

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2912 of 2007

- 1.Poongodi
- 2.Gunaprakasam
- 3.Savitha

.. Appellants/Petitioners

Vs.

- 1.V. Annamalai
- 2.The Oriental Insurance Company Limited,
Divisional Office,
Parimalam Complex,
11, E.V.N. Road, Erode -11.

- 3.Poongodi

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 26.04.2006, made in M.C.O.P. No. 1361 of 2002, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal.

For Appellants : Mr. E. Durai Vaiyapuri
for Mr. N. Manokaran

For R-1 : Exparte

For Respondents : Mr. M. Krishnamoorthy (for R2)
R3-No appearance

J U D G M E N T

This appeal has been filed challenging the portion of the award dismissing the claim petition as against the 2nd respondent-Insurance Company as well as for enhancement of the compensation granted by the award dated 26.04.2006, made in M.C.O.P. No. 1361 of 2002, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal.

2.The appellants-claimants along with one Kandayammal (deceased) filed M.C.O.P. No. 1361 of 2002, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal, claiming a sum of Rs.7,00,000/- as compensation for the death of one Ponnusamy, who died in the accident that took place on 04.09.1994. The 1st appellant is the 2nd wife of the deceased. The 1st wife of the deceased who has been impleaded as 3rd respondent, left the deceased and appellants 2 and 3 on 12.08.1987 and her whereabouts were not known. There is no issues to the 1st appellant and deceased. The appellants 2 and 3, who are children of the deceased and the 3rd respondent are under the care and custody of the 1st appellant, who is the 2nd wife of the deceased. Pending claim petition, the 4th claimant/mother of the deceased died.

3.According to the appellants, on the date of accident viz., 04.09.1994, at about 22.30 hours, when the deceased was riding his Bicycle on the Pallipalayam - Trichengode road near Ayakkadu, after returning from his duty, the driver of the 1st respondent drove the Van bearing Registration No. TCQ-7929 in a rash and negligent manner and dashed against the deceased Ponnusamy. Due to the said impact, the deceased succumbed to multiple injuries. The accident occurred due to rash and negligent driving by the driver of the 1st respondent. The appellants filed the claim petition, claiming compensation against the respondents 1 and 2 as owner and insurer of the said vehicle respectively.

4.The 1st respondent remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellants. According to the 2nd respondent, the accident did not occur due to rash and negligent driving by the driver of the 1st respondent vehicle. The 2nd respondent denied the fact that the 3rd respondent who is the 1st wife of the deceased left the house on 12.08.1987 and contended that it is the presumption of the appellants and hence, the 1st appellant is not entitled to any compensation. The 2nd respondent denied the age, avocation, income of the deceased. In any event, the total compensation claimed by the appellants are excessive and prayed for dismissal of the claim petition. The 2nd respondent reserved the rights to file additional counter statement.

6.The 2nd respondent-Insurance Company filed additional counter statement and contended that the 3rd respondent has to prove that she is the legally wedded wife of the deceased. The 2nd respondent also submitted that the 1st respondent violated the policy condition by letting the driver to drive the vehicle without valid driving license and hence, the 2nd respondent is

not liable to pay any compensation to the appellants and prayed for dismissal of the claim petition.

7.The 3rd respondent filed counter statement and denied all the averments made by the appellants. According to the 3rd respondent, the appellants 2 and 3 are the children born to her and the deceased Ponnusamy and they are not under the care of the 1st appellant. She contended that the 3rd respondent is solely dependent on the income of the deceased husband and prayed for granting compensation from the respondents 1 and 2.

8.Before the Tribunal, the 1st appellant examined herself as P.W.1 and examined one witness as P.W.2 and marked 4 documents as Exs.P1 to P4. The respondents did not let in any oral evidence, but marked 10 documents as Exs.R1 to R10.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Van belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.3,67,400/- as compensation to the 2nd and 3rd appellants and 3rd respondent. The Tribunal dismissed the claim petition as against the 2nd respondent-Insurance Company as well as the 1st appellant.

10.Challenging the portion of the award dismissing the claim petition as against the 2nd respondent-Insurance Company and not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

11.Learned counsel appearing for the appellants contended that the Tribunal erred in dismissing the claim petition against the 2nd respondent-Insurance Company on the ground that the Driver of the offending vehicle belonging to the 1st respondent did not possess valid driving license at the time of accident. The appellants are third parties. For violation of policy conditions, the appellants should not suffer. The Tribunal ought to have directed the 2nd respondent to pay the compensation at the first instance and recover the same from the 1st respondent. The 1st appellant being the dependent of the deceased is entitled for compensation. The reason given by the Tribunal that the 1st appellant is not the legal heir of the deceased is not proper. The deceased was working as a Pulp Operator and was earning a sum of Rs.3,275/- per month. At the time of accident, the deceased was aged 48 years. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded under conventional heads are also meagre and prayed for setting aside the portion of the award dismissing the claim petition against the 2nd respondent and for enhancement of the compensation.

12. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Driver of the Van belonging to the 1st respondent did not possess valid driving license at the time of accident. The Tribunal considering the same, rightly dismissed the claim petition against the 2nd respondent. The accident is of the year 1994. The amounts awarded by the Tribunal are not meagre and the appellants are not entitled for any enhancement and prayed for dismissal of the appeal.

13. Heard learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

14. From the award of the Tribunal, it is seen that the Tribunal considering the oral and documentary evidence let in by the appellants, held that the accident has occurred only due to rash and negligent driving by the driver of the Van and directed the 1st respondent/owner of the vehicle to pay the compensation and dismissed the claim petition as against the 2nd respondent-Insurance Company based on the evidence of R.W.1 and R.W.3, who deposed that the Driver of the vehicle belonging to the 1st respondent did not possess valid driving license at the time of accident. The dismissal of the claim petition against the 2nd respondent for not possessing the driving license is erroneous. It is well settled law that for non-possession of driving license, the Insurance Company cannot be exonerated totally from its liability. The claimants who are the third parties should not suffer and they must enjoy the fruits of the award passed by the Tribunal. In such circumstances, the Insurance Company must be directed to pay the compensation at the first instance and recover the same from the 1st respondent, owner of the Van. By applying the said principle to the present case, the portion of the award dismissing the claim petition as against the 2nd respondent-Insurance Company from its liability, on the ground that the driver of the Van belonging to the 1st respondent did not possess valid driving license is liable to be set aside and it is hereby set aside. The 2nd respondent-Insurance Company is liable to pay compensation at the first instance and recover the same from the 1st respondent/owner of the vehicle for violation.

15. The Tribunal has dismissed the claim petition against the 1st appellant, on the ground that the 3rd respondent/1st wife of the deceased is the legally wedded wife and there is no proof that the 1st appellant was 2nd wife of the deceased. The appellants 2 and 3 who are the sons of the deceased filed the claim petition, claiming compensation for the death of their father along with the 1st appellant, stating that she is the 2nd wife of the deceased and the 3rd respondent also did not deny

that the 1st appellant is also the dependent of the deceased. The appellants 2 and 3 also did not object that the 1st appellant is also a dependant of the deceased. Hence, the 1st appellant is also entitled for compensation and the 2nd respondent-Insurance Company is directed to pay the compensation to the appellants and the 3rd respondent at the first instance and later on, recover the same from the 1st respondent, owner of the vehicle.

16.As far as the quantum of compensation is concerned, the appellants have contended that the deceased was working as a Pulp Operator and was earning a sum of Rs.3,275/- per month and produced Ex.P10, based on which the Tribunal fixed Rs.3,275/- per month as the notional income of the deceased. The deceased was aged 48 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 25% enhancement towards future prospects. Hence, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.4,25,776/- {[Rs.3,275/- + Rs.819/- (25% of Rs.3,275/-)] x 12 x 13 x 2/3}. In view of the compensation granted towards loss of dependency, the amount awarded by the Tribunal towards loss of future earning is set aside. The Tribunal has awarded meagre amounts towards loss of consortium to the 3rd respondent and loss of love and affection to the appellants 2 and 3. The 3rd respondent, being 1st wife of the deceased is entitled to Rs.15,000/- towards loss of consortium and the appellants 2 and 3, being the children of the deceased are entitled to Rs.10,000/- each towards loss of love and affection. The amounts awarded by the Tribunal towards funeral expenses is meagre and the same is enhanced to Rs.10,000/-. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate to the appellants. The amount awarded by the Tribunal towards transportation charges is just and reasonable and hence, the same is confirmed. 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 dependency	3,35,400/-	4,25,776/-	Enhanced
2.	Loss of love and affection to the appellants 2 and 3	10,000/-	20,000/-	Enhanced

3.	Funeral expenses	2,000/-	10,000/-	Enhanced
4.	Loss of consortium to 3 rd appellant	5,000/-	15,000/-	Enhanced
5.	Loss of future earning	10,000/-	-	Set aside
6.	Transportation charges	5,000/-	5,000/-	Confirmed
7.	Loss of estate	-	15,000/-	Granted
	Total	3,67,400/-	4,90,776/-	Enhanced by Rs.1,23,376/-

17. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.3,67,400/- is enhanced to Rs.4,90,776/- together with interest and costs. Out of the enhanced award amount, the 1st appellant, being the 2nd wife of the deceased is entitled to Rs.88,376/-, appellants 2 and 3, children of the deceased are each entitled to Rs.1,26,200/- and the 3rd respondent, being the 1st wife of the deceased is entitled to Rs.1,50,000/-. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 1361 of 2002. On such deposit, the appellants and 3rd respondent are permitted to withdraw their share of the enhanced award amount, along with proportionate interest and costs, as per the apportionment fixed by this Court, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs1,23,376/-. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

2.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Namakkal.

+1 cc to Mr.N.Manokaran Advocate sr20930

+1 cc to Mr.M.Krishnamoorthy Advocate sr20755

C.M.A. No. 2912 of 2007

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