IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE. R.HEMALATHA

CMA No.2735 of 2009

1. Maari
2. Manjula
(2nd appellant declared as Major
Memo recorded vide order dated 24.9.2019)
... Appellants/ Petitioners

Vs.

1. Ramesh
2. The Iffoo-Tokio General Insurance Company Limited,
No.28, I and II floor, North Usman Road,
Chennai-17. ... Respondents/ Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 11.03.2009 passed in MCOP No.80 of 2007 by the Subordinate Judge/ Motor Accident Claims Tribunal, Tirupatthur, Vellore District.

For Appellants : Mr.M.Nallappan

For Respondents : Mr.N.Vijayaraghavan (for R2)

No appearance for R1

JUDGMENT

The appellants are the claimants in MCOP No.80/2007 on the file of the Subordinate Judge/ Motor Accident Claims Tribunal, Tirupatthur, Vellore District. They filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.5,00,000/- for the death of one Elumalai, son of the first claimant and brother of the 2nd claimant, in a road accident that took place on 03.03.2007.

2. The case of the appellants/claimants is that on 03.03.2007 the deceased Elumalai was riding his motorcycle bearing registration No.23-K-3214 on Tirupattur-Salem Road. At about 8.45 a.m. when he was nearing Pulukkuddai Junction, a speeding Mini Lorry bearing Registration No.TN-29-M-1339 belonging to the first respondent hit the motorcycle, as a result of which, he sustained multiple injuries and died on the spot. According to the claimants, the rash and negligent driving of the driver of the Mini Lorry was the cause of accident and that since the owner of the Mini

Lorry, the first respondent insured his vehicle with the 2nd respondent, both of them are jointly and severally liable to pay compensation to them. The further contention of the claimants is that the deceased was aged 20 years on the date of accident and he was working as a mason earning a sum of Rs.6,000/- per month and that they were depending on the income of the deceased.

3. The learned Subordinate Judge / Motor Accident Claims Tribunal, Tirupatthur, Vellore District, after analysing the evidence on record, awarded a compensation of Rs.2,08,596/- to the claimants together with interest at the rate of 6% per annum from the date of claim petition till the date of deposit. The Tribunal further held that since the driver of the Mini Lorry bearing registration No.TN-29-M-1339 did not possess a valid driving licence and a badge to drive a commercial vehicle on the date of the accident, the owner of the Mini Lorry alone should pay the compensation amount to the claimants and the Insurance Company was exonerated. The Tribunal further fixed contributory negligence on the part of the deceased at 25% as he did not possess a valid driving licence. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal seeking enhancement of compensation.

4. Mr.M.Nallappan, learned counsel appearing for the appellants / claimants contended that the Tribunal had totally exonerated the liability of the 2nd respondent from paying compensation to the claimants merely on the ground that the driver of the Mini Lorry bearing registration No.TN-29-M-1339 did not possess a valid driving licence and badge to drive the vehicle on the date of accident. He also relied on the decision in Oriental Insurance Company Limited Vs. Zaharulnisha and others reported in 2008 ACJ 1928 and contended that the Honourable Supreme Court had held that in the case of non possession of valid driving licence to drive the vehicle on the date of accident, there shall be an order of " Pay and Recovery ". He would therefore contend that the Tribunal ought to have directed the insurance company to pay the Award amount in the first instance and then recover the same from the owner of the Mini Lorry.

5. His next contention is that when the deceased was just aged 20 years on the date of accident and was survived by a widowed mother and a minor sister, who were depending on his income, the Tribunal had awarded a meagre amount of Rs.2,08,560/- and therefore, he prayed for enhancement of compensation.

6. Per contra, Mr.N.Vijayakumar, learned counsel appearing for the 2nd respondent, the Iffoo-Tokio General Insurance Company Limited, Chennai contended that since the deceased did not possess a valid driving licence on the date of accident, the Tribunal had fixed 25% contributory

negligence on the part of the deceased and directed the first respondent to pay 75% of Award amount. He would further contend that since this is a case of head on collusion, the deceased was also equally responsible for the accident.

