IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2248 of 2017 and
C.M.P.No.11962 of 2017

The Divisional Manager,
M/s.Oriental Insurance Company Ltd,
No.8-1-210, Opposite to District Court,
Chittoor, Andhra Pradesh. .. Appellant/2nd Respondent

Vs.

1.Ramanjulu
2.Jayammal ... Respondents 1 & 2/Petitioners
3.M.Rajesh ... 3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.03.2017 made in M.C.O.P.No.169 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Gudiyattam.

For Appellant : Mr.D.Bhaskaran

For RR1 & 2 : M/s.Dass & Viswa Associates

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 16.03.2017 made in M.C.O.P.No.169 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Gudiyattam.

2.The respondents 1 and 2 are the claimants in M.C.O.P.No.169 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Gudiyattam. They filed the above said claim petition, claiming a sum of Rs.33,00,000/- as compensation for the death of their son viz.,Ramamoorthy @ Moorthy, who died in the accident that took place on 02.03.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent riding by the rider of the two wheeler belonging to the third respondent and directed the appellant-

Insurance Company, being the insurer of the vehicle to pay a sum of Rs.16,83,000/- as compensation to the respondents 1 and 2/claimants at the first instance and recover the same from the third respondent, the owner of the two wheeler, as the rider of the two wheeler did not possess driving license at the time of accident.

4.Against the said award dated 16.03.2017 made in M.C.O.P.No.169 of 2013, the appellant-Insurance Company has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the deceased was a pillion rider at the time of the accident. The policy issued by the appellant is only an Act policy, that is statutory policy and it does not cover risk of death or bodily injury. The liability on the Insurance Company depends upon nature of contract based on the premium collected. When additional premium is not collected, the Insurance Company cannot be made liable. The Tribunal failed to consider the Judgment of the Hon'ble Apex Court and directed the appellant to pay the compensation. In any event, the amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal in so far as policy is concerned.

6.Per contra, the learned counsel appearing for the first and second respondents contended that the appellant did not plead and prove that policy issued by them is only a statutory policy and did not cover the claim of the pillion rider. No arguments were advanced before the Tribunal that they are not liable to pay the compensation to the pillion rider. The Tribunal considering all the materials available on record has held that the appellant is liable to pay the compensation. The 3rd respondent did not possess driving license and therefore the Tribunal ordered pay and recovery. The Tribunal considering the nature of work, income and age of the deceased, awarded total compensation of Rs.16,83,000/- and prayed for dismissal of the appeal.

7.I have heard the learned counsel appearing for the appellant as well as the respondents 1 and 2 and perused all the materials available on record.

8.The learned counsel appearing for the appellant contended that the Tribunal erred in holding that the appellant is liable to pay the compensation without appreciating terms of policy marked Ex.R1. According to the learned counsel for the appellant, policy issued by the appellant is only an Act policy and it does not cover the claim by pillion rider. This contention is without merits. From the award of the Tribunal it is seen that the appellant has not stated in the counter statement that the policy issued by the appellant is only an Act policy and it does not cover the claim of pillion rider. In the absence of pleadings, the Tribunal considering the averments in the claim petition, counter statement and evidence let in by the parties, held that the appellant is liable to pay the compensation. The 3rd respondent did not possess driving license at the time of accident and therefore the Tribunal ordered pay and recovery. There is no error in the award passed by the Tribunal warranting interference by this Court.

9.As far as quantum of compensation is concerned, the accident has occurred in the year 2013. The respondents 1 and 2 produced Ex.P12/salary certificate so show that deceased was earning a sum of Rs.19,250/- per month. The Tribunal did not accept the same, and fixed notional income of deceased at Rs.9,000/- per month and deducted 50% towards his personal expenses, applied multiplier and granted compensation. The Tribunal awarded 50% enhancement towards future prospects the same is not correct. The respondents 1 and 2 are entitled to only 40% enhancement towards future prospects. Thus, the compensation awarded by the Tribunal towards loss of income is modified as follows:

Rs.6,300/- (Rs.4,500/- + 40% of Rs.4,500/-) X 12 X 18 = Rs.13,60,800/-

The Tribunal has awarded a sum of Rs.2,00,000/- towards loss of love and affection, which is excessive and the same is reduced to Rs.80,000/-. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and the same is reduced to Rs.15,000/-. The Tribunal has not granted any amount towards loss of estate. Therefore, a sum of Rs.15,000/- has been granted by this Court towards loss of estate. 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 | 14,58,000/- | 13,60,800/- | reduced |
| 2. | Loss of Love and affection | 2,00,000/- | 80,000/- | reduced |
| 3. | Funeral expenses | 25,000/- | 15,000/- | reduced |
| 4. | Loss of estate | - | 15,000/- | granted |
| | Total | Rs.16,83,000/- | Rs.14,70,800/- | Reduced by Rs.2,12,200/- |

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,83,000/- is hereby reduced to Rs.14,70,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court together with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the third respondent, owner of the vehicle. On such deposit, the respondents 1 and 2/claimants are permitted to withdraw their respective share of the modified award amount, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

tta/krk

To

1.The Subordinate Judge.
Motor Accident Claims Tribunal,
Gudiyattam.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.13930
+1cc to Mr.Dass & Viswa Associates, Advocate, S.R.No. 14864



C.M.A.No.2248 of 2017 and
C.M.P.No.11962 of 2017

RJI(CO)
GN(23/07/2019)