IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2019

DELIVERED ON : 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2905 of 2007 and
C.M.A.No.2020 of 2008 and M.P.No.1 of 2008

C.M.A.No.2905 of 2007:

1.Prema
2.Minor Santhia
3.Minor Sowmiya
4.Minor Sethuraman
(Minors are rep.by their
natural guardian / next friend /
mother Prema, the first respondent herein).
5.Kasiammal ... Appellants

Vs

1.Sampathkumar
2.M.Usha Nandhini
3.The National Insurance Co.Ltd.,
Kumaran Illam, Green Fields,
Ooty-643 001.
(Notice to the first respondent is
not necessary). ... Respondents

C.M.A.No.2020 of 2008:

National Insurance Co.Ltd.,
Kumaran Illam, Green Fields,
Ooty-643 001. ... Appellant

Vs

1.Prema

2.Minor Santhia
3.Minor Sowmiya
4.Minor Sethuraman
(Minor respondents 2 to 4 are rep.by
their next friend and mother Prema,
the first respondent herein).
5.Kasiammal
6.Sampathkumar
7.M.Usha Nandhini ... Respondents

Appeals filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.11.2006 made in MCOP No.506 of 2005 on the file of the Motor Accidents Claims Tribunal cum Principal District Court, Erode.

C.M.A.No.2905 of 2007:

For Appellants : Mr.N.Manokaran

For Respondents : Mr.S.Arunkumar for R3

C.M.A.No.2020 of 2008:

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.N.Manokaran for R1 to R5

COMMON JUDGMENT

The case in brief, is as follows:

On the fateful day, ie., on 10.10.2004, at 12.10 a.m., early morning, the deceased Jayaraman was riding his bicycle on the extreme left side of the NJ-47 Road, near Pallagoundenpalayam, Kumaran Theatre, Uthukuli. At that time, the lorry bearing Reg.No.TN-09-B-5828, belonging to the second respondent in C.M.A.No.2905 of 2007 / seventh respondent in C.M.A.No.2020 of 2008 and insured with the third respondent Insurance Company in C.M.A.No.2905 of 2007 / appellant in C.M.A.No.2020 of 2008, came in a rash and negligent manner from the same direction and hit against the deceased on the back side. The deceased sustained fatal injuries and he died on the way to the hospital. The legal heirs of the deceased filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,18,000/- with interest at the rate of 7.5% per annum from the date of petition.

2.Challenging the same, the appellant Insurance Company has filed C.M.A.No.2020 of 2008 questioning the liability to pay compensation to the claimants. C.M.A.No.2905 of 2007 has been filed by the claimants for enhancement of compensation.

3.The learned counsel for the claimants has submitted that the Tribunal has not taken note of the fact that the deceased was earning a sum of Rs.4,750/- per month and there is no contra evidence for the same. The Tribunal has also not taken note of the age and future prospects of the deceased, while working out the compensation. Stating so, the learned counsel prayed for enhancement of compensation, as claimed by the claimants in the claim petition, ie., Rs.10,00,000/-.

4.The learned counsel for the Insurance Company has submitted that the Tribunal has erred in directing the Insurance Company to pay the compensation in spite of the fact that there was no valid insurance policy on the date of accident. Since the cheque issued by the insured was unpaid, there was no existence of contract between the Insurance Company and the owner of the vehicle. Stating so, the learned counsel prayed for a direction to direct the owner of the vehicle alone to pay the compensation.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.It was put forth on behalf of the Insurance Company before the Tribunal that the owner of the vehicle tendered a cheque for the premium amount and the same was dishonoured with the endorsement “insufficient funds” and subsequently the policy was cancelled and on the date of accident, there was no insurance coverage for the lorry. It is seen that the insurance policy was issued by the Insurance Company on receiving the cheque and thereafter, the policy was cancelled due to bouncing of the cheque. The Tribunal, considering the facts and circumstances of the case and also relying upon various case laws on the subject, held that even the subsequent cancellation is not a bar to satisfy the claims of the third parties and therefore the Insurance Company shall pay the compensation amount to the claimants and recover the same from the owner of the vehicle.

