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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.10.2018
(Reserved on 09.07.2018)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.1312 of 2011

1)K.Thenkani
2)S.Vasantha ... Appellants/Claimants

vs.

1)S.Selvam
2)The Divisional Manager,
United India Insurance Company Ltd.,
111, Kamarajar Road,
Sivakasi. ... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree made in MCOP.No.188 of 2002 dated 24.07.09 on the file of the Motor Accident Claims Tribunal / Sub Court, Sivakasi.

For Appellant : Mr.M.Thirunavukkarasu
For R1 : Mr.N.Sridharan
For R2 : Mr.N.Sivakumar

JUDGMENT

This appeal has been filed against the order and decree made in MCOP.No.188 of 2002, dated 24.07.09, on the file of the Motor Accident Claims Tribunal / Sub Court, Sivakasi.

2.It is the case of the appellants/claimants that on 10.08.2002, one Kannan and his brother namely, Manikandan were returning to their home in Yamaha Motorcycle bearing registration No.TN-67/T-2943 belonging to the 1st respondent insured with the appellant. The said Manikandan was the rider and Kannan was seated as pillion. While they were proceeding on Sivakasi-Naranapuram road, due the rash and negligent riding of the rider of the motorcycle namely, Manikandan, the motorcycle skidded, as a result, the pillion rider fell down and sustained grievous injuries on his head, forehead, face, shoulders and legs. He was taken to Meenakshi Mission Hospital, Madurai, and in spite of intensive treatment, he died on 21.08.2002. Wife and mother of the deceased filed MCOP.No.188 of 2002 on the file of the Motor Accident Claims Tribunal / Sub Court, Sivakasi, claiming compensation of Rs.10,00,000/-. The 2nd respondent filed counter resisting the claim. Considering the oral and documentary evidence on either side, the Tribunal awarded compensation of Rs.5,86,700/- to the claimants payable by the 1st respondent and Rs.50,000/- payable by

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the 2nd respondent insurance company as in the insurance policy, the coverage for pillion was restricted to Rs.50,000/-. Aggrieved by the said award, the appellants have filed this appeal.

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3.Learned counsel for the appellants would submit that the Tribunal ought to have held that the total compensation has to be paid by the insurance company since the policy is a comprehensive policy, in which, there is no restriction for the third party and that the deceased in this case was a pillion of the motorcycle and therefore, he is a third party to the insurance company. On the quantum of compensation, it is contended that the Tribunal has not awarded any sum under conventional heads and therefore, prayed for enhancement on the quantum. In support of his submissions, learned counsel relied on the following judgments:-

i)Yashpal Luthra and another vs. United India Insurance Co.Ltd., reported in 2012 (2) TN MAC 625 (Del.)

ii)Royal Sundaram Alliance Insurance Co.Ltd., Coimbatore, vs. A.Meenakshi and others reported in 2009 (1) TN MAC 249 (DB)

4.Heard the learned counsel for the appellant as well as the respondents and perused the materials available on record.

5.In Yashpal Luthra and another vs. United India Insurance Co.Ltd., reported in 2012 (2) TN MAC 625 (Del.), it has been held as follows:-

> ''Comprehensive/Package Policy - Whether Insurer liable to compensate for death/injury of a pillion rider on Two-Wheeler or occupants in Private Car - Tariff as also terms and conditions of Insurance Policy regulated by Tariff Advisory Committee (RAC) under Insurance Act, 1938 till 31.12.2006 - And, thereafter by Insurance Regulatory and Development Authority (IRDA) under IRDA Act, 1999 - Both TAC & IRDA are statutory Regulatory Authorities - TAC issued Circular dated 18.3.1978 to Insurance Companies to cover occupants in Private Car under Comprehensive Policy w.e.f. 25.3.1977 - Vide Circular dated 2.6.1986, TAC directed all Insurance Companies to cover pillion rider on Two Wheeler under Comprehensive Policy - Circulars, dated 18.3.1978 and 2.6.1986 continue to be valid and effective till date - Directions of TAC binding on all Insurance Companies, who incorporated specific clause in their policies after aforesaid directions - Further, IRDA issued Circular dated 16.11.2009 to all Insurance Companies restating factual position relating to liability of Insurance Companies in respect of pillion rider on Two-Wheeler and occupants in Private Car in Comprehensive Policy - And, on 26.11.2009, a meeting of CEOs of all Insurance Companies convened under auspices of IRDA - After deliberations, all Insurance Companies admitted their liability under Comprehensive/Package Policy and agreed to comply with Circular issued by IRDA - Insurance Companies further agreed to withdraw contrary plea taken before

