IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.531 of 2017
and CMP.No.11203 of 2017

1.Muthal
2.Manian ..Appellants/Petitioners

Vs

1.K.Periyanan

2.A.Karuppannan

3.The Branch Manager

National Insurance Company Ltd.,

Branch No.133, Promernand Road Branch

Cantonment, Trichy ..Respondents/REspondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 27.04.2010 made in M.C.O.P.No.897 of 2005 on the file of Principal District Court, Erode.

For appellants : : Mr.T.M.Karthikeyan
For Respondents : : Mr.C.S.Saravanan for R1 and R2
Ms.N.B.Surekha for R3.

J U D G M E N T

The Appellants are the Petitioners and fled the above appeal challenging the order and decree dated 27.04.2010 made in M.C.O.P.No.897 of 2005 respectively on the file of Principal District Court, Erode.

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 21.06.2005, while the deceased Jagadeeswari was proceeding in Modakkurichi to Ganapathipalayam road, on her way to school at about 8.45 a.m., the 1st respondent Lorry bearing Reg.No.TN-09-C-9799 came in the same direction at high speed, suddenly turned towards left ran over the deceased Jagadeeswari causing her fatal injuries resulting in her death on the spot. According to

the Petitioners, the accident occurred only due to negligence of the Lorry driver, who is the first respondent. The said lorry belongs to the 2nd respondent and the same was insured with the 3rd respondent. At the time of the accident, the deceased was aged 11 years and she was studying in 6th Standard. She was a brilliant student and the Petitioners who are the parents of the deceased have lost their loving daughter. Thus, the Petitioners seeks a sum of Rs.3,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 1st respondent and 2nd respondent contends that the Lorry was proceeding in normal speed, but the deceased who was walking on the left side of the road, without noticing the oncoming Lorry, suddenly crossed the road and invited the accident. The claim of the Petitioners in other aspects is denied. The 1st and 2nd respondent sought for dismissal of the Petition.

4. Likewise, opposing the claim of the Petitioners, by filing counter, the 3rd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioners. The driver of the Lorry who is the 1st respondent does not possess valid driving licence. The claim Petition is filed on false grounds. The 3rd respondent is not liable to pay any compensation. The claim of the Petitioners about the age of the deceased and other particulars furnished is denied. The Petitioners claim is exorbitant. The 3rd respondent sought for dismissal of the Petition.

5. Before the Tribunal, the Petitioners examined P.W.1 to P.W.3, produced documents Ex.P.1 to Ex.P.8 to prove their claim. The respondent examined R.W.1 and produced documents Ex.R.1 and Ex.R.2. The Tribunal, after analyzing the evidence on record, found negligence of the 1st respondent driver alone caused the accident, passed the award for a sum of Rs.1,40,000/- payable by the respondents 1 and 2 and dismissed the petition against the 3rd respondent/Insurance company on the ground that the 1st respondent driver did not possess valid driving licence and the same amounts to violation of policy condition. Aggrieved over the said finding of the Tribunal, the Petitioners/claimants have come forward with the present appeal.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the Petitioners contends that the Tribunal failed to consider the evidence on record properly and passed an award for a meager amount of Rs.1,40,000/-. The Tribunal erred in exonerating 3rd respondent/Insurance company on the ground that the 1st respondent did not possess valid driving

licence which amounts to violation of policy condition. The Tribunal ought to have directed the 3rd respondent/Insurance company to satisfy the award and then to recover the same from the 2nd respondent/owner of the vehicle. The Tribunal ought to have awarded much higher amount as compensation. The Petitioners/claimants seeks enhancement of the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the 3rd respondent/Insurance company contends that the claim of the Petitioner is highly excessive and the victim being a non earning member, there is no need to provide higher compensation. Inspite of notice being served, the 2nd respondent has not come forward to produce the driving licence of the 1st respondent, and as the 2nd respondent has permitted a person without driving licence to drive the vehicle, the same amounts to violation of Policy condition. As such, the Tribunal, rightly exonerated the 3rd respondent/Insurance company holding that they are not liable to pay compensation. There is no need or scope for enhancement of the quantum of the award. Thus, the 3rd respondent seeks dismissal of the appeal.