7.The learned counsel for the Insurance Company has relied upon the decision of the Hon'ble Supreme Court in the case of New India Assurance Co.Ltd. v. Tara Devi and others, reported in 2016 (2) TN MAC 520 (SC) to state that when the policy has been cancelled on account of dishonour of cheque after due intimation of dishonour to the owner of the vehicle and the cancellation letter had been sent to the insured / owner, and as on the date of accident, there was no insurance coverage for the vehicle, then the Insurance Company is not liable to pay any compensation. He also relied upon the decision of the Hon'ble Supreme Court in the case of National Insurance Co.Ltd. v. Seema Malhotra and others, reported in MANU/SC/0112/2001 to state that when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned, the insurer need not perform his part of the promise. He also relied upon the judgment of the Hon'ble Supreme Court in the case of Deddappa and others v. The Branch Manager, National Insurance Co.Ltd., reported in 2008(2) TN MAC 138 (SC), to the same effect. The learned counsel further relied upon the judgment of the Hon'ble Supreme Court in the case of United India Insurance Co.Ltd. v. Laxmamma and others, reported in (2012) 5 SCC 234, and submitted that even when the cheque issued for payment of premium was dishonoured and subsequent to the accident, the insurer cancels the policy of insurance, the statutory liability of the Insurance Company to indemnify the third parties covered as per the policy, subsists and the insurer has to satisfy the award of compensation; but if the policy had been cancelled before the date of accident, the Insurance Company is not liable to pay any compensation. Since in the present case, the policy had been cancelled and the same has been intimated to the owner of the vehicle before the date of accident, the Insurance Company is not liable to pay compensation, according to the learned counsel for the Insurance Company.

8.Even though various decisions have been placed before this Court by the learned counsel for the Insurance Company in support of his contention that when the policy had been cancelled on account of dishonour of the cheque for premium, and as on the date of accident the policy is not in force, the Insurance Company is not liable to pay any compensation, this Court has to look into the aspect as to the liability of the Insurance Company in respect of third party risk.

9.With regard to this point, it would be appropriate to refer to the **judgment of this Court in New India Assurance Co.Ltd. v. V.Bommi & others, reported in 2009-4-L.W.62**, which has been passed under similar circumstances. In that case, on the date of accident, the policy had been cancelled and the owner of the vehicle had also been intimated of the same. This Court observed that cancellation of the policy only entitles the insurer to proceed against the owner and recover what has been paid as per the award and that the Insurance Company must satisfy the innocent third party.

10.The **Division Bench judgment of this Court dated 01.12.2014 in CMA No.2240 of 2011 and Cros.Obj.No.30 of 2012**, also covers the issue in detail. Taking note of the principles enunciated by the Hon'ble Supreme Court in the case of United India Insurance Co.Ltd. v. Laxmamma and others (cited supra) that if the Insurance Company cancelled the policy and informed the insured as also the Regional Transport Officer about such cancellation before the accident of the vehicle, the Insurance Company has no liability, this Court held that however, the claim of the third party cannot be defeated for the self created predicament of the insurer in issuing the policy without actually receiving the premium and hence the Insurance Company has to pay the compensation to the claimants and then recover the same from the owner of the offending vehicle.

11.In the present case, there had already been an insurance policy in force and only at the time of renewal of the policy, the premium cheque issued by the owner of the vehicle got bounced. Of course, the return of the cheque has been duly intimated by the Insurance Company to the owner of the vehicle before the accident. But it is not a case where there was no existence of insurance policy at all. There was a policy in existence and only at the time of renewal, due to one reason or the other, the cheque issued by the party was bounced. The present case relates to third party risk. In these circumstances, this Court deems it fit and proper to direct the Insurance Company to pay the compensation and then recover the same from the owner of the vehicle.

