IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2848 of 2015

The New India Assurance Co. Ltd.,
Dharmapuri Branch, 39-C, Byepass Road,
Dharmapuri – 636 704. … Appellant/2nd Respondent

Vs

1.Shahin
2.M.J.Babu ..Respondents 1 & 2/Petitioners
3.M.Lakshmi ..3rd Respondent/1st Respondent

4.Tamilnadu State Transport Corporation Ltd.,
Salem, Division II, at Dharmapuri rep. by
its Managing Director ..4th Respondent/3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.09.2014 made in M.A.C.T.O.P.No.282 of 2013 on the file of the Motor Accident Claims Tribunal, (District Court) (Special Court for Motor accident Claims Tribunal) at Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy
For RR1 & 2 : Mr.P.Mani

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, aggrieved against the liability fixed by the Tribunal.

2.The brief facts is as follows:

On 24.08.2012 at about 04.30 PM when the deceased B.Nabiyullah and others were travelling as passenger in the Autorickshaw bearing Reg.No.TN.29-AB-8696 belonging to the 1st respondent and insured with the 2nd respondent, the driver of the 1st respondent who was proceeding towards Dharmapuri on Pennagaram – Dharmapuri Road drove the same in a rash and negligent manner while nearing Sogathur Junction Road and overtook a motorcycle and collided head on against the bus bearing Reg.No.TN-29-N-1755 coming on the opposite direction belonging to the 3rd respondent. The bus was proceeding on the middle of the road and did not keep left of the road or on seeing the Autorickshaw overtaking the motorcycle did not swerve to the left to avoid the collision. As a result of the collision the Autorickshaw capsized and it was dragged to some distance. Consequently, the deceased B.Nabiyullah and co-passenger Wasim Akram died on the spot and others who travelled on the said Autorickshaw sustained injuries. The claimants claimed a sum of Rs.10,00,000/- as compensation for the death of their son B.Nabiyullah.

3.The respondent/Insurance Company denied the mode of accident as alleged in the claim petition. It is contended by the respondent that the driver of the auto drove the vehicle in a cautious manner. But the driver of the TNSTC bus drove the same rashly and negligently without following the rules of the road, came in a fast manner dashed head on with the auto and caused the accident. Regarding the sum claimed by the claimants under the head on occupation and loss of income which is very much denied by the respondent.

4.The Tribunal after analyzing the evidence and documents has placed before the same, has observed that the accident caused only by rash and negligent driving by the driver of the Autorickshaw bearing Reg.No.TN-29-AB-8696 and by analysing the evidence placed by PW1, with regard to the income and occupation of the deceased, has awarded a sum of Rs.11,45,000/- as compensation under the following heads:

Future loss of income	Rs.10,80,000/-
Loss of love and affection for the petitioners	Rs.50,000/-
Transport to Hospital	Rs.5,000/-
Funeral expenses	Rs.10,000/-
Total	Rs.11,45,000/-

Aggrieved against the liability the respondent/Insurance Company has preferred this appeal.

5.In the grounds of appeal, the appellant has contended that the Tribunal ought to have exonerated the appellant and fastened the liability only on the 3rd respondent, the owner of the Autorickshaw insured with the appellant as he had committed breach of policy condition by allowing a person who did not possess driving license to drive the Autorickshaw that was involved in the impugned accident. The Tribunal has also erred in not considering Ex.C1, the copy of the Motor Vehicles Inspector Report and also the evidence of CW-1, the Special Sub Inspector who was examined before the Tribunal to prove the fact that the driver of the Autorickshaw did not possess valid driving license. Hence, the appeal has been filed by the

Insurance Company questioning liability. Since the driver of the Autorickshaw was not holding driving license at the time of accident.

6.Heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellant/Insurance Company and Mr.Mr.P.Mani, learned counsel appearing for the respondents 1 & 2 and perused all the materials available on record.

7.The appellant very much questioning the liability that there is a violation of policy condition. But the driver of the Autorickshaw is responsible for the accident who had driven the vehicle without holding any valid driving license.

8.On the other hand, the respondents 1 & 2/claimants contended that the sum awarded by the Tribunal is very meagre by taking monthly income of the deceased at Rs.5,000/-. The deceased was a 1st year Pharmacist student at the time of the accident and he would become Pharmacist after two years and his income would be more than Rs.10,000/- per month. Apart from that, during the time of accident has was earning a sum of Rs.5,000/- per month by selling vegetable. Hence, the income assessed by the Tribunal is very much aggrieved by the respondents/claimants. It is also argued that the Tribunal has not awarded any sum towards future prospects and the notional income of the deceased is also on the meagre side.

9.On the side of the appellant it is contended by quoting the case law reported in "2018 (1) TN MAC 435 (SC)" in the case of "Shivawwa and another Vs Branch Manager, National India Insurance Co. Ltd and another" that in the absence of filing any cross objection cannot question the quantum in support of the arguments advanced by the respondent for enhanced compensation.

