IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.155 of 2017

1.Valarmathi
2.Minor Mythili
3.Minor Rohini Priya
(Minors rep. By their mother and guardian, Valarmathi)
4.Pavayee .. Appellants

Vs.

1.M.Elango
2.V.V.Srinivasan
3.IFFCO - Tokio General Insurance Co. Ltd.,
Thulasi Chambers, 3rd Floor,
No.195, D.V.Samy Road, West R.S.Puram,
Coimbatore 641 002. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.07.2013, made in M.C.O.P.No.631 of 2010, on the file of the IV Additional District and Sessions Court, (Motor Accident Claims Tribunal), Coimbatore.

For Appellants : Mr.V.Anandhamurthy

For R3 : Ms.C.Harini for M/s.N.Vijayaraghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants-claimants, seeking enhancement of the compensation granted by the award dated 08.07.2013, made in M.C.O.P.No.631 of 2010, on the file of the IV Additional District and Sessions Court, (Motor Accident Claims Tribunal), Coimbatore.

2.The appellants-claimants filed M.C.O.P.No.631 of 2010, on the file of the IV Additional District and Sessions Court, (Motor Accident Claims Tribunal), Coimbatore, claiming a sum of Rs.15,00,000/- as compensation for the death of one Mohan, who died in the accident that took place on 12.11.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, rider-cum-owner of the motorcycle belonging to the 2nd respondent and directed the respondents 1 and 2 to pay a sum of Rs.11,17,000/- jointly and severally as compensation to the appellants and dismissed the claim petition as against the 3rd respondent.

4.Not being satisfied with the amounts granted by the Tribunal in the award dated 08.07.2013, made in M.C.O.P.No.631 of 2010, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in dismissing the claim petition against the 3rd respondent-Insurance Company. The Tribunal failed to see that the 3rd respondent has altered the document in order to avoid payment of compensation. The Tribunal erred in dismissing the claim petition against the 3rd respondent when the 3rd respondent has not adduced any evidence. The Tribunal failed to see that except examining R.W.2, no one was examined to prove that cover note was canceled when one Karthik has executed the cover note on behalf of R.W.2. It is for the 3rd respondent-Insurance Company to prove that there was no Insurance Policy at the time of accident. In any event, the amounts awarded by the Tribunal are meagre. The deceased was aged 40 years at the time of accident and was running Sree Sakthi Vinayaka Industries as a proprietor and earning a sum of Rs.12,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.10,000/- per month and deducted 10% towards Income Tax when the income of the deceased per annum was fixed only at Rs.1,20,000/-. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside the award of the Tribunal dismissing the claim petition against the 3rd respondent and for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that there is no insurance coverage for the offending vehicle at the time of accident. The cover note issued was canceled when the 2nd respondent did not produce vehicle for inspection and did not have sufficient cash for payment of premium. On 13.11.2009, the policy was issued, which is to be in force from 0.00 hours of 13.11.2009 to 12.11.2010. The appellants have not produced any document to prove the avocation and income of the deceased. The Tribunal erroneously fixed excessive amount in the absence of material evidence. The amounts awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 3rd respondent and perused the materials available on record.

