IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1320 OF 2015

R.Shanthi .. Appellant

Vs.

1. Yogaraj Nagendran

2. Bajaj Allianz General Insurance Co. Ltd.,
Hosur Post and Hosur Taluk,
No.35, Muthaiah, Periamet,
Chennai 03. .. Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 20.09.2012, made in M.C.O.P.No.1062 of 2008, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Mr.V.Ramesh Vel

For Respondents: Mr.R.V.Sivaraj (for R2)
for M/s.J.Michael Visuvasam

J U D G M E N T

This appeal has been filed challenging the portion of the award exonerating the 2nd respondent and also seeking enhancement of the compensation granted by the award dated 20.09.2012, made in M.C.O.P.No.1062 of 2008, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant-claimant filed M.C.O.P.No.1062 of 2008 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Krishnagiri, claiming a sum of Rs.5,00,000/- as compensation for the death of her son viz., K. Raghu, who died in the accident that took place on 18.02.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and dismissed the claim petition as against the 2nd respondent-Insurance Company and directed the 1st respondent to pay a sum of Rs.3,35,000/- as compensation to the appellant.

4.Challenging the portion of the award dismissing the claim petition as against 2nd respondent-Insurance Company and not being satisfied with the amounts granted by the Tribunal in the award dated 20.09.2012, made in M.C.O.P.No.1062 of 2008, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that the the Tribunal erred in dismissing the claim petition as against the 2nd respondent-Insurance Company on the ground that the rider of the motorcycle did not possess valid driving licence at the time of accident. The Tribunal ought to have ordered pay and recovery and prayed for setting aside the portion of the award dismissing the 2nd respondent-Insurance Company from paying the compensation. In any event, the total compensation awarded by the Tribunal towards pecuniary loss is meager and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the rider of the motorcycle did not possess valid driving licence at the time of accident and in violation of policy condition, he drove the vehicle and caused the accident. The Tribunal has rightly dismissed the claim petition as against the 2nd respondent-Insurance Company. The Tribunal has rightly fixed the notional monthly income of the appellant and granted compensation towards loss of future income, which is proper. The total compensation awarded by the Tribunal is not meager. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8.From the materials available on record, it is seen that the Tribunal dismissed the claim petition as against the 2nd respondent only on the ground that the rider of the motorcycle did not possess valid driving licence at the time of accident. The said reasoning for dismissal of the claim petition against the 2nd respondent is erroneous. It is well setted that if the rider of the offending vehicle did not posses valid driving licence, the Insurance Company must satisfy the award at the first instance and recover the same from the owner of the vehicle. In the judgment reported in 2004 ACJ 1 SC [National

Insurance Co. Ltd., Vs. Swaran Singh and others], the Hon'ble Apex Court has held that if the driver of the vehicle did not possess valid driving licence at the time of accident, the Insurance Company can be directed to pay the amount to the claimant and then realise it from the owner of the offending vehicle. In the judgment reported in 2012 1 TN MAC 226 [ICICI Lombard General Insurance Co. Ltd., Vs. Annakkili], it has been held that the Insurance Company cannot be exonerated from the liability to pay the compensation to the 3rd party claim for the reason that the driver had no licence or badge and after paying the amount to claimant, recover the same from the owner of the vehicle. The similar finding has been reiterated in another judgment reported in 2012 1 TN MAC 536 [National Insurance Co. Ltd., Vs. T.Mathiazhagan].

9.By applying the above said principle of law to the present case, the portion of the award dismissing the 2nd respondent-Insurance Company, on the ground that the rider of the motorcycle belonging to the 1st respondent did not possess driving licence, is set aside and the 2nd respondent-Insurance Company is directed to pay the compensation to the appellant at the first instance and later on, recover the same from the 1st respondent, owner of the vehicle.

10.As far as the quantum of compensation is concerned, it is evident from Ex.P2-Postmortem certificate, that the deceased was a minor child aged 8 years at the time of accident. The appellant has filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation for the death of her minor son. The Hon'ble Apex Court taking into consideration the passage of time from the date of II Schedule and the raise in cost of living, has fixed a sum of Rs.15,000/- per annum as the notional income of the deceased minor and applied the multiplier of '15'. This Court in some of the cases fixed a sum of Rs.45,000/- per annum for the deceased minor. Considering the raise in cost of living, the notional income of the deceased is fixed at Rs.30,000/- per annum and applying the multiplier of '15', a sum of Rs.4,50,000/- is awarded towards pecuniary loss. The Tribunal has not awarded any amount towards loss of love and affection and loss of estate to the appellant. The appellant is entitled to a sum of Rs.40,000/- and Rs.15,000/- towards loss of love and affection and loss of estate respectively. The Tribunal has awarded a meager sum of Rs.10,000/- towards funeral expenses. The same is enhanced to Rs.15,000/-. The amounts awarded by the Tribunal towards future loss of income is just and reasonable and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| S.No | Description | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|---|---|---|---|---|
| 1. | Loss of income | 2,25,000/- | 4,50,000/- | enhanced |
| 2. | Future loss of income | 1,00,000/- | 1,00,000/- | confirmed |
| 3. | Funeral expenses | 10,000/- | 15,000/- | enhanced |
| 4. | Loss of estate | - | 15,000/- | granted |
| 5. | Loss of love and affection | - | 40,000/- | granted |
| | Total | 3,35,000/- | 6,20,000/- | Enhanced by Rs.2,85,000/- |

11.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.3,35,000/- is enhanced to Rs.6,20,000/- along with interest and costs. The 2nd respondent Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1062 of 2008 at the first instance and recover the same from the 1st respondent. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.2,85,000/-. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Principal District Judge,
(Motor Accident Claims Tribunal), Krishnagiri.

+1cc to M/s.J.Michael Visuvasam, Advocate, S.R.No.101030
+1cc to Mr.Varadha Kamaraj, Advocate, S.R.No.101230

C.M.A.No.1320 of 2015

PPA(CO)
CS/17/07/2020