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Tribunals and agreed to withdraw all Appeals filed before High Courts and Supreme Court raising such plea - Minutes of meeting convened by IRDA on 26.11.2009 produced - On 3.12.2009, IRDA issued another Circular to Insurance Companies requiring written confirmation on action taken by them in this regard - Therefore, it is clear that Comprehensive/Package Policy in respect of Two-Wheeler and occupants in Private Car - In view of TAC's directives and fresh Circulars by IRDA on 16.11.2009 and 3.12.2009, such a plea, held, not permissible to be raised.''

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6.The above judgment clearly specifies that TAC directed all insurance companies to cover pillion rider on two wheeler under comprehensive policy and the directions of TAC is binding on all insurance companies who incorporated specific clause in their policies after the aforesaid directions. In the present case, it is the admitted fact that the deceased was travelling as a pillion rider and therefore, this Court need not go into the question whether the insurance company is liable to compensate more than the restricted liability. Accordingly, this Court holds that the 2nd respondent insurance company is liable to pay the entire compensation. The finding of the Tribunal is accordingly modified.

7.On the quantum of compensation, the Tribunal fixing a sum of Rs.4,500/- as monthly income of the deceased, deducing 1/3rd towards the personal expenses of the deceased and applying '18' multiplier, awarded a sum of Rs.6,48,000/- (Rs.3000X12X18). After awarding a sum of Rs.6,48,000/-, the Tribunal stating that the wife of the deceased/1st appellant did not have any issues, restricted the compensation to Rs.5,00,000/- towards loss of income which is erroneous and the Tribunal ought to granted Rs.6,48,000/- towards loss of income. It is a case of an young woman who had entered into a matrimonial life with lot of expectations, has lost her husband at a very young age and therefore, the trauma underwent by her could not be compensated with money. In my considered opinion, the Tribunal ought to have added future prospects and should have awarded more compensation. The award of Rs.1,36,700/- towards medical bills duly supported by Ex.P2-Medical Bills, is confirmed.

8.As rightly contended by the learned counsel for the appellants, the Tribunal has not awarded any sum under conventional heads. Hence, as per the judgment of the Hon'ble Supreme Court in *National Insurance Company Limited vs. Pranay Sethi and others reported in 2017 (6) CTC 493*, the appellants are entitled to a sum of Rs.70,000/- under conventional heads. If a sum of Rs.70,000/- is awarded towards conventional heads and if Rs.6,48,000/- is awarded towards loss of income, the increase in compensation would be Rs.2,18,000/-, but since the appellants have restricted their claim to Rs.1,63,300/-, the award amount is increased by Rs.1,63,300/-. Accordingly, the appellants are entitled to total compensation of Rs.8,00,000/- (Rs.6,36,700 + Rs.1,63,300) with 7.5% interest from the date of claim till the date of deposit.

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9.The 2nd respondent insurance company is directed to deposit the total compensation of Rs.8,00,000/- with 7.5% interest and costs from the date of petition till the date of deposit, less the amount already deposited, if any within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st appellant is permitted to withdraw Rs.6,00,000/- and the 2nd appellant is permitted to withdraw Rs.2,00,000/- with respective proportionate interest and costs without filing formal permission petition before the Tribunal.

With the above direction, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/
Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar (CS-I)

To

The Sub Judge,
Motor Accident Claims Tribunal,
Sivakasi.

Copy to: The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.M.Thirunavukkarasu, Advocate, SR.No.71748
+1cc to Mr.N.Sivakumar, Advocate, SR.No. 72663

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