IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.774 of 2018

1.Shanthi
2.Suresh
3.Vachala
4.Shanthamnmal ..Appellants/Petitioners

Versus

1.Sankar
2.Bajaj Allianz General,
Insurance Co.Ltd.,
24-25, College Road,
Nungambakkam, Chennai -34. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order dated 23.08.2010 made in M.C.O.P.No.3 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chenglepet.

For Appellants : Mr.Udhayakumar
For Respondents : Mr.M.B.Gopalan Associates [for R2]

J U D G M E N T

The petitioners/claimants have filed this appeal against the order dated 23.08.2010 made in M.C.O.P.No.3 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chengalput.

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/claimants is that on 29.02.2008, at about 7.00 a.m., while the deceased Janarathinam was proceeding in his bicycle in Chengalpattu to kanchipuram road, while coming near new modern rice mill, the 1st respondent lorry bearing Registration No.TN-20-AU-6059, which was insured with the 2nd respondent came at high speed dashed against the cyclist, causing him fatal injuries, resulting in his death on the spot. The accident occurred only due to negligence of the 1st

respondent vehicle driver. The petitioners/claimants who are the wife, children and mother of the deceased contends that on the date of accident, the deceased was aged 45 years and by working as a mason was earning Rs.10,000/- per month. Due to his sudden death, the petitioners/claimants are suffering from loss of love and affection as well as mandatory contribution to the family by the deceased. Thus, the petitioners/claimants seek a sum of Rs.6,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur due to negligence of the 1st respondent vehicle as alleged by the petitioners/claimants. The driver of the respondent lorry did not possess valid license and he was charge sheeted by the police for the same. As such, the 2nd respondent is not liable to pay any compensation. The age, avocation and income of the deceased as claimed by the petitioners/claimants is not true. The accident did not occur due to negligence of the lorry driver. The claim of the petitioners is exorbitant. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and produced document Exs.P.1 to P.5 to prove their claim. On the side of the respondents R.W.1 to R.W.3 were examined and Exs.R.1 to R.8 were marked. On the basis of available evidence on record, the Tribunal found that negligence of the 1st respondent vehicle driver alone caused the accident and passed an award for a sum of Rs.4,51,052/-, but concluded that as the vehicle was driven by a person without valid license to drive the four wheeler directed the 1st respondent owner to pay the compensation amount, while dismissing the claim petition against the 2nd respondent insurer. Aggrieved over the said finding of the Tribunal, the petitioners/claimants have come forward with the present appeal.

6. The learned counsel for the petitioners/claimants contends that the Tribunal wrongly dismissed the claim petition against the insurer and even assuming that there is violation of policy condition the insurer is liable to pay the amount and then they have to recover the same from the owner of the vehicle. The quantum of the award passed by the Tribunal is very low. Thus, the petitioners/claimants seek to enhance the award amount and also to direct the 2nd respondent/Insurance Company to pay the amount and to recover the same from the 1st respondent by entertaining the appeal.

7. Inspite of notice being served, the 1st respondent owner has not come forward to contest the appeal. However, the learned counsel for the 2nd respondent/Insurance Company contends that the quantum of the award passed by the Tribunal is just and proper and there is no need to enhance the same. The learned counsel for the 2nd respondent/Insurance Company fairly conceded that the offending vehicle was insured with them, but the 1st respondent permitted a person without valid license to drive the lorry which will amount to violation of policy condition, but the insurer is liable to pay the award amount with liberty to recover the same from the owner of the vehicle.

8. Heard both sides and perused the available materials on record.

9. The appeal is filed only on the issue of quantum and also liability of the 2nd respondent/Insurance Company. The conclusion arrived at by the Tribunal, fixing the negligence on the part of the 1st respondent vehicle driver alone caused the accident, on the basis of P.W.1 oral evidence as well as Ex.P.1 - Copy of the F.I.R, is not challenged in the appeal. The respondents have not preferred any appeal and as such, the conclusion of the Tribunal that negligence of the 1st respondent vehicle driver alone resulted in the accident has become final.

