IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.11.2020
CORAM
THE HON'BLE MR.JUSTICE C.SARAVANAN
C.M.A.No.300 of 2011
(Through Video Conferencing)

1.Kavarai

2.P.Kanimozhi

3.Minor P.Selvan
represented by his next friend and
the 1st appellant herein

4.Nagammal ... Appellants/Claiments

Vs.

1.J.Munisamy

2.ICICI Lombard General Insurance Company Ltd.,
Rep. by its Branch Manager,
Branch Office, Rajalakshmi Arcade,
No.228/15, 9th main, 22nd Cross, Jayanagar,
3rd block, Bangalore - 560 011. ...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree dated 30.08.2010 made in M.C.O.P.No.870 of 2008 on the file of the Motor Accident Vehicle Claims Tribunal Additional District Court, at Krishnagiri.

For Appellants : Mr.M.Sriram

For 2nd Respondent : M/s.R.Sreevidhya

JUDGEMENT

The claimants are the appellants. They are aggrieved by the impugned Judgment and Decree dated 30.08.2010 passed by the Motor Accident Claims Tribunal, Krishnagiri (Additional District Court), in M.C.O.P.No.870 of 2008.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.5,27,000/- as compensation together with interest at 6% p.a. from the date of claim petition till realisation to the appellants who are the legal heirs of the deceased Padavettan.

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3. According to the appellants, on 18.09.2007 at about 12.30 p.m, while the deceased Padavettan was standing along with two others on the left side of mud portion of the road at the bus stop in Krishnagiri to Vaniyambadi NH Road, Tata 407 Tempo bearing registration No.KA-12-2976 belonging to the 1st respondent insured with the 2nd respondent Insurance Company was driven by its driver in a rash and negligent manner and hit the deceased, as a result of which, he died on the spot. Therefore, a claim petition was filed by the appellants for the compensation as the dependents of the deceased. The Tribunal after considering the evidence on record has awarded the aforesaid compensation. The appellants are aggrieved by the amount of compensation and have therefore come with this appeal for enhancement of compensation.

4. While awarding the aforesaid compensation of Rs.5,27,000/- to the appellants/claimants, the Tribunal has considered the notional income of the deceased as Rs.4,000/- per month against the claim of Rs.7,500/- per month before the Tribunal. It is further submitted that the deceased was an agriculturist and was doing all kind of seasonal business apart from milk business. It is therefore submitted that the Tribunal ought to have taken the monthly income of the deceased as Rs.7,500/- as was declared in the claim petition.

5. The learned counsel for the 2nd respondent Insurance Company submits that the impugned Judgment and Decree passed by the Tribunal is well reasoned and requires no interference and prayed for dismissal of this appeal

6. Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent Insurance Company. I have perused the impugned Judgment and Decree passed by the Tribunal and the evidence on record.

7. It is noticed that the accident was due to the rash and negligent driving of driver of Tempo. At the same time, since the driver was not holding valid licence at the time of the accident, the Tribunal has fixed the liability on the 1st respondent owner of the vehicle. If there is a violation of policy conditions, only the 2nd respondent Insurance Company can be made liable to pay the compensation as per the decision of the Hon'ble Supreme Court in National Insurance Company Vs. Swaran Singh and Others, (2004) 3 SCC 297. The relevant portion of the Judgment is as follows:

> (vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by

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> the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

8. Therefore, the 2nd respondent Insurance Company can pay the compensation awarded by the Tribunal and recover the same from the owner of the vehicle, i.e. the 1st respondent.

9. As far as the dispute regarding the monthly income of the deceased is concerned, it is noticed that the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735 has considered the notional income of a vegetable vendor as Rs.6,500/- in the year 2008. The accident of the present case took place on 18.09.2007. Considering the same, I am inclined to consider the monthly notional income of the deceased as Rs.6,500/- for the purpose of awarding compensation to award just compensation to the appellants/claimants.

10. It is noticed that the Tribunal has not awarded future prospects. As per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680, the appellants/claimants are entitled for additional compensation on account of future prospects at 25%.

11. The compensation awarded towards loss of consortium and loss of love and affection appears to be very low. Therefore, loss of consortium to the 1st appellant wife, loss of parental consortium to the 2nd and 3rd appellants children and loss of love and affection to the 4th appellant the aged mother are to be awarded as per the decision of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 OnLine SC 1546. Similarly, since a sum of Rs.3,000/- awarded towards funeral expenses is low, it is enhanced to Rs.15,000/-.

12. Therefore, the compensation of Rs.5,27,000/- awarded by the Tribunal is re-quantified as follows:-

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Heads and Calculation	Amount
Loss of Income to the appellants due to the death of Ravichandran:- Monthly Income : Rs.6,500.00 Add: Future Prospects at 25% (6,500 x 25/100) : Rs.1,625.00 ---------------- : Rs.8,125.00 Less : Personal Expenses at 25% (8,125 x 25/100) : Rs.2,031.25 ---------------- Monthly contribution to the Family : Rs.6093.75 Annual Contribution to the Family (6093.75 x 12) : Rs.73,125.00 Multiplier 14 (73,125 x 14) - Rs.10,23,750/-	Rs.10,23,750/-
Loss of consortium to the 1st appellant	Rs. 40,000/-
Loss of parental consortium to the 2nd and 3rd appellants (40,000 x 2)	Rs. 80,000/-
Loss of love and affection to the 4th appellant	Rs. 40,000/-
Funeral Expenses	Rs. 15,000/-
Total	Rs.11,98,750/- rounded off to Rs.12,00,000/-

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13. Thus, the compensation of Rs.5,27,000/- awarded by the Tribunal is enhanced to Rs.12,00,000/-. Therefore, the appellants/claimants are directed to deposit the deficit court fee on the enhanced amount of compensation and file a proof of payment before the Tribunal to withdraw the compensation.

14. The 2nd respondent Insurance Company is directed to deposit a sum of Rs.12,00,000/- together with interest at 6% per

annum from the date of claim petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this Judgment. Liberty is given to the 2nd respondent Insurance Company to recover the compensation together with interest from the 1st respondent/owner of the insured vehicle.

15. On such deposit, the appellants are entitled to recieve the compensations as follows:-

Appellants	On the Loss of income (Rs.10,23,750)	Loss of consortium / parental consortium / love and affection	Funeral Expenses and Balance amount	Total (Rs.12,00,000)
1st appellant	Rs.4,73,750/-	Rs.40,000/-	Rs.16,250/- (15,000 + 1,250)	Rs.5,30,000/-
2nd appellant	Rs.2,00,000/-	Rs.40,000/-	-	Rs.2,40,000/-
3rd appellant	Rs.2,00,000/-	Rs.40,000/-	-	Rs.2,40,000/-
4th appellant	Rs.1,50,000/-	Rs.40,000/-	-	Rs.1,90,000/-

16. The 1st, 2nd and 4th appellants are permitted to withdraw their respective shares together with proportionate interest, less any amount already withdrawn, by filing suitable applications before the Tribunal. The 3rd appellant was aged about 17 years at the time of filing of the cliam petition in 2008. Since the 3rd appellant would have attained the age of majority, he is permitted to file appropriate application before the Tribunal for recording the age of majority to withdraw his share. The Tribunal may thereafter allow the 3rd appellant to withdraw his share.

17. Accordingly, this Civil Miscellaneous Appeal is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:-
The Motor Vehicle Claims Tribunal
Additional District Court,
Krishnagiri.

Copy to
The Section Officer,
VR Section,
High Court, Madras

+1 cc to Mr.Mukund R Pandiyan, Advocate, SR.NO..36831

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