9. This is only quantum appeal. Both sides did not seriously contest the conclusion of the Tribunal about the negligence aspect. The eyewitness to the occurrence who deposed as P.W.3 clearly stated that on 21.06.2005 as he was walking in front of the Revenue Inspector Office at Modakkurichi, at 8.45 a.m., the lorry bearing Reg.No.TN-09-C-9789 came from east to west at high speed and turned towards left side near the office of the Revenue Inspector and at that point, dashed against a school going girl, causing her fatal injuries. Further, the Police also registered Ex.P.1-FIR against the 1st respondent lorry driver only. The contents of Ex.P.1-FIR and the oral evidence of P.W.3 corroborates each other. The Petitioners also produced Rough sketch of the occurrence spot and the Observation Mahazar prepared by the Police as Ex.P.4 and Ex.P.5. The same supports the claim of the Petitioners about the manner in which the accident occurred. The Police after completion of investigation, laid charge sheet against the 1st respondent lorry driver only as evidenced by Ex.P.8-copy of Final Report. It is therefore clear that the negligence of the 1st respondent driver alone caused the accident. On the side of the respondents, no contra evidence was let in to disprove the claim of the Petitioners. As such, the Tribunal, on the basis of P.W.3 evidence and the contents of Ex.P.1-FIR, Ex.P.8-Charge sheet and other documents correctly concluded that the negligence of the 1st respondent driver alone caused the accident. The same needs

no interference.

10. The father of the deceased Jagadeeswari who deposed as P.W.2 stated that his daughter was studying in 6th standard and she was a bright student and she was aged 11 years. However, P.W.2 has not produced any document regarding date of birth of the deceased Jagadeeswari. Therefore, on the basis of Ex.P.6-Post Mortem Certificate, it will be appropriate to fix the age of the deceased as 11 years. It is clear from Ex.P.3-Certificate issued by Government Girls Higher Secondary School, Modakkurichi that the Petitioner was studying 6th standard at that point of time. Thus, the claim of the Petitioners that the deceased was aged 11 years and was studying 6th standard is clearly proved. The Tribunal, considering the above said facts, awarded lumpsum of Rs.1,15,000/- towards "loss of income and expectancy of life". This the Petitioners/claimants contend that it is not proper and further pleads this court, to fix the notional income of the deceased at Rs.8000/-. In support of the same, he relied upon the following Rulings:-

(1) 2017 1 TNMAC 427

[M.Premkumar Vs. M.Palaniappan and another]

(2) 2017 1 TNMAC 220

[Kandasamy Vs.G.R.Sampath]

Thus, following the above said Ruling and considering the case on hand, when the deceased was studying 6th standard student, it will be appropriate to fix the notional income of the deceased at Rs.6000/- per month. As the deceased was aged 11 years, the multiplier to be applied is '18'. Further, it will be appropriate to add 40% of the income towards future prospects. As the deceased was a spinster, 50% of the income is to be deducted towards personal expenses. The calculation towards "pecuniary loss" will be as under:-

Monthly salary - Rs.6000/-

Add: 40% towards future prospects

6000 + 25%(2400) = Rs.8400

Deduction: 50% towards personal expenses

8400 – 50% (4200) = Rs.4200

4200 x 12 x 18 = 9,07,200/-.

The Tribunal granted Rs.15,000/- towards loss of love and affection, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards Transport Expenses to the Petitioners. While considering the facts and attendant circumstances of the case, this court is of the considered view that it will be appropriate to provide Rs.30,000/- towards "Loss of love and affection"; Rs.15,000/- towards "Funeral expenses" and Rs.5,000/- provided towards "Transport Expenses".