10.Per contra on the side of the respondents/claimants submitted the judgment in "C.M.A.No.735 of 2012" in the matter of "The Managing Director, Tamil Nadu State Transport Corporation Limited Vs Lakshmi and others". The relevant portion is extracted hereunder:

> "22.Though, no Cross-Objection is filed by the claimants herein, this Court taking note of the facts and circumstances of the case, has thought it fit to enhance the compensation awarded by the Tribunal. It is well settled that Order XLI Rule 33 of the Code of Civil Procedure empowers the Appellate Court to grant relief to a person who has neither appealed nor filed any cross-objections. The object of this provisions is to do complete justice between the parties. Order XLI Rule 33 of the Code of

Civil Procedure has been discussed time and again by the Supreme Court in the following cases:

(i) Pannalal v. State of Bombay, AIR 1963 SC 1516

(ii) Rameshwar Prasad v. M/s.Shyam Beharilal Jagannath,

(iii) Nirmal Bala Ghose v. Balaji Chand Ghose, AIR 1965 SC 1874

(iv) Giasi Ram v. Ramjilal, AIR 1969 SC 1144

(v) Harihar Prasad Singh v. Balmiki Prasad Singh, (1975) 2 SCR 932

(vi) Mahant Dhangir v. Madan Mohan, (1988) 1 SCR 679

(vii) State of Punjab v. Bakshish Singh, (1999) 8 SCC 222

23. Section 168 of the Motor Vehicles Act, 1988 empowers the Court to award such compensation as appears to be just which has been interpreted to mean just in accordance with law and it can be more than the amount claimed by the claimants. The provisions of the Motor Vehicles Act, 1988 are clearly a beneficial legislation and hence should be interpreted in a way to enable the Court to assess just compensation. The scope of Order XLI Rule 33 of the Code of Civil Procedure and the power of the High Court to enhance the award amount in accident cases in the absence of cross-objections has been discussed by the Supreme Court in Nagappa v. Gurudayal Singh, AIR 2003 SC 674, where the Apex Court has held that the Court is required to determine just compensation and there is no other limitation or restriction for awarding such compensation and in appropriate cases wherefrom the evidence brought on record if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award and would empower the Court to enhance the compensation at the appellate stage even without the injured filing an appeal or cross-objections."

11.The learned counsel for the respondents/claimants also submitted the judgment in "C.M.A.(MD) No.762 of 2017 and C.M.P. (MD) No.8232 of 2017" in the matter of "The Branch Manager, United India Insurance Company Limited Vs. Pechiammal and others". The relevant portion is extracted hereunder:

> "28.In Nagappa Vs. Gurudayal Singh and others reported in (2003)2 SCC 274, the Supreme Court has held that there is no restriction that the tribunal/Court cannot award compensation amount exceeding the claimed amount. The relevant portion of the said judgment reads as follows:
>
> "21.For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section 96) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition.
>
> 29.Appeal being continuation of proceedings, this Court is of the views that re-appreciation of evidence and deciding the claim independently is possible. As the powers of this Court under Order 41 Rule 33 is only to do complete justice between the parties. The Motor Vehicles Act, 1988 being a beneficial legislation to award just compensation, this Court is exercising its power to enhance the compensation even in the absence of cross appeal."

It is argued by the appellant that at the time of accident the driver of the said Autorickshaw was not possessing valid driving license and that has been very much discussed by the Tribunal and the accident also occurred only due to negligent part of the driver of the Autorickshaw. Ex.P1/FIR, PW2/eyewitness was cross examined by the Insurance Company and during the cross examination PW2 admitted that he had preferred complaint to the police. He also admitted that he deny the Special Sub Inspector, Dharmapuri police station was examined as a witness by the Insurance Company. The Motor Vehicles Report which was filed before the Tribunal as Ex.C1 and rough sketch prepared by him was marked as Ex.C3. Ex.C3 reveal the fact that the vehicle collided head on, on the part of the bus, scence of occurrence but the investigation officer had registered the FIR against the driver of the Autorickshaw.

12.On perusal of the documents and evidence of the witness examined before the Tribunal the accident occurred by the driver of the Autorickshaw. Further, it is also proved that the driver of the Autorickshaw does not possess any valid driving license and it also placed before the Tribunal. Hence, the grievance of the appellant is that when there is a violation of policy, and not possessing the valid policy, the Tribunal failed to order for pay and recovery. Hence, in the observation and the clear finding that the driver of the Autorickshaw did not possess driving license, it would be appropriate to direct the appellant/Insurance Company to pay the compensation and recover the same from the owner of the offending vehicle. Accordingly, the same is ordered.

13.With regard to the arguments advanced by the respondents/claimants that even in the absence of any proof, the award has to be enhanced by verifying the sum awarded by the Tribunal. It is seen from the award that the Tribunal has not awarded future prospects of the deceased. Though he was a student of Pharmacist, it is stated that he was earning a sum of Rs.5,000/- per month by selling vegetables. Considering the said aspect, adding 40% towards future prospects would be reasonable. Accordingly, this Court modifies future loss of income to Rs.15,12,000/- (Rs.5,000 + 2,000 (Rs.5,000/- of 40%) x 12 x 18). The sum awarded by the Tribunal under other heads are 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)
1.	Future loss of income	Rs.10,80,000/-	Rs.15,12,000/-
2.	Loss of love and affection for the petitioners (Rs.25,000/- x 2)	Rs.50,000/-	Rs.50,000/-

3.	Transport to Hospital	Rs.5,000/-	Rs.5,000/-
4.	Funeral expenses	Rs.10,000/-	Rs.10,000/-
	Total	Rs.11,45,000/-	Rs.15,77,000/-

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,45,000/- is hereby enhanced to Rs.15,77,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

15.The appellant/Insurance Company is directed to deposit the entire award amount modified by this Court along with interest and costs before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit, the respondents 1 & 2 are permitted to withdraw the respective share of the enhanced award amount on the basis of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Judge,
Special Court for Motor accident Claims Tribunal, Krishnagiri.
2.The Section Officer,V.R. Section,High Court, Madras.

+1 cc to M/s.M.Krishnamurthy,Advocate Sr.No. 58258
+1 cc to M/s.P.Mari, Advocate Sr.No. 58013

AKM/02.01.2020/7P- 5C /

C.M.A.No.2848 of 2015