10. The first petitioner/wife of the deceased who deposed as P.W.1 stated that the deceased was aged 45 years at the time of the accident and by working as mason was earning Rs.200/- per day. The petitioners have not produced any document regarding the age of the deceased. As such, on the basis of Ex.P.2 - Postmortem report, the age of the deceased is fixed as 45 years, for that age group, the correct multiplier to be applied is '13'. As per the version of P.W.1 evidence the monthly income of the deceased is fixed at Rs.4,000/-.

11. Considering that the number of dependents are 4, the Tribunal is not correct in deducting 1/3rd of the income towards personal expenses of the deceased and as such, 1/4th is to be deducted. The deceased being aged 45 years, 25% income is to be added towards future prospects. Thus, the loss of income is calculated as follows:-

[Rs.4000 + (Rs.4,000 * 25%)] = Rs.5000/-
[Rs.5000 - (Rs.5000 * ¼)*12*14] = Rs.6,30,000/-

Thus, a sum of Rs.6,30,000/- is granted as compensation under the head “Loss of income”.

12. In respect of awarding compensation under conventional heads, as per the judgment of the Hon'ble 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/- towards funeral expenses and for loss of consortium a sum of Rs.40,000/- is awarded.

13. Before the Tribunal, the 2nd respondent/Insurance Company examined R.W.1 to R.W.3 and produced Exs.R.1 to R.8 to prove that the 1st respondent driver did not possess heavy vehicle driving license. It is clear from Ex.R.7 that the driver of the vehicle possessed only light vehicle driving license. It is clear from Ex.R.1 that the offending vehicle was insured with the 2nd respondent/Insurance Company. It is also clear from the Investigation report and charge sheet that the driver of the 1st respondent did not possess heavy vehicle driving license. The respondent also examined the staff of RTO Chengalpattu as R.W.2 and the Sub-Inspector of Police as R.W.3 to prove their contention. The copy of the 1st respondent vehicle driving license is produced as Ex.R.7 and the extract regarding the driving license of the said driver Suresh kumar from the RTO register of Chengalpattu, is produced as Ex.R.8. It is clear from the same, that the driver of the 1st respondent vehicle was not having valid heavy vehicle driving license on the date of accident. As such, permitting such a person to drive the lorry by the 1st respondent owner clearly amounts to violation of condition imposed under Ex.R.1 policy. However, the Tribunal is not justified in holding that due to such violation, the insurer is to be exonerated. The driver possessed license, but not the one authorising him to drive heavy vehicle. As such, the same amounts to violation of insurance policy condition and on that ground the insurer cannot avoid its liability in paying the compensation. However, the insurer is entitled to recover the award amount from the 1st respondent owner after satisfying the award. As such, the conclusion of the Tribunal that the petition is not maintainable against the 2nd respondent/Insurance Company is set aside. The 1st respondent who is the owner and the 2nd respondent insurer is liable to pay compensation. However, as there is violation of policy condition committed by the 1st respondent. The 2nd respondent/Insurance Company is entitled to recover the award amount from the 1st respondent owner after making the payment. As such, the respondents are liable to satisfy the enhanced award amount of Rs.6,85,000/-.

14. Accordingly, the award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court(Rs.)
1	Loss of income	4,16,052.00	6,30,000.00
2	Funeral Expenses	5,000.00	15,000.00
3	Loss of Consortium	15,000.00	40,000.00
5	Love and Affection	15,000.00	-
6	Total	4,51,052.00	6,85,000.00

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

(i) The award of the Tribunal is enhanced to Rs.6,85,000/- from Rs.4,51,052/-.

(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) The 2nd respondent/Insurance Company is at liberty to recover the same from the 1st respondent after making the payment.

(iv) In view of the above modified 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.

(v) The apportionment of the modified enhanced award amount is as follows:-

1st to 3rd petitioners - 30% each
4th petitioner - 10%

(vi) On such deposit, the petitioners/claimants 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.

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

(viii) In view of the order of this court passed in M.P.No.1874 of 2011 in C.M.A.SR.No.77914 of 2011, the petitioners/claimants shall forego interest for the delayed period.

No costs.

bri

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Chenglepet.

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

+1cc to Mr.M.B.Gopalan, Advocate SR.No.31132
+1cc to Mr.S.Udhayakumar, Advocate Sr.No.31010

GMR(CO)
sm:18.7.2018

C.M.A.No.774 of 2018