BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD)Nos.594 to 596 of 2014

C.M.A(MD)No.594 of 2014

1.D.Vijayalakshmi
2.Minor Madhu Sri
(Represented through
mother Vijayalakshmi) ... Appellants/Petitioners

Vs.

1. N.Anandhan
2. The Manager,
National Insurance Company Limited,
Madurai. ... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to modify the judgment and decree, dated 09.11.2009 and made in M.C.O.P.No.82/2007, on the file of Motor Accidents Claim Tribunal (Sub-Judge) Kovilpatti.

C.M.A(MD)No.595 of 2014

1.D.Vijayalakshmi ... Appellant/Petitioner

Vs.

1.N.Anandhan

2. The Manager,
National Insurance Company Limited,
Madurai. ...Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to modify the judgment and decree, dated 09.11.2009 and made in M.C.O.P.No.81/2007, on the file of Motor Accidents Claim Tribunal (Sub-Judge) Kovilpatti.

C.M.A(MD)No.596 of 2014

1.D.Vijayalakshmi
2.Minor Madhu Sri
(Represented through
mother Vijayalakshmi)

3.D.Leelavathi ... Appellants/Petitioners

Vs.

1.N.Anandhan

2.The Manager,
National Insurance Company Limited,
Madurai. ...Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to modify the judgment and decree, dated 09.11.2009 and made in M.C.O.P.No.83/2007, on the file of Motor Accidents Claim Tribunal (Sub-Judge) Kovilpatti.

For Appellant : Mr.A.Suresh Babu
(in all the Appeals)
For R2 : Mrs.K.R.Shiva Shankari
(in all the Appeals)

COMMON JUDGMENT

All the three appeals filed against the award, dated 09.11.2009, passed by the Motor Accidents Claim Tribunal, (Sub-Judge) Kovilpatti, in M.C.O.P.Nos.82, 81 & 83 of 2007. Hence, the appeals are heard together and disposed of by this common judgment.

2.The parties are referred to as per their rank in the claim petition in M.C.O.P.No.83 of 2007 in C.M.A.(MD)No.596 of 2014.

3.Facts of the case in all the three appeals:-

According to the appellants, on 22.07.2006, one Deivaraj, the husband of the first appellant, the father of the second appellant and the son of the third appellant, drove a TATA Sumo Car bearing Registration No.TN-58-A-8188 and dashed against the Tree and invited the accident. In the accident, the said Deivaraj and Thangarooban, who is the son of the first appellant, brother of the second appellant and grandson of the third appellant died and the first appellant sustained multiple injuries. The first appellant filed a claim petition in M.C.O.P.No.81 of 2007, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by her in the accident that occurred on 22.07.2006. The appellants filed a claim petition in M.C.O.P.No.82 of 2007, claiming a sum of Rs.30,00,000/- as compensation for the death of one Thangarooban. The appellants and one Leelavathi, who is the mother of the deceased Deivaraj filed a claim petition in M.C.O.P.No.83 of 2007, claiming a sum of Rs.50,00,000/- as compensation, for the death of one Deivaraj. According to the appellants, the first respondent is the owner of the TATA Sumo Car and the second respondent is the insurer of the vehicle and hence, both the respondents are liable to pay compensation.

4.According to the first appellant, she was doing transport business and was earning a sum of Rs.20,000/- per month. Due to the accident, she sustained 24% of permanent disability and she could not do the work, as she was doing earlier. She was taking treatment in the hospital from 22.07.2006 to 11.08.2006.

5.As far as M.C.O.P.No.82 of 2007 is concerned, the appellants 1 & 2 contended that the son of the first appellant Thangarooban was aged 18 years and he was a brilliant student. The first appellant and the deceased Deivaraj made arrangements for his admission in Kalasalingam Engineering College and he would have become Engineering Graduate, earning decent salary and supported the appellants 1 & 2.

