IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.776 of 2018

1.Marappa
2.Puspha ... Petitioner/Appellants

..vs..

1.Ramesh Babu
2.Oriental Insurance Company Ltd.,
Divisional Office, Divya Towers,
Sevapettai Main Road,
Salem - 636002.
3.R.Prakash
4.Oriental Insurance company Ltd.,
Vijay Shopping Complex,
No.2/7-16, Bangalore Main Road,
Jusuvadi, Hosur-635 109. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 04.08.2017 made in MCOP.No.570 of 2015 on the file of the Motor Accident Claims Tribunal/III Additional District Judge, Salem.

For Appellants : Mr.S.P.Yuaraj
For Respondents : Mr.J.Chandran, for 2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 04.08.2017 made in MCOP.No.570 of 2015 on the file of the Motor Accident Claims Tribunal/III Additional District Judge, Salem, the petitioners/claimants have come forward with this present appeal seeking to enhancement of the award amount.

2. With both parties consent, the matter is disposed of at the admission stage itself.

3. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

4. The case of the petitioners is that on 02.09.2014 at about 04.45 p.m., as the deceased Sanjai along with his friend Dilip Nagaraj were travellling in a two wheeler bearing

Registration No.TN-70-M-1274, from Bangalore to his native place, the rider of the two wheeler Dilip Nagaraj drove the vehicle at high speed in a rash and negligent manner, who going in Aravantigerepura lake to Karporu road, near the same lake, attempted to over take another two wheeler bearing Registration No.TN-29-Q-9853 and in the process, lost his control dashed against the said Hero Honda bike and also the electrical post on the left side of the road causing fatal injuries to the deceased Sanjai who died on the spot itself. The accident occurred due to the rash and negligent driving by the said Dilip Nagaraj only. At the time of the accident, the deceased Sanjai, who is the son of the petitioner was aged about 19 years and was studying engineering course. The deceased is the only son of the petitioners and they are suffering due to mental agony caused by the death of young brilliant person. Hence, they seek a sum of Rs.20,00,000/- as compensation from the respondents who are the owner and insurer of the two vehicles involved in the accident.

5. On the other hand, opposing the claim petition, the second and 4th respondents filed counter contending that the accident took place due to the rash and negligent driving by the rider of the two wheeler bearing Registration No.TN-70-M-1274 owned by the first respondent and insured with the second respondent herein. The other vehicle bearing Registration No.TN-29-Q-9853 belongs to the third respondent and insured with the 4th respondent. Admittedly, both the vehicles was insured with the same Oriental Insurance Company Limited. The second and fourth respondents Insurance Company contended that the rider of the first and third respondent's motor cycle have to prove that they possessed the valid and effective driving licence on the date of accident. The second and fourth respondents further contended that the accident occurred only due to the rash and negligent driving by the rider of the first respondent vehicle and as such the claim against the third and fourth respondents has to be dismissed. The age, avocation and income of the deceased as stated in the petition is disputed. The claim of the petitioner is exorbitant. Hence, the second and fourth respondents sought for dismissal of the petition.

6. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P13 to prove their claim. On the side of the respondents, the respondents examined R.W.1 and produced documents Ex.R1 to Ex.R10 to prove their contention.

7. The Tribunal, after analyzing the evidence available on record found that the negligence on the part of the first respondent vehicle driver alone is the cause for the accident and as the driver did not possess valid licence found the first respondent owner alone is liable to pay the compensation and as

the insurer, the second respondent was directed to make the payment and thereafter recover the same from the first respondent owner as the violation of policy condition is committed by permitting unlicenced person to drive the vehicle and passed award for a sum of Rs.7,10,000/- as compensation to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants has come forward this present appeal seeking to enhance the award passed by the Tribunal.

8. I have heard the learned counsel appearing for the appellants/petitioners and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

9. The learned counsel appearing for the appellants/petitioners contended that the Tribunal failed to appreciate the evidence properly and failed to note that the deceased was brilliant student and if he is alive, he would have earned at least Rs.10,000/- per month. The Tribunal failed to consider the future prospects of the deceased properly. The Tribunal has also failed to provide any amount towards pain and sufferings. The amount awarded by the Tribunal under the different heads is very nominal. Thus, the petitioners sought for enhancement of the quantum of award passed by the Tribunal.

10. The learned counsel appearing for the second respondent-Insurance Company contends that the petitioner has not proved that the claim of the petitioner is exorbitant and as the deceased was only a student, the Tribunal erred in fixing the notional income of the deceased at Rs.5000/- and awarded the higher amount as compensation without any basis. Thus, the second respondent Insurance Company sought for dismissal of the appeal.

11. The petitioners stated that on 02.09.2014 at about 4.45 p.m., as the deceased along with his friend Dilip Nagaraj were returning from the collage to their native place and at that time, due to rash and negligent driving by the rider of the two wheeler Dilip Kumar the accident occurred resulting in death of the petitioner's son Sanjai. The person who drove the two wheeler Dilip Nagaraj deposed as P.W.2 and stated that as he attempted to over take another two wheeler going ahead of him, the rider of the other two wheeler owned by the third respondent suddenly applied brake and to avoid dashing the said vehicle, he turned his two wheeler to the right side and in that process dashed against the light post on the left side of the road. The police also registered the case under Ex.P1 first information report against P.W.2 Dilip Nagaraj only. It is therefore clear from the same that the accident occurred only due to the high

speed in which the two wheeler was driven by P.W.2 Dilip Nagaraj.

