IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.2737 of 2003 & 2738 of 2003

Kannammal ... Appellant in CMA.No.2737 of 2003/Claimant

1.Valliammal
2.Santhimani
3.Palanisamy
4.Sumathi ... Appellants in CMA.No.2738 of 2003/Claimant

vs.

1.K.G.Ravi
2.Y.B.Bellie Raj
3.The New India Ansurance Company Limited,
Divisional Office,
Commercial road, Ooty. ...Respondents in both CMAs/Respondents

Respondents 1 & 2 Set Exparte
in Lower Court itself

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173(1) of the Motor Vehicles Act, 1988 against the decree and Judgment dated 18.02.2003 passed in MCOP.Nos.120 of 2002 and 115 of 2002 on the file of the Motor Accidents Claims Tribunal / Additional District Court (Fast Track Court No.2), Gobichettipalayam.

For Appellants : Mr.S.Kaithamalai Kumaran
(in both CMAs)

For Respondents : Mrs.R.Srividhya for R3
(in both CMAs) No appearance for R1 and R2

COMMON JUDGMENT

The appellants are the claimants in MCOP.Nos.115 of 2002 and 120 of 2002 on the file of the Motor Accidents Claims Tribunal / Additional District Judge, (Fast Track Court No.2), Gobichettipalayam. They filed the claim petitions for the death of one Kaliappa Gounder and for the injuries sustained by one Kannammal in a road accident that took place on 10.07.2001.

2. The case of the claimants is that on 10.07.2001, at about 07.00 pm, the deceased Kaliappa Gounder and injured Kannammal were travelling in a TVS 50 motorcycle bearing Registration No. TN 36 A 7201 on Goundhambadi road. When they were nearing Arulmalai junction, a Maruthi Car bearing Registration No. TN 09 Z 2007 came with a high speed and hit the motorcycle, as a result of which, both Kaliappa Gounder and Kannammal fell down from the motorcycle. While, Kaliappa Gounder died on the spot, Kannammal sustained injuries and was rushed to the Hospital.

3. According to the claimants, the rash and negligent driving of the driver of the Maruthi Car (first respondent) bearing Registration No. TN 09 Z 2007 belonging to the second respondent was the cause of the accident and that since, the owner of the Maruthi Car (second respondent) had insured the vehicle with the New India Assurance Company Limited, both of them are jointly and severally liable to pay compensation to them.

4. The first and second respondents remained absent before the Tribunal and therefore, they were set exparte. The third respondent, New India Assurance Company Limited contested claim petition on all the grounds available to the insurer. The learned Motor Accidents Claims Tribunal / Additional District Judge (Fast Track Court No.2), Gobichettipalayam after analysing the evidence on record, awarded a compensation of Rs.1,51,000/- together with interest at the rate of 9% per annum to the claimants in MCOP.No.115 of 2002 and awarded a compensation of Rs.55,000/- together with interest at the rate of 9% per annum to the claimants in MCOP.No.120 of 2002. The Tribunal further held that since the driver of the Maruthi Car (first respondent) did not have a badge on the date of the accident, the New India Assurance Company Limited is not liable to pay compensation to the claimants. The Tribunal therefore directed the driver and the owner of the Maruthi Car (first and second respondents) to pay the entire compensation to the claimants. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeals.

5. Mr.S.Kaithamalai Kumaran, learned counsel appearing for the appellants / claimants contended that the Tribunal exonerated the liability of the Insurance Company on two grounds:

(i) The driver of the Maruthi Car (first respondent) bearing Registration No. TN 09 Z 2007 was not in possession of badge on the date of the accident.

(ii) There was no permit for plying the vehicle on the route in which the accident took place.

According to him, for the above violations of Policy conditions, the Tribunal should have directed the Insurance Company to pay the compensation amount in the first instance and then recover the same from the owner of the vehicle.

6. Per contra, Mrs.R.Srividhya, learned counsel appearing for the third respondent drew the attention of this Court to the paragraph no.14 of the orders passed by the Tribunal, in which, the Tribunal has clearly held that the offending vehicle was used as a taxi and therefore, the driver should have been in possession of badge.

7. As per the decision in National Insurance Company Limited vs. Swaran Singh and others, reported in 2004 (3) SCC 297, the insurer has to indemnify the compensation amount payable to the third party and the Insurance Company may recover the same from the insured. Infact, the doctrine of 'pay and recover' was considered by the Honourable Supreme Court of India in National Insurance Company Limited vs. Swaran Singh and others, reported in 2004 (3) SCC 297 (cited supra) wherein the Supreme Court of India examined the liability of the Insurance Company in the cases of the breach of policy condition due to disqualification of the driver or invalid driving licence of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the Insurance Company may recover the same from the insured. Applying the above well laid down principles in the instance case, the Insurance Company is directed to 'pay' the compensation amount to the claimants and then 'recover' the same from the owner of the offending vehicle on the same cause of action.