6.As far as M.C.O.P.No.83 of 2007 is concerned, the appellants contended that the deceased Deivaraj was running a Bus Company in the name and style of Kannan Bus Company and doing motor mechanical work and also doing the business of buying and selling old cars. He was aged 48 years at the time of accident. The said Deivaraj was earning a sum of Rs.2,00,000/- per month. The appellants are legal heirs and dependants of the deceased Deivaraj and hence, they have claimed a sum of Rs.50,00,000/-, as compensation.

7.The first respondent remained ex-parte before the Tribunal in all the three claim petitions.

8.The second respondent filed counter and denied all the averments and contended that the first respondent is not the owner of the vehicle. The deceased Deivaraj was the owner of the Car, as he purchased the same from the first respondent. At the time of accident, Insurance policy was not in his name. He was not having any valid driving licence. The appellants have to prove their contentions. In any event, the compensation claimed by the appellants in all the three claim petitions, are excessive. The second respondent is not liable to pay any compensation and prayed for dismissal of the claim petitions.

9.Before the Tribunal, the parties were let in evidence and filed documents.

10.The Tribunal considering the pleadings, oral and documentary evidence, by three separate awards, held that the first respondent is the owner of the vehicle and the same was insured with the second respondent. The deceased did not have driving licence and contributed the negligence for the accident and appellants are entitled to only 50% of compensation in the claim petition in M.C.O.P.No.83 of 2007. The Tribunal further held that the claimants in M.C.O.P.Nos.82 & 81 of 2007 are entitled to full compensation. In view of the fact that the deceased Deivaraj did not have valid driving licence, the Tribunal held that the first respondent is liable to pay compensation and dismissed the claim petition as against the second respondent and directed the first respondent to pay the compensation. Against the said award, C.M.A(MD)Nos.594 & 595 of 2014 have been filed.

11.From the award of the Tribunal, it is seen that the Tribunal has directed the first respondent to pay the compensation to the appellants on the ground that the deceased did not possess valid driving licence on the date of accident. From Ex.C1, it is seen that the deceased had driving licence up to 10.07.2006 and the accident occurred on 22.07.2006. He did not renew the licence and on the date of accident, the driving licence had expired. The issue as to whether the Insurance Company is liable to pay compensation when the driver did not possess a valid driving licence, was considered by the Courts in various judgments and it has been held that in such case, the Insurance Company is directed to pay the compensation award at the first instance and recover the same from the owner of the vehicle. This conclusion was arrived at by the Courts, in view of the fact that, the victims/legal representatives of the deceased in the accident must get the compensation awarded and the compensation awarded should not be a paper award, since the victims/legal representatives of the deceased may not be in a position to recover the award amount from the owner of the vehicle. The provisions of the Motor Vehicles Act being the beneficial legislation with an object that the victim or the legal representatives of the deceased should not be made to suffer to get compensation. In view of the said principles, the order of the Tribunal directing the first respondent to pay the compensation and exonerating the second respondent, is set aside. The second respondent is directed to pay the compensation award at the first instance to the appellants and recover the same from the first respondent.

12.As far as quantum of compensation with regard to C.M.A (MD)No.595 of 2014 is concerned, the Tribunal considering the evidence, age, nature of injuries and disability of 24%, applied multiplier '16' and granted compensation. The total compensation awarded by the Tribunal is not meagre and it is just and proper. Hence, the same is confirmed. The appellant is not entitled to any amount as enhancement. The second respondent is directed to deposit the compensation awarded to the credit of M.C.O.P.No.81 of 2007.