12.In view of the foregoing discussions, the judgment passed by the Tribunal for pay and recovery is liable to be confirmed and accordingly it is confirmed and the Insurance Company is directed to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle, in accordance with law.

13.With regard to the quantum of compensation awarded by the Tribunal, the Tribunal has awarded a sum of Rs.3,06,000/- towards loss of dependency. The said sum has been arrived at by fixing the daily income of the deceased at Rs.75/-, arriving at the monthly income at Rs.2,250/- and the annual income at Rs.27,000/-, deducting 1/3rd of the amount towards personal expenses and adopting the multiplier of 17. The Tribunal has also awarded a sum of Rs.3,000/- each towards loss of consortium, loss of love and affection, loss of expectation of life and funeral expenses.

14.The employer of the deceased was examined as P.W.3. He deposed before the Tribunal that the deceased was employed as a semi-skilled labourer in M/s.Sakthi Auto Component Limited, Mukasi Palligoundenpalayam, from 01.04.1996 and his monthly salary as on September 2004 was Rs.4,590.55. It is seen that as per Ex.P8-Salary Certificate issued by the employer of the deceased, the deceased was receiving a net salary of Rs.3,897.55 after deductions. When there was a substantial proof regarding the income, the Tribunal ought to have relied upon it. This Court feels it appropriate to fix the monthly income of the deceased at Rs.3,897.55 (as stated in Ex.P8), rounded off to Rs.3,900/-. Since the dependents are more in number, the deceased would not have spent 1/3rd of the amount towards his personal expenses. Hence, a deduction of 1/4th of the income towards personal expenses of the deceased, would be appropriate. Adopting the multiplier of 17 relating to the age of the deceased, the loss of dependency works out to Rs.5,96,700/-. Hence, the amount awarded by the Tribunal towards loss of dependency, stands modified from Rs.3,06,000/- to Rs.5,96,700/-. It would be appropriate to award a sum of Rs.10,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. Hence, the amounts awarded by the Tribunal towards these heads at Rs.3,000/- each, stands modified to Rs.10,000/- and Rs.15,000/- respectively. It would also be appropriate to award a sum of Rs.15,000/- towards loss of estate.

15.The details of the modified compensation are as follows:

HEADS	AMOUNT
Loss of Dependency	5,96,700/-
Loss of consortium	10,000/-
Loss of estate	15,000/-

Loss of love and affection	3,000/-
Loss of expectation of life	3,000/-
Funeral expenses	15,000/-
TOTAL....	6,42,700/-

Thus, the claimants are entitled to the modified compensation of Rs.6,42,700/- with interest at the rate of 7.5% per annum. However, it is made clear that only for the compensation of Rs.3,18,000/- awarded by the Tribunal, the interest shall be calculated from the date of claim petition. The interest for the additional amount now granted by this Court, ie., Rs.3,24,700/- shall be calculated from the date of filing of this appeal.

16.The Insurance Company is directed to deposit the modified compensation as ordered above, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The second and third appellants, minors in C.M.A.No.2905 of 2007 would have attained majority by now. Hence, on such deposit, the major claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal. In respect of the share of the third appellant-minor in C.M.A.No.2905 of

2007, the same shall continue to be in the fixed deposit as ordered by the Tribunal, till the minor attains the age of majority. The first appellant, mother of the minor, is permitted to withdraw the interest from the fixed deposit, once in three months directly from the bank, which shall be used for the benefit and the welfare of the minor.

17.In the result, C.M.A.No.2905 of 2007 filed by the appellants / claimants is partly allowed and C.M.A.No.2020 of 2008 filed by the Insurance Company, stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No **09.08.2019**
Internet : Yes/No

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To

1.The Motor Accidents Claims Tribunal cum
Principal District Court, Erode.

2.The Section Officer,
VR Section, Madras High Court.

R.MAHADEVAN, J.

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Judgment made in
C.M.A.No.2905 of 2007
and
C.M.A.No.2020 of 2008
and M.P.No.1 of 2008

09.08.2019