IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2092 of 2013 & 2265 of 2014
and
M.P.No.1 of 2013 & C.M.P.No.21529 of 2017

C.M.A.No.2092 of 2013:

National Insurance Company Limited,
No.17, Mount Road,
Chennai - 600 002. .. Appellant/2nd Respondent

Vs.

1.N.Rangan

2.R.Vijayakumari
Mariyappan Nadar (died) ..Respondents 1 & 2/Claimants

3.Veeragaliammal

4.Narayanasamy (died)

5.Pachaiammal ..Respondents 3 to 5/Respondents 3 to 5

6.Jayanthi

7.Vanmathi .. Respondents 6 & 7/LRs of R4
(R6 & R7 brought on record as LRs of the deceased R4 viz., Narayanasamy vide order of this Court dated 25.02.2020 made in C.M.P.Nos.3717 to 3719 of 2020 in C.M.A.No.2092 of 2013)

C.M.A.No.2265 of 2014:

1.N.Rangan
2.R.Vijayakumari .. Appellants/Claimants

Vs.

1.Mariyappan Nadar (Died)

2.National Insurance Company Limited,
No.751, Anna Salai,
Chennai - 600 002. ..Respondents 1 & 2/Respondents 1 & 2

3.Veeragaliammal

4.Narayanasamy (died)

5.Pachaiammal ..Respondents 3 to 5/Respondents 3 to 5

6.Jayanthi

7.Vanmathi .. Respondents 6 & 7/LRs of R4
(R6 & R7 brought on record as LRs of the deceased R4 viz., Narayanasamy vide order of this Court dated 02.07.2018 made in C.M.P.Nos.6660 to 6662 of 2018 in C.M.A.No.2265 of 2014)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.11.2012 made in M.C.O.P.No.3136 of 2005 on the file of Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

C.M.A.No.2092 of 2013:

| | | |
|---|---|---|
| For Appellant | : | Mr.S.Arunkumar |
| For RR 1 & 2 | : | Ms.V.Srimathi<br>for Mr.N.John Selvaraj |
| For RR 3 & 5 | : | No appearance |
| RR6 & 7 | : | R4 Died steps taken<br>Not ready in Notice |

C.M.A.No.2265 of 2014:

| | | |
|---|---|---|
| For Appellants | : | Ms.V.Srimathi<br>for Mr.N.John Selvaraj |
| For R2 | : | Mr.S.Arunkumar |
| For RR 3, 6 & 7 | : | No appearance<br>R1, R5 Died<br>R4 Died Steps taken |



COMMON JUDGMENT

The matter is heard through "Video Conferencing".

2.C.M.A.No.2092 of 2013 is filed by the Insurance Company against the award dated 28.11.2012 made in M.C.O.P.No.3136 of 2005 on the file of Motor Accidents Claims Tribunal, II Small Causes Court, Chennai and C.M.A.No.2265 of 2014 is filed by the claimants for enhancement of compensation.

3.Both the Civil Miscellaneous Appeals arise out of the same award and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petition, for the sake of convenience.

4.The claimants filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one R.Ananth @ Ananthababu, who died in the accident that took place on 07.04.2005.

5.According to the claimants, on 07.04.2005, the deceased R.Ananth @ Ananthababu was sent by his employer to repair the axle of Lorry bearing Registration No.TN 21 Y 9329 which was coming from Andhra to Chennai at G.N.T. Road. After repairing the lorry, he slept on the sand load of the lorry. At about 04.00 a.m., the driver of the lorry drove the same in a rash and negligent manner and while overtaking another lorry, the lorry in which the deceased traveling was trapped and the deceased who was sleeping on the sand, got trapped beneath the sand and died due to suffocation. Therefore, the claimants filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation against the respondents 1 and 2, being the owner and insurer of the lorry respectively. Pending claim petition, the 1st respondent-owner of the lorry died and therefore, his legal heirs were impleaded as respondents 3 to 5 as per the order dated 21.12.2010 made in M.P.No.3517 of 2006.

6.The 1st respondent-owner of the lorry remained exparte before the Tribunal.

7.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the claimants. According to the 2nd respondent-Insurance Company, the owner of the lorry remained exparte and failed to contest the case and they are invoking provisions of Section 170 of the Motor Vehicles Act. The 2nd respondent has not received any claim form or any intimation from the alleged owner of the lorry. The 2nd respondent denied that the 1st respondent's vehicle was insured with them, the driver of the 1st respondent's lorry was possessing valid driving license and the vehicle records of the 1st respondent's lorry. The deceased was not traveling in the lorry as Coolie and hence, the 2nd respondent is not liable to pay any compensation. No premium was paid to cover the coolies and hence the 2nd respondent is not liable to pay any compensation. The claimants have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the claimants is highly excessive and made for the purpose of creating sympathy and prayed for dismissal of the claim petition.

