IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3582 of 2012

1.Sasikala
2.Minor Litesh
3.Usharani
4.Minor Nitheesh
Minor respondents 2 and 4 are rep.
by their mother and natural Guardian,
Sasikala the 1st Respondent herein) ..Appellants/Claimants

..vs..

1.Subramanian
2.The Branch Manager,
Cholamandalam General Insurance
Company Limited,
Chennai. ..Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 15.09.2012 made in MCOP.No.151 of 2010 on the file of the Motor Accident Claims Tribunal/3rd Additional District and Sessions Court(FTC), Tirupattur, Vellore District.

For Appellants : Mr.PA.Sudesh Kumar

For Respondents : Mr.N.Vijayaraghavan for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 15.09.2012 made in MCOP.No.151 of 2010 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court(FTC), Tirupattur, Vellore District, the petitioners/ claimants has come forward with this present appeal to enhanced the award amount.

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

3. The case of the petitioners is that on 13.05.2007, at about 18.00 hours, while the deceased was proceeding in Maruthi Van bearing Registration No.TN-23-B-9606, from Yelagiri Hills to Ambur, near 9th bend in the Yelagiri Hills, the driver lost control, dashed against the rock resulting in grievous injuries to the deceased Mounth Reddy who died on the spot itself. The accident occurred due to the negligence of Maruthi Van driver only. The said Maruthi Van belongs to the first respondent and the same was insured with the second respondent. At the time of accident, the deceased was aged about 33 years and working as Software Service Provider was earing a sum of Rs.25,000/- per month. The petitioners who are the wife, children and mother of the deceased were dependents on the earning of the deceased. Hence, they sought for a sum of Rs.20,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent-Insurance Company filed counter contending that the accident does not occur in the manner alleged by the petitioners. The driver of the first respondent vehicle was not having valid driving licence at the time of accident. The driver of the Maruthi van is the son of the first respondent owner and the first respondent knowingly allowed his son to drive the vehicle without valid driving licence. Hence, the second respondent is not liable to pay any compensation. The claim of the petitioners about the age, avocation and income of the deceased is denied. Thus, the second respondent sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P5 to substantiate their claim. On the side of the respondents, R.W.1 to R.W.3 were examined and documents Ex.R1 to Ex.R10 were marked.

6. The Tribunal, on the basis of available evidence on record, found the negligence of the first respondent Maruthi Car driver alone cased the accident and awarded a sum of Rs.14,11,068/- as compensation, directing the second respondent Insurance Company to pay the same and to recover the amount from the first respondent for committing the breach of policy condition. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward with the present appeal.

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

8. The learned counsel appearing for the appellants/Petitioners/ Claimants contends that the Tribunal fixed the monthly income of the deceased at Rs.10,000/- per month and deducted 1/3rd of the income towards personal expenses of the deceased instead of deducting 1/4th of the income. The Tribunal failed to provide for loss of martial life of the first petitioner wife who is aged about 25 years. Hence, the petitioners sought for enhancement of the quantum of compensation awarded by the tribunal by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the Tribunal wrongly fixed the negligence on the part of the first respondent Maruthi van driver and awarded higher amount as compensation without any basis. No ground is made out for enhancement of the award amount. Hence, the second respondent sought for dismissal of the appeal.

10. The petitioners examined the eye witness to the accident as P.W.2 and he stated that on 13.05.2007 at about 6.00 p.m., while he was coming down from Yelagiri Hills, near the 8th bend, he saw the Maruthi Van bearing Registration No.TN-23-B-9606 going ahead of him at high speed and unable to control the speed dashed against the rock resulting in the accident. According to him, he was coming down in the Motor Cycle along with his friend Nagarajan who also witnessed the accident. He stated that one Mounth Reddy died on the spot itself. The police also registered Ex.P1 First Information Report against the driver of the said Maruthi Van only. Thus, the petitioners contended that the accident occurred only due to the rash and negligent driving by the first respondent driver.

11. On the other hand, the Official of the second respondent Insurance Company who deposed as R.W.1 stated that the offending vehicle was insured with them under Ex.R1 Policy and his investigation revealed that the first respondent permitted his son Nandhakumar to drive the Maruthi van, while he was under the influence of alcohol. Further, the said Nandhakuar was not having valid driving licence. The police also filed Ex.R6 final report alleging that the driver of the first respondent Maruthi van was not having valid driving licence. The charge sheet was filed under Section 3 r/w 181 of Motor Vehicles Act. Likewise, the official of the RTO who deposed as R.W.2 stated that the driver of the Maruthi Van was only having Light Motor Vehicle licence for the period of 13.09.2007 to 12.09.202. On the date of accident i.e. 13.05.2007, no licence was issued to him from RTO Office Gudiyatham. R.W.2 further stated that on 09.08.2007, the driver was given LLR Ex.R8 and the same is in force. As per P.W.2 evidence, only on the next day of the accident, the first respondent vehicle driver got driving licence in his name. It

