IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2838 of 2015

1.Krishnaveni

2.Chitra

3.Saritha

4.Minor Dinesh
(Minor represented by mother appellant -1)

5.Nadipodan

6.Muniammal .. Appellants/Claimant

Vs.

1.Thirupathi

2.The Cholamandalam General Insurance Co. Ltd.,
II Floor, No.60, Mosuvana Street,
EVN Road, Erode - 638 009. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 08.02.2011 in MCOP.No.51 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court, (FTC), Tirupattur, Vellore District.

For Appellants : Mr.PA.Sudesh Kumar

For R2 : Ms.C.Harini
for Mr.R.Vijaya Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 08.02.2011 in MCOP.No.51 of 2010 on the file of the Motor Accident Claims Tribunal, Additional

District Court, (FTC), Tirupattur, Vellore District.

2.The appellants are claimants in MCOP.No.51 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court, (FTC), Tirupattur, Vellore District. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Paneerselvan, who died in the accident that took place on 14.09.2007. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tractor & Trailor belonging to the 1st respondent and awarded a sum of Rs.4,48,750/- as compensation to the appellants. The Tribunal directed the 2nd respondent/Insurance Company to pay a sum of Rs.2,00,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent and directed the 1st respondent to pay a balance amount of Rs.2,48,750/- as compensation to the appellants. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellants contended that the Tribunal erred in treating the deceased as unauthorized occupant in the tractor instead of treating him as a third party and the Tribunal failed to consider the evidence of PW2 the eyewitness who deposed that the deceased was a third party. The Tribunal having held that there is no evidence to show that the deceased was negligence, failed to order pay and recovery. The sum awarded by the Tribunal is meager and prayed for allowing this appeal. In support of his contention, he relied on the following judgment of this Court reported in "2013(3) MWN (Civil) 161" in the case of "National Insurance Co. Ltd., Vs Krishnan"

> "35. The last question to be considered is whether the Claims Tribunal is empowered to award a compensation more than the limit, provided for in the Personal Accident Cover Policy. When the Respondent/Claimant has sustained multiple injuries, resulting in huge Medical expenditure of Rs.1,15,934/-, restricting the quantum of compensation to the maximum amount of Rs.1,00,000/-, as per the Policy, would defeat the Principles of "Just Compensation" Few decisions on the Principles of Just Compensation is reproduced hereunder.
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> 36.If the contention of the Appellant-Insurance Company has to be accepted, then no compensation can be awarded under other heads, viz., Disability, Loss of Earning, Pain and Suffering or under any other pecuniary and non-

pecuniary losses. Even the Respondent/Claimant will not be in a position to get back Rs.1,15,934/-, incurred by him, towards Medical Expenses. Such a narrow construction of limiting the compensation only to Rs.1 Lakh, cannot be made, when sufficient oral and documentary evidence, has been adduced to prove that the pecuniary and non-pecuniary losses suffered by the injured, exceeds the maximum limit. Restricting the compensation to only Rs.1 Lakh, would defeat the very intention of the legislature, to award, "just compensation" to the accident victim, and it will not be in conformity with the judgments of the Apex Court, stated supra."

4.Per contra, learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal after considering all the materials available on record in proper perspective has awarded compensation which is not meagre. The appellants have not made out any case for enhancement and prayed for dismissal of the appeal. In support of his contention, he relied on the following judgment of this Court in CMA.No.1428 of 2017 in the case of "The Divisional Manager, M/s.United India Insurance Co., Ltd., Vs R.Rekha and others"

