BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **02.07.2019**

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.891 of 2014

1.A.Santhanamary

2.A.Rajan

3.A.Shanmugasundari

4.A.Chandirasekaran .. Appellants / Claimants

Vs.

1.G.Subramani

2.The Branch Manager,
Bajaj Allianz General Insurance
Company Ltd.,
12-G, K.M.A. Complex,
Ram Nagar,
Bye-Pass Road,
Madurai. .. Respondents / Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 13.07.2007, passed in M.C.O.P.No.1098 of 2004 by the Motor Accident Claims Tribunal / Additional District and Sessions Court [Fast Track Court No.I], Madurai.

For Appellants : Mr.K.C.Ramalingam

For 1st respondent : No appearance

For 2nd respondent : Mr.G.Maruthiah

JUDGMENT

It is a case of fatal. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.1,20,000/- towards loss of income, Rs.20,000/- towards loss of love and affection, Rs.2,000/- towards funeral expenses and Rs.26,852/- towards medical expenses, totally Rs.1,68,852/- as compensation. The Tribunal has directed the first respondent / owner of the vehicle to pay the entire compensation amount with 7.5% interest per annum from the date of petition till the date of realization and dismissed the claim petition in respect of the 2nd respondent/Insurance Company. The appellants / claimants have filed this appeal seeking to enhance the compensation and questioning the dismissal of the claim petition in respect of the 2nd respondent/Insurance Company.

2. The learned counsel appearing for the appellants / claimants would submit that at the time of the accident, the deceased was working as a driver and earning a sum of Rs.5,583/- per month. But, the Tribunal has taken only Rs.3,000/- as the notional monthly income of the deceased, which is on the lower side. He would further submit that the Tribunal has not awarded any sum towards conventional heads.

3. The learned counsel appearing for the appellants / claimants would further submit that the Tribunal has rightly fixed the entire liability on the owner of the vehicle. Merely because the driver of the offending vehicle had no valid driving license at the time of the accident, the Tribunal has erroneously exonerated the second respondent / Insurance Company from the payment of compensation and directed the owner of the vehicle to pay the entire compensation. As the policy was in force, the Tribunal ought to have directed the second respondent / Insurance Company to pay the entire compensation and thereafter, to recover the same from the owner of the vehicle. Thus, he prayed to allow this appeal.

4.The learned counsel appearing for the second respondent / Insurance Company would submit that the Tribunal has already awarded excessive amount as compensation and therefore, the same need not be interfered with. He would further submit that the Tribunal has rightly directed the owner of the offending vehicle to pay the entire compensation as there was violation of policy condition and therefore, the said finding also need not be interfered with. Thus, he prayed to dismiss this appeal.

5. Heard the learned counsel appearing for the appellants / claimants and the learned counsel appearing for the second respondent / Insurance Company and also perused the records carefully.

6. The accident is of the year 2004. The deceased was aged about 61 years at the time of accident and he died leaving behind his wife and children. In Ex.P.3, Postmortem Certificate, the age of deceased has been mentioned as '61'. Before the accident, the deceased was stated to be working as driver and earning a sum of Rs.5,583/- per month. Since no document has been produced by the claimants with regard to the income of the deceased, the Tribunal has notionally fixed a sum of Rs.3,000/- as the monthly income of the deceased. Considering the year of the accident and age of the claimant, this Court is of the view that the same need not be interfered with. It is seen that considering the number of

claimants, the Tribunal has rightly deducted 1/3rd amount towards personal expenses and adopted multiplier '5' and accordingly, awarded a sum of Rs.1,20,000/- towards loss of income. This Court does not find any reason to interfere with the same.

7. It is seen that the Tribunal has awarded only Rs.2,000/- towards funeral expenses and there is no award passed on the conventional heads. As per the decision of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others, reported in 2017(2) TN MAC 609 (SC)**, the claimants are entitled to Rs.70,000/- towards conventional heads. Accordingly, the award passed by the Tribunal under the head of funeral expenses is set aside and Rs.70,000/- is awarded towards conventional heads. The award passed by the Tribunal on the other heads are confirmed. If the amounts awarded under the other heads ie., loss of love and affection - Rs.20,000/- and medical expenses - Rs.26,852/- are added, the total compensation amount comes to Rs.2,36,852/- [1,20,000 + 70000 + 20,000 + 26,852 = 2,36,852].

8. In this case, it is not in dispute that at the time of the accident, the policy was in force. The Tribunal has directed the owner of the vehicle to pay the entire compensation merely holding that the rider of the offending vehicle was not having valid driving license at the time of accident. The law is now well settled that merely because the driver of the vehicle has no valid driving licence at the time of the accident, the Insurance Company cannot get rid of its liability, however after paying the compensation amount to the claimants, the Insurance Company can recover the same from the owner of the vehicle. In view of the above, the finding of the Tribunal, in this regard, is set aside. This Court is inclined to order for pay and recovery.

9.In view of the above, the award passed by the Tribunal is enhanced from Rs.1,68,852/- to Rs.2,36,852/- with 7.5% interest per annum from the date of petition till the date of deposit. The Insurance Company is directed to deposit the amount now awarded, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw their respective shares with accrued interest and costs, as apportioned by the Tribunal, less the amount already withdrawn, if any, by filing an application before the Tribunal. It is represented by the learned counsel for the appellants / claimants that the first appellant / first claimant is no more. Therefore, the share of the first claimant shall be equally divided among the claimants 2 to 4 and the other legal heirs of the first claimant, if any. The second respondent / Insurance Company is permitted to recover the amount from the owner of the vehicle viz., the 1st respondent herein, as per the decision of the Hon'ble Supreme Court in **Oriental Insurance Company Limited Vs. Nanjappan and others** reported in **2004 ACJ 721 (SC)**.

10.This Civil Miscellaneous Appeal is, accordingly, partly allowed. No costs.

Sd/-
Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Additional District and Sessions Court
[Fast Track Court No.I], Madurai.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.K.C.RAMALINGAM, Advocate (SR-72748[F] dated 02/07/2019)

+1 CC to M/s.G.MARUTHIAH, Advocate (SR-73542[F] dated 04/07/2019)

JUDGMENT MADE IN
C.M.A(MD)No.891 of 2014
02.07.2019

gcg
JM/26.08.2019/4P/6C