IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1478 of 2015

1.Pankajam
2.Suresh
3.Sathiya @ Sakthivel
4.Minor Palani ...Appellants /Petitioners
(Minor 4th Appellant is represented by his guardian Next friedn mother the first appellant)

/versus/

1.Rajendran

2.Divisional Manager,
New India Assurance Co.Ltd.,
Having Office at No.42,
Big Street,
Thiruvannamalai ...Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 23.11.2010 and made in M.A.C.T.O.P.No.801 of 2009 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

For Appellants : Mr.F.Terry Chella Raja

For Respondents : No appearance for R1
Mr.Neethi Perumal for R2

J U D G M E N T
(The case has been heard through video conference)

Heard the learned counsel for the appellant and the learned counsel for the respondent.

2. It is a case of fatal accident of one Mr.Thanigachalam aged about 45 years working as a coolie in brick-kiln near Polur Taluk, Tiruvannamalai District. The claimants are his wife and his three children, of them one is a minor boy. The Tribunal, after considering the facts has exonerated the Insurance Company on the ground that the

offending vehicle has violated the policy condition. It had no Fitness Certificate at the relevant point of time. Regarding the quantum, taking into account the alleged avocation of the deceased, income of Rs.3,000/- per month was tentatively fixed as the fundamental income of the deceased. After deducting 1/3rd for his personal expenditure multiplier 15 was applied and a sum of Rs.3,60,000/- was awarded, besides Rs.48,000/- was awarded under the other non conventional head. Totally a sum of Rs.4,08,000/- was awarded as compensation to the claimants with 7.5% interest from the date of petition till the date of deposit. The award amount was ordered to be apportioned in the ratio of Rs.1,08,000/- to the first claimant/wife and Rs.1,00,000/- each to the children/ claimants 2 to 4.

3. The learned counsel for the appellant would pointedly argued that it is now well settled preposition of law in case of policy violation, the principle of pay and recovery should be applied and the Insurance Company cannot be exonerated from the liability.

4. In support of his submission, the learned counsel would rely upon the judgment of this Court rendered in United India Insurance Company Limited Vs. Sowkath Ali and others reported in 2009 (1) TN MAC 301, which was in consonance with the judgment of this Court in Velammal and others Vs. Kanagu reported in 2006 TNMAC 75 DB, wherein at Para 8 & 9. the ratio has been laid down as under:

> "8. The Division Bench while holding that the Insurance Company is not liable for violation of policy condition, hekd that the Insurer insofar as a claim by third parties is concerned, has to first pay the claimant and proceed against the owner of the vehicle to recover the amount paid by it. The relevant portion reads as follows:
>
> "In the result, we hold that the Insurer cannot avoid the liability to answer the claim of the third parties, but the Insurer is at liberty to proceed against the owner of the vehicle and recover the amount paid by it after paying the claimants-appellant herein."
>
> 9. Following the ratio laid down in the above said Division Bench Judgment, in this case, since the vehicle in question did not have a valid fitness certificate on the date of accident, there is violation of policy condition and the owner will be liable for the breach. The Insurance Company, as far as the third party claim is concerned will at the first instance pay the claimant and recover the same

from the owner of the vehicle in accordance with law."

5. Regarding the quantum, the learned counsel for the appellant would submit that the principle laid down by the Division Bench of this Court in 2019 1 TNMAC 54 DB has to be applied and the factor of inflation index referred in the judgment to be applied. He would submit that if such index is applied tentative income of the deceased person should have been fixed at Rs.6,000/- as a fundamental income. After applying the factor of inflation index it should be Rs.7,467/-. The learned counsel would also submit that the compensation awarded under the non conventional head are not inconsonance with the standard prescribed by the Hon'ble Supreme Court in the Constitutional Bench judgment in Pranay Sethi case.

6. The learned counsel for the Insurance Company would submit that when violation of the policy condition is apparently found, the principle of pay and recovery is not applicable. The Motor Vehicle Inspector report in this case clearly indicates that the offending vehicle had no Fitness Certificate which leads to irresistible inference that the vehicle was not road worthy and the owner of the vehicle has allowed the vehicle to be driven on the motorable road causing the accident. Hence the Insurance Company cannot be mulcted with the responsibility to pay and then recover.

7. As far as the quantum, the learned counsel for the Insurance Company would submit that no doubt the Constitutional Bench has laid down certain fundamental standard for awarding compensation, but, such yardstick need not be applied to this case, since the accident took place in the year 2009, whereas the Constitutional Bench judgment is of the year 2017.

8. On considering the rival submissions and perusing the records, this Court finds that as far as the liability is concerned, being a beneficial legislation the Courts had time and again extended the principle of pay and recovery wherever possible, including the case of violation of policy condition such as want of Fitness Certificate. This Court following the precedent, order pay and recovery instead of exonerating the Insurance Company in toto. To that extent the order of the Tribunal is modified.

9. Coming to the quantum, this Court finds that the claimants have not produced documents to substantiate the avocation of the deceased or his income. In this case, this Court could not lay any of the documents to show the skill or the earning capacity of the deceased except the evidence of PW.1, who is none other than the wife of the deceased. This Court taking into consideration the year of accident and the

place of accident fix Rs.3,000/- as the notional monthly income of the accident victim. With Rs.3,000/- as fundamental income, the loss of dependency is fixed as below:

Fundamental income	: Rs.3,000/-
For Future Prospects	: Rs.750 (25%)

1/4th for his personal expenditure deducted

Age of the victim is found to be 45 years as per the claim petition. Hence multiplier 14 is applied. Therefore, the loss of dependency will be Rs.4,72,500/- (3000+750)x3/4x12x14)

For loss of consortium (1st Claimant)	Rs.40,000/-
Loss of love and affection	Rs.45,000/- (15,000x3)
Funeral Expenses	Rs.15,000/-
Loss of Estate	Rs.15,000/-
Transport and damage to cloth	Rs.5,000/-
Total	Rs.5,92,500/-

10. The said amount shall be apportioned to the claimants as below:

(i) 1st claimant	Rs.2,17,500/-
(ii) Claimants 2 to 4	Rs.1.25,000/- each

11. In the result, the Civil Miscellaneous Appeal is partly allowed. The Insurance Company/2nd respondent shall pay the compensation as fixed by this Court to the appellants/claimants with interest at the rate of 7.5% per annum. The Insurance Company is exempted from paying interest for 1218 days, which was due to the delay in filing the appeal before this Court. The Insurance Company shall recover the same from the owner of the vehicle. The award amount of Rs.5,92,500/- with interest shall be deposited within a period of twelve weeks from the date of receipt of copy of this order. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Motor Accident Claims Tribunal,
District Judge, Thiruvannamalai.

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

C.M.A.No.1478 of 2015

AK(CO)
GN(06/11/2020)