is therefore clear from the above said discussion that the offending vehicle was driven by one Nandhakumar under the influence of alcohol without any valid licence. The eye witness account of the accident has been given by P.W.2 and nothing is elicited from him in cross examination to discredit his evidence. As such, the finding of the Tribunal that the negligence of the first respondent Maruthi Van driver alone caused the accident is just and proper. Further, it is clear that the vehicle was insured with the second respondent as per Ex.R1 Policy. Admittedly, there is violation of policy condition by the first respondent who permitted a person without licence to drive the vehicle and that too under the influence of alcohol. As such the second respondent is justified in contending that they are not liable to pay compensation. The same is to be accepted. However, as the vehicle was under the Insurance coverage, the second respondent is directed to pay the entire award amount to the petitioners and then recover the same from the owner of the offending vehicle, who has committed violation of policy condition.

12. The Tribunal on the basis of evidence let in by the petitioners fixed the monthly income of the deceased at Rs.10,000/-. The petitioners states that the deceased was earning a sum of Rs.20,000/- per month by working as Software Service Provider. However, there is no evidence except Ex.P4 to prove the avocation and income of the deceased. Hence, the Tribunal fixed the monthly income at Rs.10,000/-. It is clear from Ex.P2 postmortem certificate and other documents produced by either side that the deceased was aged about 33 years at the time of accident. Since the age of the deceased is fixed at 33, the multiplier to be applied is 16. In the absence of any proof to prove the income of the deceased, the Tribunal is justified in fixing the monthly income at Rs.10,000/-. The deceased was a graduate engineer. Hence, towards future prospects of the person aged 33 years, it would be appropriate to give 40% towards future prospects. Thus, the income of the deceased is calculated as follows. Rs.10,000/- monthly income + 40% future prospects at Rs.4,000/- = Rs.14,000/-. Since the number of dependents are more than 3, 1/4th of the income is deducted towards personal expenses. Accordingly, the loss of dependency is calculated is as follows:-

Rs.14,000/ - 1/4th amount of Rs.3,500/- = Rs.10,500/- x 12 = Rs.1,26,000/- x 16 = Rs.20,16,000/- will be pecuniary loss of income.

13. 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 consortium	=	Rs.40,000.00
Loss of Estate	=	Rs.15,000.00
Funeral Expenses	=	Rs.15,000.00
Transportation	=	Rs. 4,000.00

14. Accordingly, the compensation warded by the Tribunal is modified and enhanced as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	13,60,068.00	20,16,000.00
2.	Loss of love and affection	40,000.00	-
3.	Funeral Expenses	10,000.00	15,000.00
4.	Transport charges	1,000.00	4,000.00
5.	Loss of Estate	-	15,000.00
6.	Loss of consortium		40,000.00
	Total	14,11,068.00	20,90,000.00

15. In the Result, the Civil Miscellaneous Appeal is partly allowed. No Costs. The amount of Rs.14,11,068/- awarded by the Tribunal, dated 15.09.2012 made in MCOP.No.151 of 2010 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court(FTC), Tirupattur, Vellore District is enhanced to Rs.20,90,000/-. The second respondent-Insurance Company is directed to deposit the entire enhanced award amount of Rs.20,90,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire 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 and then the second respondent-Insurance Company is entitled to recover the same from the first respondent/owner of the vehicle in accordance with law. On such deposit, the appellants 1, 2 and 4/ petitioners 1, 2 and 4 /claimants 1,2 and 4 are entitled to 30% each of the award amount and the 3rd Petitioner/3rd claimant is entitled to 10% of the award amount. The appellants 1 and 3/petitioners 1 and 3/ claimants 1 and 3 are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The appellants 2 and 4/petitioners 2 and 4 are minors, their share amount shall be deposited in any one of the Nationalized Bank till they attain

majority. The first petitioner/first appellant is permitted to withdraw the accrued interest once in three months. The appellants/claimants are directed to pay the required Court fee for the enhanced award amount before getting the copy of Judgment.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rrg

To

The Additional District and Sessions Court(FTC),
Motor Accident Claims Tribunal
Tirupattur, Vellore District.

+ 1 cc to Mr. PA.Sudesh Kumar, Advocate SR.22111
+ 1 cc t Mr. N. Vijayaraghavan, Advocate Sr.22957

C.M.A.No.3582 of 2012

KGK(CO)
EU(20/08/2018)