Sl. No.	Heads	Amounts awarded by the Tribunal	Amounts awarded by this Court
1.	Pecuniary Loss	Rs.1,15,000/-	9,07,200/-.
2.	Loss of love and affection	Rs. 15,000/-	30,000/-
3.	Funeral expenses	Rs. 5,000/-	15,000/-
4.	Transport expenses	Rs. 5,000/-	5,000/-
	Total	Rs.1,40,000/-	9,57,200/-

11. In view of the fact that the 1st and 2nd respondents failed to produce driving licence and on the basis of Ex.P.7-MVI report wherein, it is stated that the driving licence is not produced, the Tribunal concluded that the 2nd respondent/owner of the vehicle permitted the 1st respondent, without driving licence to drive the lorry and thereby committed violation of Ex.R.2 - Insurance Policy conditions. The 2nd respondent vehicle bearing Reg.No.TN-09-C-9799 was covered under Insurance Policy and the same is marked as Ex.R.2. According to R.W.1, the staff of the 3rd respondent/Insurance company, inspite of service of notice to R2/owner, he failed to respond and the driving licence of the 1st respondent was not produced. The Tribunal considering the same, held that only because the 1st respondent did not possess valid driving licence, the same was not produced. The act of the 2nd respondent/owner in permitting a person without licence to drive his lorry will clearly amount to violation of policy condition and on that basis, the Tribunal, while holding that the 1st and 2nd respondent are liable to pay compensation, exonerated the 3rd respondent/Insurance company.

12. Pending appeal, the 1st and 2nd respondents/driver/owner of the above said lorry filed CMP.No.11203 of 2017 seeking permission to produce the driving licence of the 1st respondent and the copy of the judgment dated 16.04.2010 passed by the criminal court in C.C.No.295 of 2006 on the file of Judicial Magistrate No.3, Erode.

13. As there is no serious objection to the same, the said CMP is allowed and the said documents are marked as Ex.P.9 and Ex.P.10 by consent. It is clear from Ex.P.9-Driving Licence that the 1st respondent Periyanan, driver of the above said lorry possessed valid driving licence.

14. The said driving licence was in force on the date of the accident. Further, it is clear from Ex.P.10 the copy of the judgment passed by the criminal court that the driver was charged only under Section 279 and 304 A IPC and not under any other provisions. In the said case, the Driver was found not guilty and the case ended in acquittal. As such, no charge sheet was filed against the 1st respondent driver on the ground of not possessing valid driving licence. It is therefore, clear from Ex.P.9 driving licence that the 1st respondent driver possessed proper valid licence on the date of the accident i.e., 21.06.2005.

15. Admittedly, the said lorry was insured with the 3rd respondent as per Ex.R.2 Insurance policy. In such circumstances, as the driver of the offending vehicle is having valid driving licence and the policy coverage was in force, the 3rd respondent/Insurer is also liable to pay compensation.

16. The conclusion of the Tribunal contrary to that and exonerating the 3rd respondent from liability on the grounds that violation of policy condition committed by 1st and 2nd respondents is not sustainable and hence, the said finding is set aside.

17. In the result, this Civil Miscellaneous Appeal is allowed. The award amount is enhanced to Rs.9,57,200/- from Rs.1,40,000/-. The appellants/claimants are entitled for Rs.9,57,200/- as compensation with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally liable to pay the compensation. As such, the respondents 1 to 3 are directed to pay the compensation/award amount along with proportionate accrued 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. On such deposit, the claimants are entitled to withdraw the same, in equal proportion, by filing necessary application before the Tribunal. As per the order of this court dated 03.02.2017 passed in CMP.15187/2016, for the delay period of 1798 days, interest is waived off. No costs. Consequently, connected MP is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

nvsri
To
1.The Principal District Judge, Erode.

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

+2 Ccs to Mrs.N.B. Surekha, Advocate sr 47590, 48401.
+1 CC to Mr.T.M.Karthikeyan, Advocate sr 47812.
+1 cc to Mr.C.S.Saravanan , Advocate sr 48192.

C.M.A.No.531 of 2017

CA(CO)
SP(16/11/2018)