respondent as insurer is bound to satisfy the award at first instance and then in view of Policy violation committed by the 1^{st} respondent, the insurer/2^{nd} respondent is entitled to recover the award amount from the 1^{st} respondent/owner of the vehicle. As such, the second respondent/Insurance company, at first instance, is directed to deposit the entire award amount along with proportionate interest and cost, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(v)The appellants/claimants 1 and 4 are entitled to withdraw the same along with accrued interest, less the amount, if any already withdrawn. Insofar as the appellants/claimants 2 and 3 are concerned, their share shall be invested in a fixed deposit in a Nationalised Bank which shall be renewed periodically, till they attain majority. The accrued interest therein shall be withdrawn by the 1^{st} claimant/mother, once in three months.

(vi) The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount.

(vii) In C.M.P.No.15635 of 2017 in CMA.SR.No.71448 of 2017, this court by order dated 24.10.2017, directed that "if the award amount amount is enhanced in the appeal, the Petitioners shall pay the necessary court fee. Hence, the appellants are directed to pay the necessary court fee, before obtaining the copy of the decree.

(viii) In C.M.P.No.18648 of 2017 in CMA.SR.No.71448 of 2017, this court by order dated 09.11.2017 ordered that the delay of 71 days in filing the above appeal is condoned, subject to the interest being waived off, for the default period. The said condition remains unaltered.

(ix) No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nvsri

To
1.The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Sathyamangalam.

2.The Section Officer,
VR Section, High Court,
Madras.(2Copies)

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.41472

+1cc to Mr.R.Naliyappan, Advocate, S.R.No.41059

C.M.A.No.3154 of 2017

KK(CO)
SP(06/03/2019)