

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2344 of 2015
and C.M.P.No.21854 of 2018

M/s. Iffco Tokiyo General Insurance Company Limited
Represented by its General Manager,
31, S.T. Road, Secunderabad,
Andra Pradesh.

... Appellant/2nd Respondents

Vs.

1.S.Chidambaranathan

2.S.Subbulakshmi

... Respondents 1 & 2/Petitioners

3.Giriraj Surendar Rai

... 3rd Respondent/1st Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2015 made in M.C.O.P.No.750 of 2012 on the file of the IV Additional District and Sessions Court, Coimbatore.

For Appellant : Mrs.C.Harini
for Mr.N.Vijayaraghavan

For R1 and R2 : Mr.A.E.Ravichandran
for Mrs. C.Usha

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 30.01.2015 made in M.C.O.P.No.750 of 2012 on the file of the Motor Accidents Claims Tribunal, IV Additional District and Sessions Court, Coimbatore.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P.No.750 of 2012 on the file of the Motor Accidents Claims Tribunal, IV Additional District and Sessions Court, Coimbatore. The respondents 1 and 2 filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of their

son viz., C.Subramania Akilesh, who died in the accident that took place on 06.01.2012. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the mini van belonging to the 3rd respondent and directed both the 3rd respondent as well as appellant/Insurance Company being insurer of the said mini van to pay a sum of Rs.8,24,00/- as compensation to the respondents 1 and 2, jointly and severally. Challenging the said award dated 30.01.2015, made in M.C.O.P.No.750 of 2012, granting compensation to the respondents 1 and 2, the appellant-Insurance Company has come out with the present appeal challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal.

3. The learned counsel appearing for the appellant contented that the Tribunal has erred in fixing the liability, when the driver of the third respondent did not possess valid driving license to drive commercial vehicle. He did not obtain any badge or endorsement in the driving license. The Tribunal has erred in fixing notional income of the deceased at Rs.8,000/- per month in the absence of any materials produced by the respondents 1 and 2 with regard to income of the deceased. The amounts awarded by the Tribunal towards loss of love and affection and mental agony are excessive and prayed for setting aside the award of the Tribunal.

4. Per Contra, the learned counsel appearing for the respondents 1 and 2 contended that the driver of the vehicle belonging to third respondent possessed driving license at the time of accident and the respondents 1 and 2 have proved that the driver of the vehicle belonging to the third respondent is responsible for the accident. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

5. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.

6. The contention of the learned counsel appearing for the appellant that the driver did not possess valid driving license and therefore, the appellant is not liable to pay any compensation, is without merits and contrary to the judgment of the Hon'ble Apex Court reported in (2017) 14 Supreme Court Cases 663 [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,], wherein it has been held that when a person is possessing valid driving license to drive a particular class of vehicle, he can drive all categories of vehicle in the said class and there is no necessity to obtain badge or endorsement to drive the commercial vehicle of that particular class.

7.As far as quantum of compensation is concerned, the respondents 1 and 2 have produced appointment letter of the deceased, wherein the deceased was offered a job on monthly salary of Rs.16,000/-. The Tribunal had not accepted the said letter on the ground that the same was not proved by examining the person, who issued the said letter. Considering the educational qualification of the deceased, the Tribunal has fixed notional income of the deceased at Rs.8,000/- per month. The deceased was 21 years at the time of accident and the Tribunal had not awarded any amount towards future prospects. The respondents 1 and 2 are entitled to 40% enhancement for future prospects. Further, the Tribunal has taken the age of the mother of the deceased for arriving at multiplier for calculating loss of income and the same is erroneous. As per the judgement of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the age of the deceased must be taken for applying multiplier. In view of this error, this Court considers that it is a fit case for exercising its power under Order 41 of C.P.C. to enhance the compensation awarded by the Tribunal. The compensation awarded by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.8,000} + 3200 \text{ (40\% of Rs.8,000/-)} \times 12 \times 18 \times \frac{1}{2} = \text{Rs.12,09,600/-}$$

The amount awarded by the Tribunal under the head of mental agony is hereby set aside. A sum of Rs.3,000/- granted by the Tribunal towards funeral expenses is hereby enhanced to Rs.15,000/-. The Tribunal had not awarded any amount towards loss of estate and this Court awards a sum of Rs.15,000/- under this head. A sum of Rs.1,00,000/- granted by the Tribunal towards loss of love of affection is hereby reduced to Rs.80,000/-. The amounts awarded by the Tribunal under other heads are hereby 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	6,24,000	12,09,600	Enhanced
2.	Loss of love and affection	1,00,000	80,000	Reduced
3.	Mental agony	75,000	-	Set aside
4.	Damage to clothes and article	1,000	1,000	Confirmed

5.	Transportation	1,000	1,000	Confirmed
6.	Funeral expenses	3,000	15,000	Enhanced
7.	Flight tickets	20,000	20,000	Confirmed
8.	Loss of estate	-	15,000	Granted
	Total	8,24,000	13,41,600	Enhanced by Rs.5,17,600/-

8. With the above modification, this Civil Miscellaneous Appeal is disposed of and the compensation awarded by the Tribunal at Rs.8,24,000/- is hereby enhanced to Rs.13,41,600/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. Both the appellant as well as third respondent are directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 2 are permitted to withdraw the enhanced award amount equally along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

kj/rst

To

The Motor Accident Claims Tribunal
IV Additional District Judge, Coimbatore.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.3802-
+1cc to Mr.A.E.Ravichandran, Advocate, S.R.No.3483

C.M.A.No.2344 of 2015
and C.M.P.No.21854 of 2018

RSI (CO)
CS/26/04/2019