7. A perusal of the records shows that the claimants have examined one Nagaraj (PW2), who is an eyewitness to the occurrence and he has clearly deposed that he was riding his motorcycle behind the deceased and the deceased was riding his motorcycle at moderate speed. His further contention is that the driver of the Mini Lorry bearing registration No.TN29-M-1339 was rash and negligent in driving his vehicle. No contra evidence was adduced on the side of the respondents.

8. The Tribunal had fixed 25% contributory negligence on the part of the deceased only on the ground that the deceased was not in possession of a valid driving licence on the date of accident and not on the ground that he was also rash and negligent in driving his motorcycle. The First Information Report (Ex.P1) shows that the driver of the mini lorry bearing registration No.TN-29-M-1339 was the wrong doer. As already observed, the eyewitness to the occurrence has clearly deposed that the driver of the mini lorry was rash and negligent in driving his vehicle. Therefore, in the absence of contra evidence, I hold that there is no contributory negligence on the part of the deceased Elumalai.

9. In the decision in Oriental Insurance Company Limited Vs. Zaharulnisha and others reported in 2008 ACJ 1928 (cited supra), the Honourable Supreme Court had held that even if the driver did not have a valid licence and a badge on the date of accident, the Insurance Company would be liable to satisfy the Award and then recover the same from the owner. In the said decision (cited supra), two decisions of the Honourable Supreme Court in (i) National Insurance Company Limited Vs. Baljit Kaur reportd in 2004 ACJ 428 (SC) and (ii) National Insurance Company Limited Vs. Swaran Singh reported in 2004 ACJ 1 (SC) were referred. Hence, I hold that the 2nd respondent shall pay compensation to the claimants in the first instance and then recover the same from the first respondent, owner of the Mini Lorry.

10. As far as the quantum of compensation is concerned, it is contended by the learned counsel appearing for the claimants that the deceased was working as a mason, earning a sum of Rs.6,000/- per month. The age of the deceased was 20 years on the date of accident and the accident took place in the year 2007. Therefore, notional income of the deceased is fixed at Rs.6,000/-. As per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% should be added towards future prospects. The deceased died as a bachelor and was aged 20 years on the date of the accident and

therefore, proper multiplier to be adopted in the instant case is ' 18 ', as per per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 and 1/3 should be deducted towards his personal expenses since he had a widowed mother and a minor sister. Thus, "loss of dependency" is calculated as follows:

Notional income -	- Rs.6000
Add: 40% future prospects (6000+2400)	- Rs.8,400
Deduction 1/3 (8400-2800)	- Rs.5,600
Proper multiplier	- 18
Loss of dependency (5600 x 12 x 18)	- Rs.12,09,600

Apart from this amount, the claimant is also entitled to Rs.15,000/- Rs.15,000/- and Rs.40,000/- towards "loss of estate", "funeral expenses" and "loss of love and affection" respectively, as per the decision in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC). The revised compensation awarded under various heads is extracted hereunder.

Sl.No	Heads	Amount
1	Loss of dependency (5600x12x16)	12,09,600
2	Loss of estate	15,000
3	Funeral expenses	15,000
4	Loss of love and affection	40,000
	Total	12,79,600

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition.

11. In the result,

(i) The civil miscellaneous appeal is allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.2,08,596/- to Rs.12,79,600/-.

(iii) The claimants are directed to pay necessary court fees for the enhanced compensation amount, within three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The 2nd respondent is directed to deposit the enhanced compensation amount of Rs.12,79,600/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit (less the amount already deposited by them), to the credit of MCOP No.80 of 2007 on the file of the Subordinate Judge/ Motor Accident Claims Tribunal, Tirupatthur, Vellore District within 4 weeks from the date of receipt of a copy of this order and then recover the same from the first respondent, owner of the Mini Lorry.

(v) On such deposit being made by the 2nd respondent, the first claimant (Maari) / mother of the deceased is entitled to withdraw a sum of Rs.9,00,000/- with costs and interest and the 2nd claimant (Manjula) / sister of the deceased is entitled to withdraw a sum of Rs.3,79,600/-.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Subordinate Judge/ Motor Accident Claims Tribunal,
Tirupatthur, Vellore District.

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No. 82886

CMA No.2735 of 2009

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A.SK(27/07/2020)