IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1205 of 2014

1. Rajangam
2.Selvanayaki ...Appellants

.Vs.

1.Meganathan @ Megavannan
2.The Divisional Manager,
The New India Assurance Company Ltd.,
having office at Cuddalore. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 04.07.2012 passed in MCOP.No.76 of 2010 on the file of the Motor Accident Claims Tribunal / II Additional District Judge, Cuddalore, at Chidambaram.

For Appellants : Mr.A.Murugan
For Respondents : Mr.A.Tamilvanan for R1
No appearance for R2

JUDGMENT

The appellants are the claimants in MCOP No.76 of 2010 on the file of the II Additional District Judge / Motor Accident Claims Tribunal, Cuddalore, Chidambaram. They filed the claim petition under Section 166(1) of the Motor Vehicles Act seeking compensation of Rs.15,00,000/- for the death of their son Anand alias Anandhan in a road accident that took place on 19.10.2006.

2. The case of the claimants is that on 19.10.2006, when the deceased was travelling in a Tempo goods vehicle bearing Registration No.TN.21/L 4752 belonging to the 1st respondent and insured with the 2nd respondent, the driver of the Tempo van drove his vehicle rashly and negligently as a result of which, the van got capsized near Vayaloor Check post and the deceased sustained multiple injuries all over his body and died on the spot. According to the claimants, the rash and negligent driving of the driver of the Tempo van was the cause of the accident and that since the van was insured with the 2nd respondent Insurance Company, both of them are jointly and severally liable to pay compensation to them.

3. The learned II Additional District Judge / Motor Accidents Claims Tribunal, Cuddalore at Chidambaram, after analysing the evidence on record awarded a compensation of Rs.2,94,000/- together with interest at the rate of 7.5% per

annum to the claimants. The Tribunal further observed that since the deceased travelled in a tempo van as gratuitous passenger, the 2nd respondent is not liable to pay compensation to the claimant. In fact, the Tribunal had fixed the liability on the owner of the Tempo van (1st respondent). Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal.

4. Mr.A.Murugan, learned counsel appearing for the appellant contended that the deceased was travelling in the cabin with the driver and he travelled along with his goods in the van. His specific contention is that merely based on the evidence of PW2 and PW3, the Tribunal should not have been come to a conclusion that the deceased is a gratuitous passenger in the Tempo van belonging to the 1st respondent. He also prayed for enhancement of compensation since the Tribunal has awarded a very meagre amount of Rs.2,94,000/- to the claimants, especially when the deceased was just aged 22 years on the date of accident.

5. No appearance on behalf of the 2nd respondent.

6. Mr.A.Tamilvanan, learned counsel appearing for the 1st respondent drew the attention of this Court to Rule 236 of the Tamil Nadu Motor Vehicles Rules 1989, which provides that no person shall carry the goods beyond the number for which there is a sitting accommodation. His specific contention is that as per Rule 236, six persons can be seated in the Tempo van.

7. A perusal of the Insurance policy marked as Ex.P3 shows that the seating capacity in the Tempo van is 2 + 1. In the FIR (Ex.P1), it is stated that the deceased was travelling in the Tempo van along with his goods. There is nothing on record to show that the deceased was sitting on the load area of the Tempo van.

8. In United India Insurance Company Vs. Nagammal and others reported in 2009 (1) CTC 1, a Larger Bench of this court has held that in case of passengers in a goods vehicle, unless it is shown that they were travelling either as the owners of the goods or as authorised representative of the owner of the goods "within the permitted seating capacity", the Insurance Company would not be held liable to pay compensation. As per the present case is concerned, the specific contention of the claimants is that the deceased was seating in the cabin within the permitted seating capacity.

9. Section 147 of the Motor Vehicles Act enjoins upon the insurer certain requirements in relation to the use of particular vehicle. They are (i) the policy must specify the persons or class of persons, who are insured with respect to their liability to third parties (ii) the policy must specify the extent of liability which must extend to the extent specified in sub Section 2 of Section 147 and (iii) the

liability which may be incurred by the specified persons or class of persons in respect of death or bodily injury to any person caused by or arising out of use of the vehicle in a public place. In fact, Section 147(1)(b)(i) was amended with effect from 14.01.1994 and it includes the owner of the goods or his authorised representative carried in the vehicle".

10. As already observed since the deceased was sitting within the seating capacity of the goods vehicle and as the owner of the goods in the Tempo van, the 2nd respondent Insurance Company is also liable to pay compensation. Therefore, the conclusion of the Tribunal exonerating the liability of the Insurance company is set aside.

11. It is seen from the records that the deceased was aged 22 years on the date of accident and he was a Mason by profession. The Tribunal has fixed the monthly income of the deceased as Rs.4000/- per month. Since the accident took place in the year 2006, the notional income of the deceased is fixed at Rs.7,500/-. Considering the age of the deceased as per the decision in National Insurance Co. vs Pranay Sethi and others reported in 2017 (2) TNMAC 601 (SC), 40 % should be added to the income of the deceased towards future prospects. The proper multiplier to be adopted in the instant case is 18 as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.7,500/-
40% Future Prospects = Rs.3,000/-
Total = Rs.7,500/- + Rs.3,000/- = Rs.10,500/-
After 50% deduction = Rs.5250/-

Loss of dependency:

= Rs.5250 x 12 x 18
= Rs.11,34,000/-

12. Apart from the above said amount, the appellants / claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards loss of estate, loss of love and affection and funeral expenses respectively. The award passed under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.11,34,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.12,04,000/-

13. Thus, the compensation awarded by the Tribunal is

enhanced from Rs.2,94,000/- to Rs.12,04,000/-.

14. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.2,94,000/- to Rs.12,04,000/-.

(iii) The order of the Tribunal exonerating the liability of the Insurance Company is set aside.

(iv) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(v) The second respondent, New India Assurance Company Ltd., is directed to deposit the enhanced compensation amount i.e., Rs.12,04,000/- (less the amount 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 MCOP.No.76 of 2010 on the file of the Motor Accident Claims Tribunal / II Additional District Judge, Cuddalore at Chidambaram, within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the apportionment made by the Tribunal and after following due process of law.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The II Additional District Judge,
The Motor Accidents Claims Tribunal,
Cuddalore at Chidambaram.

Copy To

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

+1cc to Mr.A.Murughan, Advocate, S.R.No. 80877

CMA.No.1205 of 2014

SV(CO)
GN(09/01/2020)