IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE. R.HEMALATHA

CMA.No.3056 of 2013 and
CMA No.3528 of 2013
and
M.P.No.1 of 2013

CMA No.3056 of 2013

P.Sadaiyappan ... Appellant/1st Respondent

Vs.

1. Punitha
2. Minor Mohana Eswari
3. Minor Jananeeswaran
4. Minor Mithin Jeyam
   Minor Respondents
   (R2 to R4 represented by their
   mother Punitha)
5. Jangiri
6. ICICI Lombord General Insurance Co. Ltd.,
   Coimbatore Town, Coimbatore District.

... Respondents/Claimants/2nd Respondent

CMA No.3528 of 2013

1. Punitha
2. Minor Mohana Eswari
3. Minor Jananeeswaran
4. Minor Mithin Jeya
   Petitioners 2 to 4 represented by their
   mother Punitha
5. Jangiri ... Appellants/Claimants

Vs.

1. P.Sadaiyappan
2. ICICI Lombord General Insurance Co. Ltd.,
   Coimbatore Town, Coimbatore District.

... Respondents/Respondents

Prayer in CMA No.3056 of 2013

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 12.07.2012 passed in MCOP No.134 of 2011 by the Principal District Judge/ Motor Accident Claims Tribunal, Dharmapuri.

Prayer in CMA No.3528 of 2013

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 12.07.2012 passed in MCOP No.134 of 2011 by the Principal District Judge/ Motor Accident Claims Tribunal, Dharmapuri.

Appearance in CMA No.3056 of 2013

For Appellant : Mr.V.Chinnasamy

For Respondents : Mr.S.Doraisamy (for R2 to R5)

Mrs.R.Srividhya (for R6)

Appearance in CMA No.3528 of 2013

For Appellants : Mr.S.Doraisamy

For Respondents : Mr.V.Chinnasamy (for R1)

Mrs.R.Srividhya (for R2)

COMMON JUDGMENT

1. The claimants filed the claim petition in MCOP No.134 of 2011 on the file of the Principal District Judge/Motor Accident Claims Tribunal, Dharmapuri under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the death of one Sagadevan, (husband of the first claimant, father of the claimants No.2 to 4 and son of the 5th claimant) in a road accident that took place on 22.09.2010.

2. The case of the claimants is that on 22.09.2010, at about 9.00 hours, the deceased was travelling as a pillion rider in a two wheeler TVS Star City bearing registration No.TN-38-AV-7717, which was ridden by its owner Senthil Athiban on Coimbatore-Palakad Road. When they were nearing Kuniamuthur Vahab Petrol bunk, a speeding tipper lorry bearing registration No.TN-28-W-1454 hit the two wheeler, as a result of which, the deceased fell down and the back wheel of the tipper lorry ran over him and he died on the way to hospital. According to the claimants, the rash and negligent driving of the tipper lorry was the cause of accident and that since the owner of the lorry (first respondent) insured his vehicle with the 2nd respondent, ICICI Lombord General Insurance Company Limited, both of them are jointly and severally liable to pay compensation to them.

3. The owner of the tipper lorry, the first respondent remained absent before the Tribunal and therefore, he was set exparte. The 2nd respondent, Insurance Company contested the claim petition contending that the lorry was not insured with them on the date of accident.

4. The learned Principal District Judge/Motor Accident Claims Tribunal, Dharmapuri, after analysing the evidence on record, awarded a compensation of Rs.5,96,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The Tribunal further held that since the tipper lorry was not insured with the 2nd respondent, ICICI Lombord General Insurance Company Limited, on the date of accident, they are not liable to pay compensation to the claimants. Therefore, the Tribunal directed the first respondent, the owner of the tipper lorry to pay the entire compensation amount to the claimants together with interest. Aggrieved over the orders passed by the Tribunal, the first respondent/owner of the tipper lorry filed the appeal in CMA No.3056 of 2013 questioning his liability, while the claimants have filed the appeal in CMA No.3528 of 2013 seeking enhancement of compensation.

5. Mr.V.Chinnasamay, learned counsel appearing for the appellant/owner of the tipper lorry contended that the claimants filed a copy of the insurance policy (Ex.P3), which would clearly go to show that the tipper lorry was insured with the 2nd respondent on the date of accident. He therefore, contended that the Tribunal was wrong in exonerating the liability of the insurance company from paying compensation to the claimants.

