

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :25.04.2019

Judgment Delivered on :08.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.532 of 2012

and

M.P.No.1 of 2012

The ICICI LOMBARD GENERAL
INSURANCE COMPANY LTD,
R.S.Puram, Coimbatore.

... Appellant/3rd Respondent

..Versus..

1.Manju

2.Minor Sithappa

3.Minor Arulkumar

(Minors 2&3 are rep.by next
friend guardian mother
1st respondent Manju)

4.Lakshmi

5.Uchaiya : Respondents 1-5/Petitioners

6.The Secretary,

Thalavady Block Level Federation
Hosur Road, Thalavady & Post
Sathiyamangalam Taluk

7.The Chairman / District Collector,
Women Development Project
Erode

(6th respondent set exparte
before the Tribunal)

... Respondents 6&7/Respondents 1&2

Prayer: Civil Miscellaneous Appeal filed under section 173 of
Motor Vehicle Act, 1988 against the Judgment and Decree dated
25.04.2011 made in M.C.O.P.No.100 of 2010 on the file of the
Motor Accident Claims Tribunal (Subordinate Judge),
Sathiyamangalam.

For Appellant : M/s.R.Sreevidhya
For R1 to R5 : Mr.Ma.P.Thangavel
For R7 : Mr.N.Manikandan,
Govt.Advocate
For R6 : Exparte Before the Tribunal

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and Decree dated 25.04.2011 made in M.C.O.P.No.100 of 2010 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Sathiyamangalam.

2. The third respondent-Insurance Company before the Tribunal is the appellant herein.

3. The legal heirs of the deceased Jeyakumar filed the claim petition alleging that on 26.02.2008, at about 12.15 hrs, (night), when the deceased was riding a Mini-door van bearing Registration No.TN 36 X 4486 at a normal speed without any goods, on the Thalavady to Kongalli Main Road near Soosaipuram Pirivu at Thread office, one lorry came in the opposite direction in high speed in a rash and negligent manner and to avoid accident, the deceased turned the mini-door van to the left side and applied brake suddenly. Due to the sudden brake, the van was upset on the road side pit. Due to the upset of the Minidoor, the deceased Jayakumar was thrown away from the van and he sustained greivous injury on the head, chest and injuries all over the body. Immediately after the accident, the neighbours took the deceased to the Govt.Hospital, Thalavady, but the 1st claimant's husband died on the way to hospital. It is alleged that the accident happened solely due to the rash and negligent driving of the lorry which came in the opposite direction. At the time of accident, the deceased was the employee of the 6th respondent's society. The 7th respondent is the Chairman of the society and the appellant is the Insurer of the vehicle. At that time of accident, opposite lorry was unable to be traced. At the time of accident, the deceased was the employee in the Mini-door van TN 36 X 4486, so, the appellant and the respondents 6&7 have to pay the compensation to the claimants.

4. Before the Tribunal, the appellant-Insurance Company filed a counter statement alleging that at the time of the accident, the driver did not have the requisite badge to drive the L.M.V vehicle and further stated that as per the policy, the claimant was not entitled to any compensation.

5. During the Trial, P.W.1 and P.W.2 were examined and Exhibits P1 to P9 were marked. On behalf of the respondents, R.W.1- employer and R.W.2 - Record keeper from the R.T.O office were examined. R.W.2 deposed that at the time of the accident, as per Ex.P8, the deceased was having only driving licence to drive the L.M.V, but no badge to drive the goods carrier and marked Exs.R2 and R3. The staff from the Insurance Company was examined as R.W.3 and marked the original Insurance Policy is Ex.R4 and also Motor Vehicle's Inspection Report as Ex.R7.

