IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1501 of 2013

1.S.Navamani
2.S.Vidhya
3.S.Kiruthika
4.A.Chinnammal .. Appellants/Claimants

..Vs..

1.Joseph
2.B.Syedjohn
3.Rabert
4.United India Insurance Company Ltd.,
Near Hotel Jothibhavan,
Erode Main Road,
Perundurai Town & Post,
Perundurai Taluk - 638 052. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Award of the Motor Accident Claims Tribunal (Sub Court), Perundurai in MCOP.No.182 of 2011 dated 18.12.2012.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondents 1 to 3 : No Appearance

For Respondent 4 : Mrs.R.Srividhya

J U D G M E N T

The instant appeal has been filed by the claimants challenging the Award dated 18.12.2012 passed by the Motor Accident Claims Tribunal (Sub Court, Perundhurai) in M.C.O.P.No.182 of 2011.

The brief facts leading to the filing of the instant appeal are as follows:-

2. One Shanmugam died on 08.04.2011 as a result of an accident caused by a Yamaha Motor Cycle bearing registration

No.TN33-T-7651 driven by the first respondent and insured with the fourth respondent United India Insurance Company Limited. The second and third respondents are the previous and current owner of the said vehicle respectively. The dependents of the deceased Shanmugam, who are the Appellants in the instant appeal, preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.182 of 2011 seeking a compensation of Rs.10,35,000/- which was restricted to Rs.10,00,000/- for the death of Shanmugam. The Motor Accident Claims Tribunal by its Award dated 18.12.2012 in MCOP.No.182 of 2011 directed the respondents 1 to 3 jointly and severally to pay the Appellants a sum of Rs.3,20,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation. Under the impugned Award, the Tribunal has exonerated the liability of the fourth respondent insurance company.

3. Heard, Mr.S.kaithamalai Kumaran learned counsel for the Appellants and Mrs.R.Srividhya, learned counsel for the fourth respondent. Despite service of notice on the remaining respondents and their names having been printed in the cause list today, none appears on their behalf.

4. According to the learned counsel for the Appellants, the Tribunal has erroneously not held the fourth respondent insurance company liable to compensate the Appellants. According to the learned counsel for the Appellants, even if the driver of the vehicle was not possessing a valid driving licence, the insurance company is liable to compensate the Appellant, since there was a valid certificate of insurance, at the time of the accident and the Tribunal ought to have directed the fourth respondent to pay the award amount and recover the same from the respondents 1 to 3.

5. The learned counsel for the Appellants further contended that the amount of compensation awarded by the Tribunal is low and not commensurate with the actual loss suffered by the Appellants who are the dependents of the deceased shanmugam. According to the learned counsel for the Appellants, the deceased shanmugam was aged 52 years at the time of the accident and was an agent of PACL India Limited and earning a substantial income.

6. According to the learned counsel for the Appellants, the Tribunal has erroneously not considered the loss of future prospects under the impugned award. The learned counsel for the Appellants further contended that adequate compensation was not granted to the Appellants towards loss of consortium, love and affection and funeral expenses. Further, according to the learned counsel for the Appellants, no compensation was awarded towards loss of estate.

7. Per contra, learned counsel for the fourth respondent insurance company would submit that the driver of the vehicle did not possess a valid driving licence, at the time of the accident. The learned counsel for the fourth respondent would contend that considering the age of the deceased, who was aged 52 years at the time of his death, the compensation awarded by the Tribunal under the impugned Award is an adequate compensation.

8. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels, observes the following:

a) The death of shanmugam as a result of an accident caused by a Yamaha Motor Cycle bearing registration No.TN33-T-7651 has not been disputed by the fourth respondent, before the Tribunal.

b) A valid certificate of insurance for the vehicle was available, at the time of the accident.

c) The age of the deceased has also not been disputed by the fourth respondent before the Tribunal and the number of dependents of the deceased who are the Appellants in the instant appeal has also not been disputed by the fourth respondent, before the Tribunal.

d) The Tribunal has given a clear finding that only due to the rash and negligent driving by the driver of the Yamaha Motor Cycle bearing registration No.TN33-T-7651, the accident had happened which resulted in the death of shanmugam.

e) Even though the Appellants have claimed in their claim petition that the deceased shanmugam was earning a monthly income of Rs.15,000/-, the Tribunal has assessed the monthly income of the deceased at the time of his death at Rs.3,000/-. The accident happened in the year 2011. Considering the year of the accident, the monthly income of the deceased assessed by the Tribunal at Rs.3,000/- is a reasonable sum.

f) The deceased died at the age of 52 years and the Appellants have filed voucher of PACL India Limited which was marked as Ex.P7 which reveals that the deceased was an agent of the PACL India Limited. The Tribunal has rejected the said voucher and assessed the notional income of the deceased shanmugam at the time of his death at Rs.3,000/-. But, the Tribunal has not awarded any compensation towards loss of future prospects. In the considered view of this Court, considering the age of the deceased shanmugam, the Tribunal ought to have awarded compensation towards loss of future prospects.

g) The Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium, a sum of Rs.40,000/- towards love and affection and a further sum of Rs.5,000/- towards funeral expenses, which, in the considered view of this Court is very meagre and inadequate. This court is of the considered view that the amount awarded under the above said heads will have to be enhanced.

h) The Tribunal has also not awarded any compensation to the Appellants towards loss of estate, for which, they are entitled to.

i) It is settled law that once there is a valid certificate of insurance, the insurer is liable to compensate the third party claimant even though there was a policy violation committed by the insured. On such payment being made, the insurer is entitled to recover the same from the insured. In the instant case, the driver of the Yamaha Motor Cycle which is insured with the fourth respondent did not possess a valid driving licence which is a policy violation. But the Tribunal has erroneously not directed the fourth respondent to pay the award amount to the Appellants and recover the same from the respondents 1 to 3. In the considered view of this Court, the Tribunal ought to have directed the fourth respondent to pay the Award amount and recover the same from the respondents 1 to 3 jointly or severally .

9. In the light of the above observations, the Award passed by the Tribunal has to be enhanced in the following manner:

Heads	Amount Awarded by the Tribunal	Modified Award Amount
Loss of Income	Rs.2,64,000/-	Rs.2,64,000/-
Loss of future prospects	Nil	Rs.39,600/-
Funeral Expenses	Rs.5,000/-	Rs.15,000/-
Loss of consortium	Rs.10,000/-	Rs.15,000/-
Love and Affection	Rs.40,000\-	Rs.60,000/-
Total	Rs.3,19,000/-	Rs.3,93,600/-
Rounded off	(+) Rs.1,000/-	Nil
Award Amount	Rs.3,20,000/-	Rs.3,93,600/-

10. In the result, the Civil Miscellaneous Appeal is partly allowed by modifying the Award amount from Rs.3,20,000/- to Rs.3,93,600/-. However, there shall be no order as to costs.

11. The fourth respondent is directed to deposit the Award amount of Rs.3,93,600/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, after deducting the amount that has already been deposited, to the credit of M.C.O.P.No.182 of 2011 on the file of the Motor

Accident Claims Tribunal (Sub Court, Perundhurai) within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the fourth respondent is permitted to recover the same from the respondents 1 to 3 and the Appellants are permitted to withdraw the amount lying to the credit of M.C.O.P.No.182 of 2011 on the file of the Motor Accident Claims Tribunal (Sub Court, Perundhurai) with accrued interest by filing an appropriate application as per the ratio apportioned by the Tribunal.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Sub Court, Perundhurai.

Copy TO

1. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No. 65234
+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 65269

C.M.A.No.1501 of 2013

SSI(CO)
GN(20/11/2018)