



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.02.2019
Pronounced on : 11.04.2019

WEB COPY

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A. No. 1012 of 2011

1.Mathalaimary
2.Thanaselvi
3.Merlin Deviya
4.Vemel Xavier
5.Keethriyammal

... Appellants

Versus

1.J. Suresh Babu

2. I.F.F.C.O Tokio General Insurance Company Limited,
Tulsi Chambers, 3rd floor,
195, T.V. Samy Road (west),
R.S.Puram,
Coimbatore - 641 002.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.04.2010 made in M.C.O.P.No.406 of 2009 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Court, Dharmapuri.

For Appellants : Mr.M.Selvam

For Respondents : Exparte (R1)

: Mr.J. Michael Visuvasam (for R2)

JUDGMENT

The appellant/Insurance company has preferred this appeal, as against the award dated 30.04.2010 made in M.C.O.P.No.406 of 2009 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Court, Dharmapuri.

2.The brief facts of the case are as follows:

On 20.06.2007, at about 14.00 hours, the deceased Madhalaimuthu @ Mani was riding his Hero Honda motorcycle bearing Regn.No.TN-29-F-3486, which is insured with the second respondent. When the vehicle was proceeding on the Sogathur Junction road towards south at a sedate speed, the first respondent came from the opposite direction, by driving his Yamaha motorcycle bearing registration No.TN-69-C-6876, in a



rash and negligent manner and dashed against the vehicle of the deceased Madhalaimuthu @ Mani. Due to the said accident, the said Madhalaimuthu @ Mani fell down and sustained fatal injuries all over the body and succumbed to the injuries. The first respondent also sustained grievous injuries and he took treatment at the Government Hospital. Since the accident took place due to rash and negligent manner of driving of the Yamaha motorcycle bearing registration No.TN-29-C-6876 by the first respondent, a case was registered by the Dharmapuri Police Station in Crime No.655 of 2007 for the offences punishable under Section 279, 337 and 304(A) of IPC against the first respondent.

3.It is stated that the deceased was aged about 50 years at the time of accident and he was doing contract business in supplying building materials like sand, bricks, metal stones etc., and was earning Rs.15,000/- per month. Hence, the claimants, who are the legal heirs of the deceased filed the claim petition, claiming a sum of Rs.33,50,000/- as compensation from the respondents 1 and 2, for the death of Madailaimuthu @ Mani, which was restricted to Rs.15,00,000/-.

4.The claim petition was resisted by the Insurance Company, which was arrayed as second respondent in the capacity of insurer of the vehicle driven by the claimant. It was contended by the second respondent that the claim has to be made against the owner and the insurer of the vehicle driven by the first respondent, whereas, the second respondent is only the insurer of the vehicle driven by the deceased.

5.Before the Tribunal, in order to sustain the claim, on the side of the claimants, the fourth appellant herein was examined as PW.1, the first appellant herein was examined as PW.2 and ten documents were marked as Exs.P1 to P10. On the side of the respondents, neither oral nor documentary evidence was adduced.

6.The first respondent, who was the owner of the offending vehicle, was set exparte.

7.The Tribunal, on consideration of the materials placed before it, held that as the Insurance policy shows that additional premium has been paid by the owner of the vehicle for only Rs.1,00,000/-. The claimants are entitled to only for a sum of Rs.1,00,000/- as compensation. Accordingly, the Tribunal has directed the respondents 1 and 2 to pay the compensation amount jointly and severally.



9. Heard both sides and perused the materials available on records. Admittedly, the deceased himself was the owner of the two wheeler driven by him. However, the claimants have not chosen to implead the Insurer of the offending vehicle of the first respondent. The second respondent in this appeal is none other than the Insurer of the vehicle driven by the deceased himself. Therefore, the liability of the second respondent/insurance company, if at all, is only to the extent of indemnification of the insured against the third person or in respect of damages of property. While so, the second respondent insurance company cannot be fastened with any liability under the provisions of the Motor Vehicles Act for the death of the deceased, who himself was the owner of the vehicle, and in the absence of impleadment of the insurer of the offending vehicle. Since the deceased himself was the owner of the two wheeler and not a third party, the claim petition filed by the claimants will not come within the purview of Section 146 or 147 of The Motor Vehicles Act for the purpose of payment of compensation. At the same time, the claimants are entitled for payment of Rs.1,00,000/- only towards Personal Accident Cover proportionate to the premium paid by the deceased. This was the ratio laid down by Division Bench of this Court in the case of (Divisional Manager, United India Insurance Co., Limited vs. Rekha and others) reported in 2017 (2) TNMAC (DB) 674. The Tribunal also, rightly appreciated the above legal position and awarded only a sum of Rs.1,00,000/- as compensation to the claimants and directed this amount to be paid by the second respondent/Insurance company.

<https://hcservices.ecourts.gov.in/hcservices/>



11. Considering the facts and circumstances of the case, this Court is of the opinion, that fixing the age of the deceased at 50 years, in the absence of any positive evidence and in the absence of any documents to prove the monthly income of the deceased, a notional income of Rs.6,000/- per month is fixed and adding 40% towards future prospects and deducting 1/4 towards personal expenses of the deceased the income to the family is quantified at Rs.6,300/- per month ($6000 \times 40\% - 1/4$). By applying multiplier '13' as per oft-quoted Judgement of Sarla Verma case, the loss of income to the family is quantified at Rs.9,82,800/- ($\text{Rs.}6000 \times 40\% \times 1/4 \times 12 \times 13$). Taking into account of the age of the first claimant, she is entitled to get loss of consortium of Rs.40,000/- and claimants 2 to 5 being the legal heirs of the deceased are entitled to get compensation under the head of loss of love and affection in a sum of Rs.15,000/- each. Apart from this, the claimants are also entitled to a sum of Rs.15,000/- towards loss of estate. Further, a sum of Rs.15,000/- is awarded towards funeral expenses. In all, the compensation awarded by the Tribunal is enhanced from Rs.1,00,000/- to Rs.11,12,800/-, the break-up details are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of Income	Rs.1,00,000/-	Rs.9,82,800/-
Loss of consortium	-	Rs.40,000/-
Love and Affection (for four legal heirs)	-	Rs.60,000/-
Funeral expenses	-	Rs.15,000/-
Loss of estate	-	Rs.15,000/-
Total	Rs.1,00,000/-	Rs.11,12,800/-

12. In the result, this Civil Miscellaneous Appeal is allowed as against the first respondent only and the compensation awarded by the Tribunal is hereby enhanced to Rs.11,12,800/- with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation and as against the second respondent/ Insurance company, the compensation award amount awarded by the Tribunal is hereby confirmed.

13. Consequently, the claim of the appellants against the second respondent in this appeal is dismissed. Hence, the first respondent is directed to deposit the enhanced award amount along with interest and costs, within a period of eight weeks



from the date of receipt of a copy of this Judgement. On such deposit being made, the appellants/claimants are permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

klt

To

- 1.The Motor Accidents Claims
Tribunal-cum-Principal District Court, Dharmapuri.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 CC to Mr.M.Selvam, Advocate sr 35629.

+1 CC to Mr.J.Michael Visuvasam, Advocate sr 35891.

C.M.A.No.1012 of 2011

BP(CO)
SP(29/08/2019)