6. Based upon the oral and documentary evidence, the Tribunal has held that the accident took place due to the rash and negligent driving of the lorry. The monthly income of the deceased was taken as Rs.4,000/- and Rs.2,000/- was deducted. The Tribunal adopted formula under the Workmen's Compensation Act, taking the age as '29' and factor as 209.92 and awarded a sum of Rs.4,19,840/- (209.92x2000), as the claim petition was filed under Section 163-A of the Motor Vehicle's Act and the accident took place during the course of employment.

7. The appellant-Insurance Company would submit that since the driver did not possess necessary badge at the time of the accident, it amounts to violation of the terms and conditions of the policy and the appellant-Insurance Company is not liable to pay the compensation.

8. The issue of possession of endorsement or badge in driving licence is no longer res integra, in view of the Judgment pronounced by the Apex Court, in the case of Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (2) TN MAC 145 (SC), wherein, it has been held that once a licence is issued to drive 'Light Motor Vehicle', it would also mean specific authorization to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, should not exceed 7500 kg. Admittedly, the Mini-door van in the present case is below the prescribed weight and accordingly, in view of the above decision, this Court holds that there is no want of badge for the 'light motor vehicle' licence. Therefore, it does not amount to breach of policy condition and, hence, the said contention does not stand legal scrutiny.

9. In view of the above referred decision, it remains to be stated that as per Ex.R4 policy of the Insurance, which covers the period from 27.06.2007 to 28.06.2008, and the date of the accident being 26.02.2008, at the time of accident, the policy (Ex.R4) is duly in force and additional premium has been paid towards the driver and the nature of the policy, as could be seen from Ex.R4, being package policy, the appellant-Insurance Company is liable to pay the compensation.

10. Taking into consideration of the fact that at the time of the accident, there is an employer and employee relationship between the parties and necessary additional premium has been paid, the compensation has to be awarded under the Workmen's Compensation Act. To arrive at quantum, as the application is filed under Section 163 (A) of Motor Vehicle's Act, a sum of Rs.4,000/- is taken as salary as per the evidence of R.W.1.

11. As per the Constitutional Bench judgment of the Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601, 50% has to be included for future prospectus and further, as per the said decision, the age of the claimant should not be the criteria and only the age of the victim should be taken into account while calculating the compensation. Accordingly, considering the age of the deceased, the multiplier is fixed as '29' years.

12. Therefore, in the light of the decision of the Supreme Court in Managing Director, State Express Transport Corporation Limited, Vs. Radha and others reported in 2018 (1) TN MAC 592 (DB), wherein it is held that the Court could take suo motu decision to enhance the compensation award amount without any appropriate petitions made by the claimants/victims as per the Order XLI, Rule 33 of CPC and Section 151 of CPC as well as Article 227 of the Constitution of India. Hence, the relevant portion of the above said Judgment paragraph No.9 is extracted hereunder:-

"9. Though the Appeal has been preferred by the Transport Corporation, the facts and circumstances of the case, enables this Court to enhance the Compensation awarded by the Tribunal from Rs.14,57,000/- to Rs.17,83,600/- by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33, C.P.C., and Section 151 C.P.C., as well as Article 227 of the Constitution of India. Moreover, the provisions of Motor Vehicles Act are beneficial in nature and what is required to be awarded is Just and Reasonable Compensation. Therefore, even in the absence of Appeal/Cross-Appeal by the Claimants, this Court has got power and jurisdiction to enhance the Compensation, which has been recognised by the Honourable Supreme Court in Nagappa v. Gurdayal Singh, 2004 (2) TN MAC 398 (SC)."

13. Accordingly, the following calculation is made towards 'loss of income'.

$Rs.4,000/- + Rs.2,000/- = Rs.6,000/- \times 209.92 \times 50/100 = Rs.6,29,760/-$

14. The compensation awarded by the Tribunal is enhanced from Rs.4,19,840/- to Rs.6,29,760/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of payment.

15. In the result,

(i) The Civil Miscellaneous Appeal is disposed of to the limited extent indicated above. No costs. Consequently, connected M.P. is closed.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.4,19,840/- to Rs.6,29,760/-.

