BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON:08.02.2019
PRONOUNCED ON: 05.04.2019
CORAM
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.(MD).No.1126 of 2015
and
C.M.P.(MD).No.1019 of 2019
in
Cross.Obj(MD).No.SR4427 of 2019

United India Insurance Company Limited,
Rep by its Divisional Manager,
Xavier Building, PWD Office Road,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District. ... Appellant/3rd Respondent

Vs.

1.Latha
2.Minor Revathy
3.Minor Retheesh
4.Minor Subin ... Respondents1 to 4/Petitioners
5.T.Manikandan ... 5th Respondent/1st Respondent
6.K.P.Anand ... 6th Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.05.2015 made in M.C.O.P.No.91 of 2013 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Kanyakumari District, Nagercoil.

For Petitioner :Mr.J.S.Murali
For R1 to R4 :Mr.K.Vamanan
For R5 :Mr.R.Murugan
For R6 : No appearance

C.M.P.(MD).No.1019 of 2019 in
Cross.Obj(MD).No.SR4427 of 2019

1.Latha
2.Minor Revathy
3.Minor Retheesh
4.Minor Subin
... Petitioners/Cross Objectors/Respondents 1-4

Vs.

1.United India Insurance Company Limited,
Rep by its Divisional Manager,

Xavier Building, PWD Office Road,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District. ... 1st Respondent/1st Respondent/ Appellant

2.T.Manikandan
3.K.P.Anand ... Respondents 2 & 3/Respondents 2 & 3/Respondents 5 & 6

PRAYER: Civil Miscellaneous Petition filed under Section 5 of the Limitation Act, to condone the delay of 523 days in filing the above cross objection in CMA(MD) No.1126 of 2015 before this Court.

For Petitioners :Mr.K.Vamanan
For R1 :Mr.J.S.Murali
For R2 :Mr.R.Murugan
For R3 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant/Insurance Company, against the judgment and decree dated 11.05.2015, passed in M.C.O.P.No.91 of 2013, by the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Kanyakumari District, Nagercoil.

2.This Civil Miscellaneous Petition has been filed by the claimants to condone the delay of 523 days in filing the above cross objection in CMA(MD) No.1126 of 2015 before this Court.

3.The brief facts of the case are as follows:

The claim of the claimants is that on 30.05.2010 at about 8.00 p.m., when the deceased Subramanian was walking with his brother and his friend in the left side of the road towards Villukury Junction, the first respondent, who drove the bike bearing Registration No.TCX 1478 in a rash and negligent manner and hit against the deceased. Due to which, the deceased sustained injuries all over body. Immediately, he was taken to Dr.Jeyasekaran Hospital for first aid and thereafter, he was sent to Government Medical College Hospital for better treatment and he died on 31.05.2010, while in treatment. Hence, the claimants claimed a sum of Rs.15 lakhs as compensation.

4.The case of the claimants was resisted by the appellant/Insurance Company by filing a counter statement. According to the appellant, due to the negligent act of the deceased, the accident had taken place and hence, they are not liable to pay compensation. It is further stated that it is for the claimants to establish the age, occupation and income of the deceased. In the absence of the same, the appellant/ Insurance Company prayed for the dismissal of the claim petition.

5.Before the Tribunal on the side of the claimants as many as 7 documents were marked as Exs.P1 to P7 and P.Ws.1 to 3 were examined as witnesses and on the side of the respondents, as many as two documents were marked as Ex.Rs.1 and 2 and R.W.1 to R.W.7.

6.The appellant/Insurance Company has filed a counter statement stating that without noticing the moving of vehicles, the deceased cross the road and invited the accident. The first respondent, who is the rider of the motor-cycle drove the vehicle in a moderate speed by following the traffic rules and the accident had occurred only on the negligence part of the deceased. Hence, his contention is that the accident had occurred only due to the negligence of the deceased. Further, it is contended that the ownership of the said vehicle by the second respondent is also denied by the appellant/Insurance Company. The other aspects regarding the compensation claimed under various heads are also disputed by the respondent.

7.After considering the oral and documentary evidence, the Tribunal has given a finding that the accident had occurred only due to the rash and negligent driving on the part of the first respondent, directed the third respondent to pay the compensation of Rs.15,46,500/- with 7.5% interest per annum at the first instance and thereafter, the third respondent to recover the same from the first and second respondents. Against which, the present appeal is filed by the appellant / Insurance Company.

8.In the grounds, the learned counsel appearing for the appellant has contended that there is wilful breach of policy condition by the owner of the vehicle at the time of accident and hence, the appellant/Insurance Company has no legal obligation to indemnify the owner of the vehicle. Therefore, when there is a violation of policy condition and breach on the part of the respondent, the order of Tribunal in adopting "pay and recovery" method is also not legally sustainable. It is further contended that if the violation of policy condition is proved through oral and documentary evidence, the insurer has to be exonerated and the liability has to be fastened on the owner of the vehicle. He further contended that there are various guidelines regarding the mode of recovering the award amount from the owner of the vehicle.

