IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2986 of 2017 & 1358 of 2018
and
C.M.P.No.17626 of 2017

C.M.A.No.2986 of 2017

National Insurance Co.Ltd.,
No.751, Anna Salai,
Chennai - 600 002. .. Appellant /2nd Respondent

-vs-

1.Jansi Rani
2.Minor Gnana Arputharaj
3.Minor Gnana Athisayaraj
(2 & 3 are minors, rep.by their mother, guardian and next friend Mrs.Jansi Rani)

4.Mary Ponnammal ...Respondents 1 to 4/Petitioners

5.M/s.Deepak Agencies,
No.66, Thambu Chetty Street,
Chennai - 600 001. .. 5th Respondent/1st Respondent
(R5-remained exparte before the tribunal hence his presence may be dispensed with)

PRAYER: Civil Miscellanous Appeal filed under Order Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 09.09.2016 made in M.C.O.P.No.685 of 2013 on the file of the Motor Accident Claims Tribunal (II Additional District Judge) at Poonamallee.

For Appellant : Mr.R.Ravichandran

For Respondents : Mr.F.Terry Chellaraja

C.M.A.No.1358 of 2018

1.Jansi Rani
2.Minor Gnana Arputharaj
3.Minor Gnana Athisayaraj

(2 & 3 are minors, rep.by their
mother, guardian and next
friend Mrs.Jansi Rani)

4.Mary Ponnammal ... Appellants/Petitioners

-vs-

1.M/s.Deepak Agencies,
No.66, Thambu Chetty Street,
Chennai - 1.
(R1-remained exparte before the Tribunal hence
his presence may be dispensed with)

2.National Insurance Company Limited,
No.751, Annasalai,
Chennai - 600 002. .. Respondents/Respondents

PRAYER: Civil Miscellanous Appeal filed under Order Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 09.09.2016 made in M.A.C.T.O.P.No.685 of 2013 on the file of the Motor Accident Claims Tribunal (II Additional District Judge) at Poonamallee.

For Appellants : Mr.F.Terry Chellaraja

For Respondents : Mr.R.Ravichandran

C O M M O N J U D G M E N T
(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

The appeals have been preferred by the Insurance Company as well as Claimants aggrieved over the finding regarding the negligence as well as quantum.

2.One Mr. Bothi Ponraj, 41 years old, allegedly working as a Driver cum Office Assistant in a private concern, earning about Rs.21,000/- per month, died in an accident occurred on 18.05.2013, when he was riding his two wheeler from East to West on the Chennai-Bangalore Highway and hit behind a container lorry which was parked on the road without exhibiting any signal. Therefore, the claim petition. On contest, the tribunal found that the accident occurred because of the parking of the container lorry without exhibiting proper signal on the Highways and found that the container lorry was not having valid licence to run on the road and therefore, directed a compensation of Rs.25,00,000/- to be paid to the claimants by the Insurance Company and recover the same from the owner of the container lorry.

3.Heard Mr.R.Ravichandran, learned Counsel appearing for the Insurance Company and Mr.F. Terry Chellaraja, learned Counsel appearing for the claimants.

4.The learned Counsel appearing for the Insurance Company would submit that even if the container lorry was parked on the road without exhibiting any signal, it is the bounden duty of the victim to ride the vehicle very slowly and he could have avoided the accident, if he had ridden the vehicle in a normal speed. Therefore, contributory negligence should have been fastened upon the victim. Further, he would submit that a sum of Rs.21,000/- taken as monthly income is without any basis though the company's representative, PW3, employer in his evidence stated that the salary was paid in cash. The learned Counsel contended that no company, that too a private limited company would pay Rs.21,000/- in cash. Therefore, he seeks to reduce the amount as far as the monthly salary fixed by the tribunal is concerned.

5.However, Mr.Terry Chellaraja, learned Counsel appearing for the claimants would submit that the negligence aspect is based on the evidence of the witnesses and therefore, the said finding cannot be disturbed. Regarding the sum of Rs.21,000/- determined by the tribunal as monthly income, he would submit that it is based on PW3 evidence apart from the documentary evidence.

6.Heard the parties and perused the records.