6. Per contra, Mrs.R.Srividhya, learned counsel appearing for the 2nd respondent/Insurance Company contended that though the tipper lorry was initially insured with the 2nd respondent for the period from 07.2.2009 to 06.02.2010, the same was not renewed subsequently and that Ex.P3 was not issued by them. She also drew the attention of this court to Ex.P3, which is allegedly photostat copy of the insurance policy for the period from 07.02.2010 to 06.02.2011 and the previous policy issued by them for the period from 07.02.2009 to 06.02.2010 and contended that in both the policies, the cover note number is indicated as 53466051, which would clearly go to show that Ex.P3 was fraudulently created by the first respondent/ owner of the tipper lorry. She therefore, prayed for dismissal of the appeal filed by the owner of the tipper lorry.

7. The learned Principal District Judge/Motor Accident Claims Tribunal, Dharmapuri had dealt with the above aspect in extenso and concluded that Ex.P3 was not issued by the 2nd respondent/insurance company for the period from 07.02.2010 to 06.02.2011. It is also to be noted that the owner of the lorry remained absent before the Tribunal and was set exparte. Even in the appeal, the original insurance policy for the relevant period has not been filed by the appellant. The observations made by the Tribunal, especially in paragraph No.10 of its order clearly show that the Tribunal

had considered the oral and documentary evidence adduced on both side and had come to the conclusion that the Ex.P3 is a fake document. Therefore, I do not see any reason to interfere with the findings recorded by the Tribunal in this regard and the appeal in CMA No.3056 of 2013 filed by the first respondent/owner of the tipper lorry is liable to be dismissed.

8. As far as the quantum of compensation is concerned, Mr. S.Duraisamy, learned counsel appearing for the appellants/claimants contended that the deceased was a painter by profession on the date of accident and when it is specifically contended in the claim petition that he was earning a sum of Rs.10,000/- per month, the Tribunal had fixed the monthly income of the deceased only as Rs.4,500/-. He further contended that no amount was awarded towards " future prospects" and therefore the award passed by the Tribunal has got to be enhanced.

9. It is stated that the deceased was a painter by profession and the accident took place during the year 2007. Therefore, notional income of the deceased is fixed at Rs.7,500/-. As per the decision of a Constitution Bench of the Honourable Supreme Court in National Insurance Company Vs. Pranay Sethi and others reported in 2017(2) TN MAC 601, future prospects at 40% should also be added to the income of the deceased (7000 +3000= 10,500). On the date of accident, the deceased was aged 38 years and the proper multiplier to be adopted in the instant case is '15 ', as per the decision in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. There are 4 persons depending on the income of the deceased. Therefore, 1/4th should be deducted towards personal expenses of the deceased. Thus, Loss of dependency is calculated as follows.

Notional Income + 40% future prospects(7,500+3000)= 10,500
Less: 1/4th towards personal expenses (10,500-2625)= 7,875
Proper multiplier = 15
Loss of dependency (7,875x12x 15) = 14,17,500

In addition to that, the claimants are also entitled to Rs.15,000, Rs.15,000/- and Rs.40,000/- towards "Loss of Estate", "Funeral Expenses" and "Loss of consortium" to the first claimant. The revised compensation awarded under various heads is extracted hereunder.

Sl.No	Heads	Amount
1	Loss of dependency (7875x12x15)	14,17,500
2	Loss of consortium to the first claimant	40,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
	Total	14,87,500

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition.

10. In the result,

(i) The appeal in CMA No.3056 of 2013 is dismissed. No costs. The orders passed by the Tribunal by fixing the liability on the first respondent/ owner of the tipper lorry to pay compensation to the claimants is upheld.

(ii) The appeal in CMA No.3528 of 2013 is allowed. No costs. The connected miscellaneous petition is closed.

(iii) The compensation awarded by the Tribunal is enhanced from 5,96,000/- to Rs.14,87,500/-

(iv) The first respondent/owner of the tipper lorry is directed to deposit the enhanced compensation amount of Rs.14,87,500/- together with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit (less the amount already deposited by him), within 4 weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the first respondent/ owner of the tipper lorry, the claimants are entitled to withdraw the same, after following due process of law and as per the apportionment made by the Tribunal.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

mst

To

1. The Principal District Judge,
Motor Accident Claims Tribunal, Dharmapuri

+1cc to Mr.S.Doraisamy, Advocate SR.No.80148

+1cc to Mr.V.Chinnasamy, Advocate SR.No.79634

+1cc to Mrs.R.Srividhy, Advocate SR.No.86291

CMA.No.3056 of 2013 and
CMA No.3528 of 2013
and
M.P.No.1 of 2013

GJ(CO)
GMY(09/12/2019)