IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.2740 of 2019
and
CMP.No.13937 of 2019

1.Anbhalagan
2.Baskar
3.Bhavani
4.Lakshmi

...Appellants/Petitioners

vs.

1.G.Vadivelan
2.ICICI Lombard General Insurance Co., Ltd.,
Motor III Party Claims Office,
1st floor, Arihant Plaza, No.84/85
Walltax Road, Parry's Corner,
Chennai 600 003. ...Respondents/Respondents

PRYAER:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 16.11.2018, in M.C.O.P.No.347 of 2015, on the file of I Special Sub-Judge, Small Causes Court, Chennai.

For Appellants : M/s.T.G.Balachandran
For Respondents : Mr.K.Poomalai for R2
Exparte - R1

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 16.11.2018, in M.C.O.P.No.347 of 2015, on the file of I Special Sub-Judge, Small Causes Court, Chennai.

2. The brief facts of the case is as follows:

On 06.10.2014, at about 05.45 hours, when the deceased was travelling as a pillion rider in the motorcycle bearing Regn.No.TN-01-AP-3746 at Arcot Road, Kodambakkam near the junction of Ganga Nagar Main Road from West to East and due to rash driving, the motorcycle mounted a pit resulting in falling of the pillion rider causing grievous head injuries which ultimately proved fatal. Hence, the appellants made a claim for a sum of Rs.10,00,000/- as compensation.

3. The second respondent/Insurance Company contested the claim by filing a counter statement, inter alia stating that they are not liable to pay the compensation and denies the averments made by the petitioners/appellants. They further contends that the petition is not maintainable either on facts or in law against them. They have contested on the aspect that the motor cycle alleged to have caused the accident was insured with them at the time of accident. They denied the age, occupation and income of the deceased, place, date and time of accident and the petitioners are put to strict proof of the same. The claim of the appellants is highly exorbitant and does not bear any legal equitable and reasonable basis. Therefore, the Insurance Company prayed for dismissal of the claim petition.

4. Before the Tribunal, first appellant/first petitioner was examined as PW1 and Two eye-witnesses viz., PW2 and PW3 were also examined. Ex.P1 - FIR Copy, Ex.P2 - Rough sketch copy, Ex.P3-Post mortem certificate copy, Ex.P4-Final report copy, Ex.P5-Legal heirship certificate copy, Ex.P6 -Aadhaar card copy of petitioners 1 to 3 & Voter ID card copy of fourth petitioner, Ex.P7- Bank passbook copy of petitioners 1 to 4 and Ex.P8- Aadhaar card copy of PW3 were marked. On behalf of the Insurance Company, neither any witness was examined nor any document was marked.

5. The Tribunal, after analyzing the entire evidence both oral and documentary, has come to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the motor cycle bearing Regn.No.TN-01 AP-3746 insured with the second respondent/Insurance Company and held that Insurance Company is liable to pay the compensation. By coming to such conclusion, the Tribunal has made calculation under different heads and passed an award for a total compensation amount of Rs.4,50,000/-. The breakup details of the compensation are as follows:-

S.No	Head	Amount granted
1.	Total Loss of Dependency	Rs.3,15,000/-
2.	Loss of love and affection	Rs.1,00,000/-
3.	Loss of Estate	Rs. 5,000/-
4.	Transport Charges	Rs. 5000/-
5.	Funeral Expenses	Rs. 15,000/-
	Total	Rs.4,50,000/-

6. Aggrieved against the quantum of compensation awarded by the Tribunal, the appellants/claimants have filed the present

appeal under Section 173 of the Motor Vehicles Act, 1988 seeking for enhancement of compensation.

7. The learned counsel appearing for the appellants/claimants would contend that the Tribunal has failed to consider that there are four dependants for the deceased and out of that, the fourth dependant is unmarried and as such she has earned more amount and therefore, notional income has to be accordingly fixed at Rs.7500/- instead of Rs.5000/- fixed by the Tribunal. Further they contends that in the post-mortem certificate of the deceased her age was mentioned as 61 years, but she was only 60 years at the time of the accident and hence the multiplier should be '9' instead of '7'. Further, the Tribunal ought to have taken the future prospects at 15% adopted the age of the deceased as 60. The Tribunal has failed to grant any sum under the head of partental consortium. The Tribunal has awarded a meagre sum of Rs.4,50,000/- only as against the facts and circumstances of the case. The order of the court below is contrary to law, weight of evidence, facts and probabilities of the case.

8. On the other hand, the learned counsel appearing for the second respondent/Insurance Company submitted that the accident occurred solely due to the negligence of the deceased/pillion rider who was seated in an inebriated condition in the motor cycle. The appellants have to prove that the driver of the motor cycle alleged to have been insured with this respondent had a valid effective license/endorsement/badge on the date of accident. They submitted that the appellants have to prove valid registration certificate, fitness certificate and tax on the date of accident. The appellants are put to strict proof of their relationship with the deceased and should further establish that they alone are dependants and entitled to sue and there is no other legal heir to the deceased.

9. Heard learned counsel appearing for the appellants/claimants and as well as learned counsel appearing for the respondent/Insurance Company.

10. On perusal of the records, it is seen that the deceased sustained injuries in the accident that occurred on 06.10.2014 at 05.45 hours, while she was travelling in a motor cycle as a pillion rider.