> "7. In view of the stand taken by the insurance company specifically questioning their liability to pay the compensation amount, the Tribunal formulated a question as to whether the legal representatives of the deceased are entitled to maintain the claim petition against the insurer inasmuch as the vehicle was owned by the deceased himself. After analysing the evidence available on record, the Tribunal answered the said question by placing reliance on the decision rendered by the Honourable Supreme Court in the case of (National Insurance Company Limited vs. Balakrishnan reported in 2012 (2) TNMAC 637(SC) and came to the conclusion that when the owner cum driver of the vehicle has paid additional premium of Rs.100/- taking a coverage for the pecuniary and non-pecuniary losses suffered by him in an accident arising out of the use of the vehicle owned by him, then, on his death, his legal representatives can maintain the claim petition against the insurer. After having arrived at such a conclusion, the Tribunal proceeded to assess the quantum of compensation payable to the respondents and ultimately passed the award for a sum of Rs.51,37,125/- payable by the insurance company. Aggrieved by the same, the

Insurance Company has come forward with this appeal."

5.Heard Mr.PA. Sudesh Kumar, learned counsel appearing for the appellants and Ms.C.Harini for Mr.R.Vijaya Raghavan, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

6.From the materials available on record, it is seen that the appellants have contended that the deceased travelled in the tractor as a load man. The accident has occurred due to rash and negligent driving by the driver of the tractor belonging to the 1st respondent insured with the 2nd respondent/Insurance Company. PW2 eyewitness in his evidence has also deposed to that effect. The 2nd respondent/Insurance Company contended that the deceased was not engaged as a coolie. The tractor belonging to the 1st respondent is an unauthorized vehicle. Further, the appellants have not furnished the Insurance Policy of the said vehicle. The said vehicle was not insured with the 2nd respondent. Further, more the deceased was travelling as a unauthorized passenger in the tractor at the time of the accident. Therefore, the Insurance Company is not liable to pay any compensation. The Insurance Company has examined RW2 to prove that the said tractor was not registered. RW2 in his evidence has deposed that he has not issued any driving license to the driver of the tractor. But RW1 in his evidence has deposed that the deceased was travelled as a passenger in the tractor. As per policy produced by the 1st respondent the deceased was entitled to a sum of Rs.2,00,000/-. The said vehicle was driven by its driver without possessing driving license the Insurance Company is not liable to pay the said sum. In his cross examination he admitted that RW1, the deceased travelled in the said tractor as a coolie. As per premium the deceased was entitled to Rs.2,00,000/-. The Tribunal considering both oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the tractor and directed the 2nd respondent/Insurance Company to pay a sum of Rs.2,00,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent.

7.As far as quantum of compensation is concerned the appellants have not produced any documents with regard to income of the deceased. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.3,750/- per month as notional income of the deceased. The Tribunal deducted 1/4th towards personal expenses and applied multiplier '13' and awarded a sum of Rs.4,38,750/- (33,750 x 13) towards loss of dependency. Further, the Tribunal has awarded a sum of Rs.5,000/- each towards funeral expenses and loss of love & affection. The Tribunal has totally award a sum of Rs.4,48,750/- as compensation to the appellants out of which has already stated above a sum of Rs.2,00,000/- has to be paid by the 2nd respondent/Insurance Company to the appellants at the first instance and recover the same from the 1st respondent and the balance amount of Rs.2,48,750/- has to be paid by the 1st respondent to the appellants. In my considered opinion the award passed by the Tribunal is just and fair and the same need not be interfered with.

8.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.4,48,750/- awarded by the Tribunal as compensation to the appellants, along with interest and costs is confirmed. No costs.

9.The 2nd respondent/Insurance Company is directed to pay a sum of Rs.2,00,000/- along with interest and cost to the appellants at the first instance and recover the same from the 1st respondent. The 1st respondent owner of the tractor is directed to deposit a sum of Rs.2,48,750/- as compensation to the appellants along with interest and cost, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.51 of 2010. On such deposit, the appellants are permitted to withdraw their share of the award amount, on the basis of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn. The share of the minor 4th appellant is directed to be deposited in any one of the Nationalised Banks till he attains majority. The 1st appellant being the mother of the 4th appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Fast Track Court,
Motor Accident Claims Tribunal,
Tirupattur,
Vellore District.

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

C.M.A.No.2838 of 2015

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