13.As far as the quantum of compensation with regard to C.M.A(MD)No.594 of 2014 is concerned, the Tribunal has fixed the notional income of the deceased Thangarooban at Rs.1,80,000/- per year and applied the multiplier of '16'. The deceased was 18 years at the time of his death. As per the judgment reported in **2009(2)TN MAC 1 (SC)** ***Sarla Verma v. Delhi Transport Corporation,*** the correct multiplier is 18. The Tribunal erred in deducting 1/3rd from the notional income of the deceased instead of 50%. Therefore, 50% is deducted from the notional income, the loss of income would be Rs.16,20,000/- (1,80,000 x 18 x ½). Further, a sum of Rs.70,000/- is awarded towards conventional heads. The break-up details are hereunder:-

Loss of income (1,80,000/- x 18 x 1/2)	=	16,20,000
Conventional Heads	=	70,000
Total	=	16,90,000

The appellants are entitled to a sum of Rs.16,90,000/- as compensation. The second respondent Insurance Company is directed to deposit the modified award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.82 of 2007, on the file of the Motor Accidents Claim Tribunal (Sub-Judge) Kovilpatti, within a period of **eight weeks** from the date of receipt of copy of this judgment;

14. On such deposit being made, the first appellant is entitled to a sum of Rs.6,50,000/- (Rupees Six Lakhs Fifty Thousand only) with respective proportionate interest by filing necessary application before the Tribunal. The Tribunal is directed to deposit the share of the second appellant Rs.10,00,000/- in any one of the Nationalized banks in a Fixed Deposit, initially for a period of three years and renewable thereafter, till the minor attains majority. The mother of the second appellant is permitted to withdraw the accrued interest once in three months directly from the bank.

15.As far as the quantum of compensation with regard to C.M.A(MD)No.596 of 2014 is concerned, the Tribunal has held that the deceased contributed the negligence to the accident and the appellants are entitled to only 50% of the amounts to be awarded. The Tribunal, by holding that no document was produced to show that the deceased Deivaraj was earning a sum of Rs.2,00,000/-per month, fixed the notional income at Rs.10,000/- per month and awarded a sum of Rs.10,40,000/- as loss of income and granted a sum of Rs.2,000/- towards transportation. After reducing compensation of Rs.5,21,000/- towards 50% of contributory negligence, the Tribunal awarded a sum of Rs.5,21,000/- (Rupees Five Lakhs Twenty One Thousand only) as compensation to the appellants. As per the judgment of the Apex Court reported in ***2017 (2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi],*** the appellants are entitled to Rs.70,000/- towards conventional head (The first appellant is entitled to get Rs.40,000/- towards consortium, the appellants 2 & 3 are entitled to Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses). The break-up details are hereunder:-

Loss of income	=	10,40,000
Loss of estate	=	15,000
Loss of funeral expenses	=	15,000
Loss of consortium	=	40,000
Total	=	11,10,000

After deducting 50% towards contributory negligence the appellants are entitled to Rs.5,55,000/-.

16.The appellants are entitled to a sum of Rs.5,55,000/- as compensation. The second respondent Insurance Company is directed to deposit the modified award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.83 of 2007, on the file of the Motor Accidents Claim Tribunal (Sub-Judge) Kovilpatti, within a period of **eight weeks** from the date of receipt of copy of this judgment;

17. On such deposit being made, the first appellant is entitled to a sum of Rs.1,85,000/- with respective proportionate interest, by filing necessary application before the Tribunal. The Tribunal is directed to deposit the share of the second appellant Rs.1,85,000/- in any one of the Nationalized banks in a Fixed Deposit, initially for a period of three years and renewable thereafter, till the minor attained majority. The mother of the second appellant is permitted to withdraw the accrued interest once in three months directly from the bank. The third appellant is entitled to a sum of Rs.1,85,000/- with proportionate interest, by filing necessary application before the Tribunal.

18.With the above modification, the appeal in C.M.A(MD) No.595 of 2014 is dismissed and the appeals in C.M.A.(MD)No.594 & 596 of 2014 are partly allowed. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Subordinate Judge,
Motor Accidents Claim Tribunal,
Kovilpatti.

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 82905

AM
TE/SKN/SAR-4 : 01/02/2019 : 6P/3C