9.The grievance of the appellant/Insurance Company is that the amount determined by the Tribunal as monthly income of the deceased at Rs.10,000/-, however, the Tribunal ought to have fixed the notional income at Rs.6,000/- as per the dictum of Division Bench of this Court. The other grievance is that the loss of income to the family assessed by the Tribunal is also not proper. Apart from that, a sum of Rs.1,00,000/- towards loss of consortium, the Tribunal has also awarded a sum of Rs.75,000/- towards loss of love and affection, which appears to be on the higher side. On the whole, the appellant/Insurance Company sought for setting aside the judgment and decree of the Tribunal.

10..When there is a wilful breach of policy condition, there cannot be any pay and recovery ordered by the Tribunal and it is the owner of the vehicle, who is liable to pay the entire compensation. Though the appellant/Insurance Company has preferred this appeal on various grounds, the main argument advanced by the appellant/Insurance company is that the quantum arrived by the Tribunal by deducting the monthly income of the deceased at Rs.10,000/-. There was no other document like, Salary Register, books of accounts and attendance register were produced and only a salary certificate was marked as Ex.R.7.

11.In the claim application, P.W.1 was examined before the Tribunal that the deceased was working as a Mason and at the time of accident, he was earning a sum of Rs.400/- per day. The claimants have produced Ex.P.1 and Ex.P.2 before the Tribunal, which shows that the deceased was working under one M-DEE Builders Private Ltd. The said owner was examined as P.W.3 before the Tribunal, who deposed and filed Ex.P.7 salary certificate of the deceased wherein he stated that the deceased was earning Rs.400/-. t is also observed that the deceased was 40 years old at the time of accident and hence, the Tribunal has taken the income of the deceased at Rs.10,000/- and determined the loss of income by deducting 1/4th towards his personal expenditure. The appellant/Insurance Company is very much aggrieved against the determination of monthly income fixed by the Tribunal, in the absence of any other relevant documents like Salary Register, books of accounts and attendance register and the employment of the deceased under P.W.3. Hence, in the absence of any other documents, the appellant/Insurance Company prayed that the income of the deceased has to be taken at Rs.6,500/- in view of the decision of the Hon'ble Supreme Court in the case of ***NATIONAL INSURANCE CO.LTD., VS. PRANAY SETHI AND OTHERS*** reported in ***2017(16) SCC 680.*** Therefore, after deducting 1/4th towards personal living expenses of the deceased, the loss of monthly income comes to Rs.4,875/- and that the total loss of income of the deceased is (4875/- x 12 x x 15) Rs.8,77,500/-.

12.The tribunal awarded a sum of Rs.1,000/- towards Transport expenses. The tribunal awarded a sum of Rs.500/- towards damage and clothes and a sum of Rs.20,000/- towards funeral expenses and the first respondent, who is the wife of the deceased, is entitled for loss of consortium, the tribunal awarded a sum of Rs.1,00,000/- and the claimants 2 to 4 have entitled for the loss of love and affection at Rs.25,000/- each, which are all on the higher side.

13.Accordingly, the claimants are entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	Loss of income	13,50,000	8,77,500	Reduced
2.	Transportation	1,000	1,000	Confirmed
3.	Loss of love and affection for R2 to R4	75,000/-	75,000/-	Confirmed
4.	Loss of Consortium for R1	1,00,000	1,00,000	Confirmed
5.	Loss of damage and clothes	500	500	Confirmed
6.	Funeral Expenses	20,000	20,000	Confirmed
Total compensation		15,46,500	**10,74,000**	Rs./-4,72,500

14.The claimants are entitled for a sum of Rs.10,74,000/- with interest at 7.5% per annum, as compensation. The appellant/third respondent is directed to deposit the award amount with accrued interest and costs, if not already deposited, within a period of 8 weeks from the date of receipt of a copy of this judgment. On such deposit being made, the major respondents/claimants are permitted to withdraw their share in the award amount as apportioned by the Tribunal, if not already withdrawn. Since the respondents 2 to 4/claimants 2 to 4 are the minors, their shares in the award amount shall be deposited in any one of the nationalized bank in a fixed deposit, initially for a period of three years and renewable thereafter, till they attained majority. The first respondent/Mother, who is the natural guardian of the minor claimants 2 to 4 is permitted to withdraw the accrued interest, once in three months directly from the bank and utilize the same for their welfare. The excess award amount shall be refunded to the appellant/Insurance Company, if any.

15.In view of the order passed in the Civil Miscellaneous Appeal, the Civil Miscellaneous Petition is dismissed. Consequently, the Cross Objection is rejected at SR stage itself.

16.In the result, the award dated 11.05.2015 in M.C.O.P.No.91 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Kanyakumari District, at Nagercoil, is hereby modified and the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar(CS IV)

To

The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Kanyakumari District, Nagercoil.

Copy to;
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.**(2 copies**)

+1 CC to M/s.R.MURUGAN, Advocate (SR-59422[F] dated 05/04/2019)

+2 CC to M/s.K.VAMANAN, Advocate (SR-59333[F] dated 05/04/2019)

+1 CC to M/s.J.S.MURALI, Advocate (SR-59650[F] dated 08/04/2019)

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