(iii) The claimants are directed to pay the court fee, if any, for the enhanced compensation amount.

(iv) The appellant/Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.6,29,760/- (less the amount if any already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 100 of 2010 on the file of the Motor Accidents Claims Tribunal, (Subordinate Judge) Sathiyamangalam, within a period of eight weeks from the date of receipt of a copy of this judgment.

(v) On such deposit being made, the respondents/claimants are permitted to withdraw their share of compensation amount, in the proportion mentioned by the Tribunal. As far as the minor respondents 2 and 3 are concerned, their respective share amount of compensation shall be deposited in any interest bearing Nationalized Bank and the interest accrued thereon shall be withdrawn by their natural guardian mother once in six months and their share of compensation amount shall be kept in deposit, periodically renewed till they attain majority.

सत्यमेव जयते
Sd/-

Assistant Registrar (CS-VI)

// True Copy//

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Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
(Subordinate Judge), Sathiyamangalam.

2.The Section Officer,
V.R.Section,
High Court, Madras.

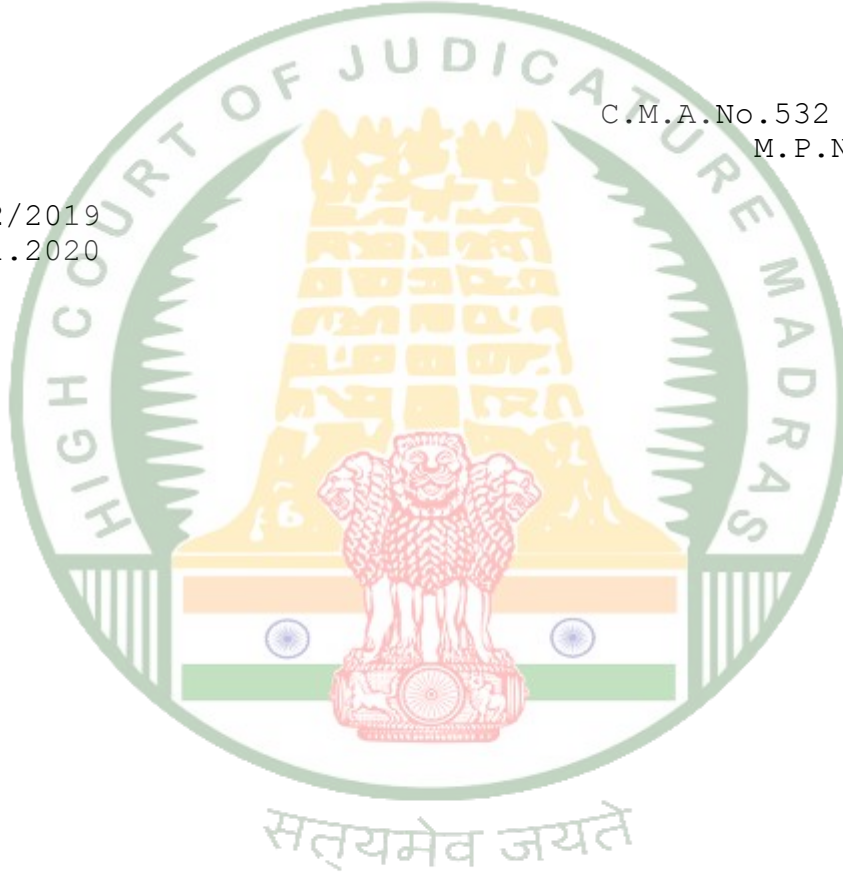
+lcc to Ms.R.Sree Vidhya, Advocate, SR.No.69087.

+lcc to Mr.P.Thangavel, Advocate, SR.No.68224.

+lcc to Government Pleader, SR.No.67873.

Judgment in
C.M.A.No.532 of 2012 and
M.P.No.1 of 2012

NRL (CO)
CSR: 16/12/2019
CSR: 22.01.2020



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