8.From the materials on record, it is seen that the accident has occurred on 12.11.2009 at 9.00 P.M. According to the appellants, at the time of accident, the cover note issued by the 3rd respondent was in force. According to the 3rd respondent-Insurance Company, one person approached the employer of his agent- R.W.2 at 9.30 P.M on 12.11.2009 and on his request, the cover note was issued to be in force from 8.00 P.M onwards. At 10.30 P.M, the cover note was canceled as the 2nd respondent, owner did not have sufficient funds to pay the premium and did not bring the vehicle for inspection. To substantiate the above contentions, the 3rd respondent examined his agent as R.W.2. The 3rd respondent has not examined the said Karthik, the employee of his agent-R.W.2 who had issued the cover note to prove that without premium being paid and vehicle not being produced for inspection, the cover note was issued. It is not believable that employee and agent of 3rd respondent issued cover note without receiving premium and without inspecting the vehicle. There is nothing on record to show that R.W.2-agent of the 3rd respondent has informed the 2nd respondent about cancellation of cover note. The Tribunal considering the evidence of R.W.2, cover note and entire materials on record, held that both the 2nd respondent, owner of the vehicle as well as the 3rd respondent-Insurance Company have not stated the truth before the Tribunal. Having held so, the Tribunal erred in dismissing the claim petition against the 3rd respondent. The appellants cannot be penalized for the irregularities of the agent of the 3rd respondent or act of the 2nd respondent, owner of the vehicle. The cover note issued by the employee of agent-R.W.2 which was marked as Ex.P15 was in force from 8.00 P.M and accident occurred at 9.00 P.M. The 3rd respondent has not proved that cover note was issued after 9.30 P.M to be in effect from 8.00 P.M. The best person to speak about the same is Karthik who issued cover note on behalf of the 3rd respondent. For the above reason, the finding of the Tribunal that the 3rd respondent is not liable to pay compensation and dismissal of the claim petition against the 3rd respondent is set aside. The respondents 1 to 3 are jointly and severally liable to pay compensation to the appellants.

9.As far as the quantum of compensation is concerned, the appellants have contended that the deceased was the Proprietor of Sree Sakthi Vinayaka Industries and was earning a sum of Rs.12,000/- per month. To prove the said contention, they have examined P.W.1. The respondents have not let in any contra evidence to disprove the evidence of P.W.1. The accident is of the year 2009. The notional income fixed by the Tribunal is not meagre. The Tribunal erred in deducting 10% from Rs.1,20,000/-, the annual income of the deceased towards Income Tax. The same is set aside. The deceased was aged 40 years at the time of accident. The appellants are entitled to 25% enhancement towards future prospects. Hence, awarding 25% enhancement towards future prospects, the amounts granted by the Tribunal towards loss of income is modified to Rs.16,87,500/- {[Rs.10,000/- + Rs.2,500/- (25% of Rs.10,000/-)] x 12 x 15 x ¾}. The Tribunal has awarded a meagre sum towards loss of love and affection, loss of consortium and funeral expenses. The same are enhanced to Rs.40,000/- towards loss of consortium to the 1st appellant, Rs.40,000/- each towards loss of love and affection to the appellants 2 and 3 and Rs.15,000/- towards funeral expenses. The Tribunal failed to grant any amount towards loss of estate. Appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts granted by the Tribunal under the head, transportation is just and reasonable and 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	10,80,000/-	16,87,500/-	enhanced
2.	Loss of consortium	10,000/-	40,000/-	enhanced
3.	Loss of love and affection	20,000/-	80,000/-	enhanced
4.	Transportation	2,000/-	2,000/-	confirmed
5.	Funeral expenses	5,000/-	15,000/-	enhanced
6.	Loss of estate	-	15,000/-	granted
	Total	11,17,000/-	18,39,500/-	Enhanced by Rs.7,22,500/-

10.In the result, the appeal is allowed and the compensation granted by the Tribunal at Rs.11,17,000/- is enhanced to Rs.18,39,500/- along with interest and costs. The respondents 1 to 3 are jointly and severally directed to deposit the enhanced award amount 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.631 of 2010. On such deposit, the appellants 1 and 4/claimants 1 and 4 are permitted to withdraw their share of the enhanced award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any of the Nationalized Bank, till the minors attain majority. The 1st appellant/mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. The appellants are directed to pay the difference in Court fee if any for the amount now enhanced by this Court. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The IV Additional District and Sessions Judge,
(Motor Accident Claims Tribunal),
Coimbatore.

+1cc to Mr.N.Vijayaragavan , Advocate SR.No. 39449
+1cc to Mr.V.Anandhamurthy , Advocate SR.No. 38401

C.M.A.No.155 of 2017

A.SK(12/03/2020)