IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
21.02.2019	23.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.Nos.1206 of 2012 & 1375 of 2018

M/s.National Insurance Company Ltd,
37, Pantheon Road, Near Hotel Asoka,
Chennai - 8. ... Appellant in C.M.A.No.1206 of 2012

1.Mrs.R.Punitha
2.R.Abirami
3.R.Sivagami
R.Sudhakar (deceased) ... Appellants in C.M.A.No.1375 of 2018

Vs.

1.R.Punitha
2.R.Abirami
3.R.Sivagami
D/o. Late Rajendran
Sudhakar (deceased) ... Respondents in C.M.A.No.1206 of 2012

4.R.Sivalingam
(set ex-parte in lower Court) ... 1st Respondent in CMA No.1375/2018 and 4th respondent in CMA No.1206 of 2012

5.M/s.National Insurance Company Ltd,
No.37, Pantheon Road, Near Hotel Asoka,
Chennai - 600 008. ... 2nd Respondent in C.M.A.No.1375 of 2018

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 11.03.2011 made in M.C.O.P.No.2163 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr.D.Bhaskaran in CMA.No.1206 of 2012

For Appellants : Mr.T.G.Balachandran in CMA.No.1375 of 2018

For Respondents : Mr.T.G.Balachandran for RR1-3
R4- No Appearance in
CMA.No.1206 of 2012

For Respondents : R1- Set ex-parte
Mr.D.Bhaskaran for R2 in
C.M.A. No.1375 of 2018

C O M M O N   J U D G M E N T

The Insurance Company is the appellant in C.M.A.No.1206 of 2012, while the claimants/the legal heirs of the deceased are the appellants in C.M.A.No.1375 of 2018 those who have filed the aforesaid appeals against the Judgment and decree dated 11.03.2011 made in M.C.O.P.No.2163 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2. Brief facts of the case is as follows:

2(i). On 18-05-2007 at about 10.30 hours, the deceased was standing near the platform of office of AIR and TV Chief Engineer, at Swami Sivananda Salai conversing with his friend K.Vasudevan and at that time a Honda Activa Scooter TN-04-AA-7357 was ridden by its rider in a rash and negligent manner from east to west, hit the deceased, due to which the deceased sustained head injury and multiple injuries and died at Hospital and the accident was occurred only due to the rash and negligent riding of the rider of the motor cycle bearing Registration No.TN-04-AA-7357.

2(ii). On the side of the petitioners in M.C.O.P. No.2163 of 2007/Appellant herein in C.M.A No.1375/2018, P.W.2 one Jaheer Hussain as an eye witness to the occurrence has been examined and also marked as Ex.P1 F.I.R, Ex.P2 sketch, Ex.P3 post-mortem certificate and Ex.P4 death certificate through P.W.1. On a careful reading of the above said oral evidence of P.W.2 reveals that the accident was occurred only due to the rash and negligent riding of the rider of the first respondent's vehicle as stated in the petition. Further, criminal case was also registered as against the rider of the first respondent's vehicle. No oral and documentary evidence on the side of the second respondent regarding negligent aspect. On the side of the Respondents, R.W.1 has deposed about the driving license of the rider of the motor cycle alone and therefore from the oral and documentary evidence of the petitioners'/claimants' side reveals that the accident was occurred only due to the rash and negligent riding of the rider of the first respondent's motor cycle and answered this point accordingly.

3.The learned counsel for the Insurance Company/the appellant in C.M.A.No.1206 of 2012 contended that as the rider of the first respondent's two wheeler, does not posses valid driving license at the time of the accident, the Insurance Company is not liable to pay compensation and therefore pay and recovery may be ordered. Further, the compensation awarded by the Trial Court is on the higher side.

4.Per contra, the learned counsel for the respondents who are the appellants in C.M.A. No.1375 of 2018 would contend that though a plea has been raised by the Insurance Company regarding the possession of valid driving license by the rider of the two wheeler at the time of the accident, the same was not proved in the manner known to law.

5.On perusal of both the oral and documentary evidence adduced before the Tribunal, it is seen that the staff of the office of the Insurance Company was examined as R.W.1. The copy of the Insurance Policy is marked as Ex.R1 and the Investigation report is marked as Ex.R2 as well as notices issued to both the owner and driver of Hero Honda Activa two wheeler which were returned with covers are marked as Ex.R3.

6. Admittedly, the investigator was not examined by the Insurance Company and the said investigation report marked as Ex.R2 has been enclosed with copy of the charge sheet filed by the police before the Criminal Court which indicates that the driver of the two wheeler at the time of the accident was aged about 18 years and charge sheeted under Section 3 of Motor Vehicles Act, 1988.