8. CMA.No.2737 of 2003: As far as the quantum of compensation is concerned, the learned counsel appearing for the claimant contended that when the injured had suffered a fracture in her hip, the Tribunal has awarded a megre amount of Rs.55,000/-. It is seen from the records that the injured Kannammal was aged 35 years on the date of the accident and was earning a sum of Rs.3,000/- per month. She has sustained a injury in her hip and Dr.Periyasami (PW4) has assessed the partial permanent disability as 28%. Since there is no functional disability, there is no necessity to adopt multiplier method as far as the present case is concerned. Considering the nature of injuries sustained by the injured, the compensation awarded by the Tribunal is enhanced as detailed hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of income	Rs.9,000/- (Rs.3,000/- x 3 months)
2.	Partial Permanent disability	Rs.28,000/-
3.	Pain and sufferings	Rs.5,000/-
4.	Transportation	Rs.5,000/-
5.	Extra nourishment	Rs.3,000/-
6.	Attender's charges	Rs.2,000/-
7.	Damage to clothes	Rs.500/-
8.	Medical Bills	Rs.7,935/-
Total		Rs.60,435/-

Thus the compensation awarded by the Tribunal in MCOP.No.120 of 2002 is enhanced from Rs.55,000/- to Rs.60,435/- which would carry interest at the rate of 7.5% per annum.

9. CMA.No.2738 of 2003: In the instance case, the deceased Kaliappa Gounder was aged 55 years as per the post mortem report. The contention of the claimants is that Kaliappa Gounder is an agriculturist and was also doing milk vending business, earning a sum of Rs.6,000/- per month. Since no documentary evidence was adduced in this regard, the Tribunal fixed the notional income of the deceased as Rs.2,000/- per month and adopted multiplier of 11 after deducting 1/3 towards the personal expenses of the deceased. Since the accident took place in the year 2001 and it is contended that the deceased was an agriculturist and also a milk vendor, a sum of Rs.3,000/- is fixed as monthly income of the deceased. Since there are four dependents, 1/4 is deducted towards the personal expenses of the deceased and thus a sum of Rs.2,250/- is taken up for calculating loss of dependency. As the age of the deceased was 55 years on the date of the accident, the proper multiplier to be adopted in the instant case is 11 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Loss of dependency
= Rs. 2,250/- x 12 x 11
= Rs.2,97,000/-

10. Apart from the above said amount, the appellants / claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of love and affection" and "funeral expenses" respectively. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.2,97,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.3,67,000/-

Thus the compensation awarded by the Tribunal in MCOP.No.115 of 2002 is enhanced from Rs.1,51,000/- to Rs.3,67,000/- which would carry interest at the rate of 7.5% per annum.

11. In the result,
CMA.No.2737 of 2003:
(i) The Civil Miscellaneous Appeal is partly allowed. No costs.
(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.55,000/- to Rs.60,435/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.
(iv) The New India Assurance Company Limited is directed to deposit the enhanced compensation amount ie., Rs.60,435/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.120 of 2002 on the file of the Motor Accidents Claims Tribunal/ Additional District Court (Fast Track Court No.2), Gobichettipalayam within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the Maruthi Car (second respondent) bearing Registration No. TN 09 Z 2007 on the same cause of action.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

CMA.No.2738 of 2003:

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,51,000/- to Rs.3,67,000/-.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The New India Insurance Company Limited is directed to deposit the enhanced compensation amount ie., Rs.3,67,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.115 of 2002 on the file of the Motor Accidents Claims Tribunal/ Additional District Court (Fast Track Court No.2), Gobichettipalayam within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the Maruthi Car (second respondent) bearing Registration No. TN 09 Z 2007 on the same cause of action.

(v) The entire enhanced compensation awarded by this Court ie., Rs.2,16,000/- (Rs.3,67,000/- - Rs.1,51,000/-) together with interests and costs is awarded to the first respondent (the wife of the deceased Kaliappa Gounder) and the compensation awarded by the Tribunal ie., Rs.1,51,000/- together with interests and costs is awarded to the appellants / claimants as per the apportionment made by the Tribunal.

(vi) On such deposit being made, the appellants / claimants are at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
  The Additional District Court,
  Fast Track Court No.2,
  Gobichettipalayam.

2.The Section Officer,
  Vernacular Records,
  High Court, Madras-104.

+2ccs to Mr.A.K.Kumarasamy, Advocate Sr.77260 and 77261
+1cc to Ms.R.Sreevidhya, Advocate Sr.77821

CMA.Nos.2737 of 2003
& 2738 of 2003

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srg 18/09/2020