7.There is no dispute with regard to the manner of accident. The accident occurred at 10.30 P.M. in the night. If the container lorry was parked on the road, there should a parking light and there should be a signal to show that the vehicle is parked. Even Ex.P.1 FIR would denote that there was no parking light to show that vehicle was parked. PW2, eye witness also spoke about the manner of the accident that because of the absence of parking signal, the accident had occurred. Further, there is no direct evidence adduced on the side of the Insurance company. Only the officials from the Insurance Company have been examined. When Ex.P.1 FIR, categorically speaks about parking of the vehicle without parking light and the same was corroborated by PW2, eye witness, in the absence of any contra evidence, the finding regarding negligence cannot be disturbed and therefore, the Insurance Company is liable to pay the amount.

8.With regard to the payment of compensation, it is submitted that the container lorry has got no permit and therefore, the Insurance Company is not liable to pay the amount. The said contention has to be accepted and it was rightly accepted by the tribunal and therefore, pay and recovery was ordered by the tribunal. The said direction given by the tribunal to the Insurance Company to pay the amount and recover the same from the owner is right and the same is confirmed.

9.With regard to the quantum, it is an admitted case that the deceased was working as a driver and the only dispute is with regard to the quantum of monthly salary. According to the claimants, it is only Rs.21,000/- as proved by PW3 evidence, whereas, the Insurance Company would submit that Rs.21,000/- cannot be paid in cash though PW3 himself stated that the amount was paid in cash. The said contention of the Insurance Company is acceptable since no company would pay Rs.21,000/- in cash. Therefore, Rs.21,000/- fixed by the tribunal is set aside.

10.As proved by Ex.P.7, the deceased was a driver. The date of the accident is 18.05.2013. It is very difficult to get a driver nowadays. In the year 2013 also, it would have been very difficult to get a driver for less than Rs.15,000/- per month. Therefore, Rs.15,000/- is taken as monthly income of the deceased.

11.The age of the deceased was 41 years. As per the Judgment in "Pranay Sethi's case" 25% has to be added towards future prospects. If 25% is added, the monthly income of the deceased would be Rs.15,000 + 25% = Rs.18,750/-.

12.The size of the family is 4. Therefore, 1/4th has to be deducted towards personal expenses and the multiplier to be applied in this case is '14' as per the Judgment of "Sarala Verma's case". Hence, loss of income would be Rs.18750/- x 12 x 14 - 1/4 = Rs.23,62,500/-

13.The tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium to the 1st claimant and the same has to be reduced to Rs.40,000/- as per the Judgment of "Pranay Sethi's case". Similarly, Rs.5,50,000/- awarded towards loss of love and affection to the children and the mother of the deceased has to be reduced to Rs.1,50,000/- viz., Rs.1,00,000/- to the children and Rs.50,000/- to the mother of the deceased. Rs.50,000/- awarded towards funeral expenses and transportation is reduced to Rs.30,000/- and further Rs.25,000/- awarded towards transportation is set aside. No amount has been awarded towards Loss of Estate and therefore, Rs.15,000/- is awarded. Rs.2,000/- awarded towards Damages of clothes is confirmed. Therefore, the sum of Rs.25,00,000/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of Income	23,62,500/-
2.	Loss of Love and affection	1,50,000/-
3.	Funeral Expenses & Transportation	30,000/-
4.	Loss of consortium	40,000/-
5.	Loss of estate	15,000/-
6.	Damages to clothes	2,000/-
	Total	25,99,500/-
	Rounded Off	26,00,000/-

14.Hence, the total compensation payable in this case is Rs.26,00,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

15. The Insurance company is directed to deposit the entire award amount as per the order of this Court before the trial Court along with interest and costs by deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the tribunal is directed to transfer the respective shares of the major claimants as per the ratio fixed, through RTGS within a period of one week except the shares of the minors. The compensation awarded to the minors shall be equally shared by them and the same shall be deposited in any one of the Nationalized Banks in the interest bearing Fixed Deposit until they attain majority. Additional Court fee if any, has to be paid by appellants within a period of two weeks from the date of receipt of a copy of this order.

16. Accordingly, C.M.A.No.2986 of 2017 is partly allowed and C.M.A.No.1358 of 2018 is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The II Additional District Judge,
Poonamallee.

Copy to:
The Section Officer,
Vernacular Records,
High Court, Madras-104.

+1cc to Mrs.M.Malar, Advocate, S.R.No.55046

C.M.A.Nos.2986 of 2017 & 1358 of 2018
and
C.M.P.No.17626 of 2017

NR(CO)
CB(02/09/2020)