7. Merely, there was a charge under Section 3 of Motor Vehicles Act, 1988 regarding the non-possession of valid driving license that by itself cannot discharge the burden of the owner or insurance company to dislodge the liability.

8. Admittedly, the owner of the two wheeler remains ex-parte before the lower Court as well as before this Court. Mohan Associate with the Regional Transport office were examined by the Insurance Company and furthermore, no positive evidences were available on record to indicate that the rider of the two wheeler does not possess the required valid driving license at the time of the accident and in the absence of any positive evidence being adduced by the Insurance Company, it appears that the Tribunal has rightly come to the conclusion that the Insurance Company has not probabilized plea regarding the holding of driving license by the rider of the Two wheeler. As such, the said finding of the Tribunal regarding the fact that Insurance Company/Appellant in C.M.A. No.1206 of 2012, not having probabilized plea in the possession of valid driving license of the rider of the two wheeler is hereby confirmed. In this view of the matter, C.M.A. No.1206 of 2012 filed by the

Insurance Company is hereby rejected.

9. Whereas C.M.A. No.1375 of 2018 has been filed by the Appellant herein/Claimant for seeking of enhancement of compensation. On perusal of the records, the Appellant/Claimant has filed C.M.A. No.1375 of 2018 with a delay of 348 days. The same was allowed in C.M.P. No.1 of 2013 on 19.06.2018. Accordingly, the purpose of calculating the amount of interest with a period of 348 days shall be excluded. As far as the Income of the deceased C. Rajendran is concerned, it is stated that the deceased was earning Rs. 8,000/- (Rupees Eight Thousand only) per month when he was proprietor and contractor of fabrication work. However, no evidence has been produced before the Tribunal except the version of the P.W.1. Therefore, the Tribunal has fixed notional income of the deceased at Rs.4,500/- (Rupees Four Thousand Five Hundred Only). The deceased died leaving behind 4 defendants. However, one of them is a married daughter. Therefore, 1/3rd deduction has to be rejected. As per the decision of the Constitutional Bench, the Future prospects has to be added in the absence of any positive evidence to show the nature of avocation whether it is permanent income or terminal income to be drawn from the said avocation.

10. This Court is of considered view that 30% could be fixed as a future benefits. Accordingly, the loss of pecuniary benefits is arrived at Rs.6,000/- (Rupees Six Thousand Only) less 1/3rd amount for personal expenses =Rs.4,000/-. (Rs.6000/- (-) 1/3rd). While Future benefits of 30% on Rs.6,000/- works out to Rs.1800/- (Rs.6000 X 30%), Monthly contribution is arrived at Rs. 5,800/-. i.e.(Rs.4000/- + 1800/-) and total Annual Income works out to Rs.69,600/-. (5800 x 12). Taking into consideration the age of the deceased at 48 at the time of the accident, as per the Sarala Verma's case, (2009) 6SCC 121, multiplier of 13 is adopted. Therefore, the loss of income to the family is arrived at Rs. 9,04,800/- (Rs.69,600 X 13). The first petitioner being widow is entitled for Rs.40,000/- (Rupees Forty Thousand Only) for loss of consortium and other Appellants/Claimants 2 and 3 are entitled for Rs.40,000/- (Rupees Forty Thousand Only) each for the loss of love and affection and Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. Thus, the appellants/claimants are entitled to get compensation under the various heads as follows:

For the loss of Income	: Rs. 9,04,800.00
For loss of Estate	: Rs. 15,000.00
For loss of Consortium	: Rs. 40,000.00
For Funeral Expenses	: Rs. 15,000.00
For loss of Love and Affection (40000 X 3)	: Rs. 1,20,000.00
	Rs. 10,94,800.00

11.In this regard, the Insurance Company is directed to deposit the award amount enhanced by this Court to the credit of M.C.O.P.No.2163 of 2007 after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of copy of this order and on such deposit, the Ist appellant is entitled to Rs.4,94,800/-, the appellants 2 and 3 each entitled to Rs.3,00,000/- and the appellants/claimants are permitted to withdraw the same along with interest @7.5% p.a. from the date of petition till the date of deposit.

12. In the result, C.M.A. No.1375 of 2018 is partly allowed and C.M.A. No.1206 of 2012 is rejected accordingly. The quantum of compensation awarded to the Appellants/Claimants in M.C.O.P. No.2163 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai is enhanced from Rs.4,98,000/- to Rs.10,94,800/- as stated above. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

lbm

Copy to:

The Motor Accidents Claims Tribunal, Chief Judge,
Small Causes Court, Chennai.

+1cc to Mr.D.Bhaskaran, Advocate SR.No.39057

+2cc to Mr.T.G.Balachandran, Advocate SR.No.38704, 38705

C.M.A.Nos.1206 of 2012 & 1375 of 2018

SVI(CO)
GMY(15/10/2019)