12. On the side of the respondents, there is no eye witness account of the accident. However, the second respondent examined the staff working with them as R.W.1 and he stated that the riders of both the vehicles involved in the accident, namely, P.W.2 Dilip Nagaraj and Ajai Babu did not posses valid driving licence at the time of accident. As stated above, both the vehicles involved in the accident are insured with the same insurance company, which is arrayed as second and fourth respondent. It is clearly admitted that the accident occurred on 02.09.2014 and only due to the rash and negligent driving by the rider of the first respondent two wheeler bearing Registration No.TN-70-M-1274, the occurrence took place. As such, it is clear from the oral evidence of P.W.1 and P.W.2 as well as R.W.1, the negligence on the part of the first respondent's vehicle driver who is examined as P.W.2 in this proceedings also caused the accident. Admittedly the vehicle driven by him was insured with the second respondent. As such the second respondent is liable to pay compensation to the petitioners as insurer of the said vehicle.

13. However, it is pointed out that the rider of the vehicle P.W.2 Dilip Nagaraj did not posses driving licence and inspite of the second respondent sending notice Ex.R3 and Ex.R4 to the owners of the vehicles, they failed to produce the driving licence of the rider of the two wheeler concerned. It is therefore clear that the rider of the two wheeler P.W.2 Dilip Nagaraj did not posses any licence on the date of accident. In such circumstances, even though the offending vehicle bearing Registration No.TN-70-M-1274 belonging to the first respondent was insured with the second respondent as there is violation of policy condition, by permitting unlicenced person to drive the vehicle, the second respondent Insurance Company is not liable to pay compensation. However, as the insurance coverage was in force, it is appropriate to direct them to pay the award amount first and then to realize the same from the owner of the vehicle who is the first respondent herein.

14. The first petitioner who is the father of the deceased deposed as P.W.1 stated that his deceased son was aged about 18 years and was brilliant student. To prove the same he produced the copy of +2 Mark Sheet of the deceased as Ex.P7. The deceased was studying B.Tech., Engineering Course in Allianze University at Bangalore and to prove the same, the petitioner produced the admission certificate of the said Institution as Ex.P13. The first petitioner further stated that the deceased was his only son and he being a bachelor, the petitioners who are the parents of the deceased are only the legal heirs. On

evidenced by Ex.P12 Legal Heir Certificate. Hence, the petitioners sought for compensation of Rs.20,00,000/- from the respondents. The deceased being a first year student in Engineering Course and without any other income of his own, the Tribunal fixed the notional income of the deceased at Rs.5,000/-. However, considering the fact that deceased passed out his +2 and the mark sheet is produced as Ex.P7 and doing first year B.Tech engineering course there is every possibility of him getting a good job in the engineering field. Hence, it will be appropriate to fix the notional income of the deceased at Rs.10,000/-. The age of the deceased is stated to be 19 years in Ex.P2 Postmortem certificate. As such his age is fixed at 19. For the said age group of 19 years, the correct multiplier to be applied is 18. The Tribunal has wrongly applied the multiplier 16 and the same is to be modified to 18. The deceased being a bachelor 50% of the income is to be deducted towards the personal expenses of the deceased. Since the deceased was aged 19 years as per the certificate Ex.P13 produced by them, 40% of the income is to be added towards future prospects. Thus, the loss of notional income is calculated as follows:-

"Notional income fixed at Rs.10,000/- per month and 40% of the amount of Rs.4,000/- is added towards future prospects and the total amount comes to Rs.14,000/-. The deceased being a bachelor, 50% of the amount of Rs.7,000/- is to be deducted towards the personal expenses of the deceased and balance amount would be Rs.7,000/-. Thus, the loss of dependency is calculated as follows. Rs.7,000/- x 12 = Rs.84,000/- x 18 = Rs.15,12,000/-.

15. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Estate = Rs. 15,000.00
Funeral Expenses = Rs. 15,000.00

16. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	4,80,000.00	15,12,000.00
2.	Funeral Expenses	20,000.00	15,000.00
3.	Loss of love and affection	2,00,000.00	-
4.	Loss of Estate	-	15,000.00
5.	Transportation	10,000.00	-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
	Total	7,10,000.00	15,42,000.00

Accordingly, the quantum of compensation warded by the Tribunal is modified and the same is enhanced to Rs.15,42,000/-.

17. In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.7,10,000/- awarded by the Tribunal dated 04.08.2017 made in MCOP.No.570 of 2015 on the file of the Motor Accident Claims Tribunal/III Additional District Judge, Salem is hereby enhanced to Rs.15,42,000/-. The second respondent Insurance company is directed to deposit the entire award amount of Rs.15,42,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit the award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are entitled to equal share of the award amount. The appellants/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The second respondent Insurance company is permitted to recover the award amount from the first respondent/owner of the two wheeler bearing Registration No.TN-70-M-1274 in accordance with law.

rrg

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
The III Additional District Judge,
Salem.

Copy to:The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.SP.Yuaraj, Advocate SR.No.27141

SSV(CO)
sm:18.5.2018