11. It is also seen that the Tribunal perused the evidences adduced on both sides and also the documents and came to the conclusion that the accident occurred due to the rash and negligent riding of the motorcycle bearing Regn.No.TN-01-AP-3746. It is observed that the vehicle has been insured with the second respondent under the Policy

No.3005/20110880571/00/0000000024 for the period from 12.04.2014 to 11.04.2015 and the date of accident was on 06.10.2014 and the second respondent also not denied the policy mentioned by the appellants. Therefore, it is considered that the said vehicle had a valid insurance policy issued by the second respondent at the time of accident. Hence, it concluded that the insurer is liable to pay the compensation to the appellants/petitioners and accordingly, awarded a sum of Rs.4,50,000/- as compensation to the appellants/petitioners.

12. The grievance of the appellants is that when it is clearly proved before the Tribunal that the deceased was a flower vendor at the time of accident and was earning Rs.10000/- p.m., the Tribunal has fixed only a sum of Rs.5000/- p.m., but there was no proof placed before the Tribunal. The appellants examined one witness, who is also a flower vendor along with the deceased and who had clearly spoken that the deceased was a flower vendor and both were selling flowers near temple and also in the residential areas and, hence this court is of the view that the notional income taken by the Tribunal at Rs.5000/- p.m., is very much on the meagre side. Other grievance of the appellants is with regard to the assessment of the age taken by Tribunal based on the post-mortem certificate at 61 years. But the appellants have filed the two documents viz., Ration card and Voter ID card to prove the fact that the deceased was aged about 60 years and not even completed 59 years. In this connection, the appellants has relied upon the cases where in the High Court as well as Supreme Court laid down the principles in taking the notional income of the person of certain category. In this case, the Tribunal ought to have taken income at Rs.9000/- and the age of the deceased has to be taken below 60 years and proper multiplier has to be adopted by the Tribunal and the sum awarded under the other heads viz., loss of Love and Affection is also very meagre.

13. On the other hand, the second respondent contended that a claim of Rs.10000/-p.m., for a flower vendor, and aged about 60 years is highly excessive. It is also brought to the notice of this court that even in the claim petition, the age of the deceased has been stated as 60 years and the same is not proved. Hence, it is considered that the assessment of the age based on the post-mortem certificate is very much reasonable and the same does not require any modification in the absence of any supporting document placed before the Tribunal. They further contends that the age as well as notional income taken by the Tribunal for awarding compensation are very much reasonable in the absence of any reliable documents. The Ration card or Voter ID card are not reliable for assessing the age of the deceased. Hence, the award made by the Tribunal is reasonable and does not require any modification.

14. On perusal of records, it is seen that the age of the deceased has been taken properly by the Tribunal based on the post-mortem certificate. Further, there cannot be any future prospects for the deceased who was 60 years. Hence, the assessment made by the Tribunal with regard to the age and the multiplier as well as income is reasonable.

15.While dealing with the notional income, the income of earning of house wife is also to be considered. In other words, an earning woman can support her family financially as well as by doing all the household works. Hence, considering the occupation of the deceased who was a flower vendor, her notional income taken by the Tribunal at Rs.5000/- p.m., is meagre and the same has to be enhanced and accordingly, this court re-fix a sum at Rs.6500/- p.m., as income of the deceased. Hence, total loss of dependency is calculated by deducting ¼ towards the personal expenses and adopting the multiplier '7', which would be Rs.4,09,500/- (6500x12x1/4x7)

6500x12=78000x1/4=19500

78000-19500=58500x7=Rs.4,09,500/-

16. In so far as the compensation awarded by the Tribunal under other heads are concerned, viz., Love and Affection at Rs.1,00,000/-, Loss of Estate at Rs.15000/-, Transport Charges at Rs.5000/- and funeral expenses at Rs.15,000/-, this court is of the view that it appears to be just and reasonable and hence, they stand confirmed.

17. The compensation awarded by the Tribunal is modified by this Court under various heads as follows:

S.No	Head	Sum awarded by the Tribunal	Sum awarded by this Court
1.	Total Loss of Dependency	Rs.3,15,000/-	Rs.4,09,500/-
2.	Loss of love and affection	Rs.1,00,000/-	Rs.1,00,000/-
3.	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-
4.	Transport Charges	Rs. 5,000/-	Rs. 5000/-
5.	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
Total		Rs.4,50,000/-	Rs.5,44,500/-

Thus, the claimants are entitled to a sum of Rs.5,44,500/- together with interest at the rate of 7.5% per annum.

18. In the result,

(i)The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(ii)The compensation awarded by the Tribunal is enhanced from Rs.4,50,000/- to Rs.5,44,500/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii)The claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv)The second respondent/Insurance Company is directed to deposit the entire amount awarded 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 judgment, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer the amount to the claimants' bank account through RTGS within a period of two weeks thereon. On such deposit, the appellants are permitted to withdraw their respective share of the award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn after following due process of law.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gv

To

1. The I Special Sub-Judge,
   Small Causes Court, Chennai.

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

+1 CC to Mr.K.Poomalai, Advocate sr 69481.

C.M.A.No.2740 of 2019
and
CMP.No.13937 of 2019

PVS(CO)
SP(30/11/2020)