8.Before the Tribunal, the 1st claimant examined himself as P.W.1 and one D.Devan, employer of the deceased was examined as P.W.2 and one K.Raju, who is an eyewitness to the accident was examined as P.W.3 and five documents were marked as Exs.P1 to P5. On behalf of the 2nd respondent-Insurance Company, one Tmt.G.Nadira Nishat, Administrative Officer of the 2nd respondent-Insurance Company was examined as R.W.1 and one Pichai Muthu, Assistant Manager of the 2nd respondent-Insurance Company was examined as R.W.2 and two documents were marked as Exs.R1 and R2.

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 lorry belonging to the respondents 3 to 5 and directed the 2nd respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.3,66,000/- as compensation to the claimants.

10.Challenging the said award dated 28.11.2012 made in M.C.O.P.No.3136 of 2005, the 2nd respondent-Insurance Company has come out with the appeal in C.M.A.No.2092 of 2013 and the claimants have come out with the appeal in C.M.A.No.2265 of 2014 seeking enhancement of compensation.

11.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal failed to distinguish the liability of owner and insurer under the policy and erred in holding that 2nd respondent is liable to pay the compensation. The deceased was not a Coolie or person covered under Section 147 of the Motor Vehicles Act. The Mechanic is not liable to be covered under the law and policy. The learned counsel appearing for the 2nd respondent further contended that if this Court comes to the conclusion and 2nd respondent is liable to pay the compensation, the claimants are not entitled for any enhancement and prayed for setting aside the award passed by the Tribunal and for dismissal of C.M.A.No.2265 of 2014 filed by the claimants.

12.Per contra, the learned counsel appearing for the claimants contended that deceased was sent by his employer to repair the lorry at the request of the owner of the lorry, the 1st respondent. After repairing the lorry, while returning in the said lorry, the accident occurred due to rash and negligent driving by the driver of the lorry. The deceased traveled as a Coolie of owner of the lorry, 1st respondent. R.W.2, Assistant Manager of the 2nd respondent-Insurance Company in his evidence admitted that when the lorry is repaired on the way it can be brought back by the owner only with the help Mechanic who is a Coolie. The Tribunal considering the evidence of R.W.2, held that 2nd respondent-Insurance Company is liable to pay the compensation. The learned counsel appearing for the claimants further contended that deceased was aged 25 years, working as Mechanic and was earning a sum of Rs.4,500/- per month and Rs.100/- per day as batta. The Tribunal erroneously fixed a sum of Rs.4,500/- per month as notional income of the deceased and the Tribunal has not granted any enhancement towards future prospects. The Tribunal erred in deducting 50% towards personal expenses of the deceased and the amount awarded by the Tribunal towards loss of love and affection is meagre. The correct multiplier applicable is '18' and the Tribunal erroneously applied multiplier '15' taking into consideration the age of the mother of the deceased and prayed for dismissal of C.M.A.No.2092 of 2013 and for enhancement of compensation.

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

14.From the materials available on record, it is seen that the deceased was working as Mechanic and at the request of the 1st respondent, the owner of the lorry, he was sent by the employer to repair the lorry and bring it back. It is the contention of the claimants that deceased while returning in the lorry after repairing the lorry, accident has occurred and due to the injuries, he died. The contention of the learned counsel appearing for the 2nd respondent is that Mechanic is not a Coolie or person covered under Section 147 of the Motor Vehicles Act. This contention is contrary to the evidence of R.W.2, the Assistant Manager of the 2nd respondent-Insurance Company. From the award of the Tribunal, it is seen that R.W.2 has admitted that repaired lorry can be brought back only with help of Mechanic, who is a Coolie. The Tribunal considering the evidence of R.W.2, held that policy issued by 2nd respondent-Insurance Company covered the Coolie and hence the 2nd respondent is liable to pay the compensation. There is no error in the said finding of the Tribunal warranting interference by this Court.

15.As far as quantum of compensation is concerned, the claimants have claimed that the deceased was working as Mechanic and was earning a sum of Rs.4,500/- per month as salary and Rs.100/- per day as batta. The claimants failed to prove the same. The Tribunal fixed monthly income of the deceased at Rs.4,500/- per month. The accident occurred in the year 2005. In the absence of any material evidence with regard to avocation and income, the notional income fixed by the Tribunal is excessive. Considering the year of accident, age and nature of work done by the deceased, a sum of Rs.4,000/- per month is fixed as notional income of the deceased. The deceased was aged 25 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the claimants are entitled to 40% enhancement towards future prospects. The Tribunal has adopted multiplier '13' based on the age of the mother of the deceased which is not proper. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC) [cited supra], the age of the deceased is the basis for adopting multiplier. The correct multiplier applicable is '18' as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]. The deceased was a bachelor at the time of accident and the Tribunal has rightly deducted 50% towards personal expenses of the deceased. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.6,04,800/- {Rs.5,600/- [Rs.4,000/- + Rs.1,600/- (40% of Rs.4,000/-)] X 12 X 18 X 50%}. The Tribunal has awarded meagre sum of Rs.5,000/- towards funeral expenses and Rs.10,000/- towards loss of love and affection. Hence, the same are enhanced to Rs.15,000/- and Rs.40,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. 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 | 3,51,000/- | 6,04,800/- | Enhanced |
| 2. | Loss of love and affection | 10,000/- | 40,000/- | Enhanced |
| 3. | Funeral expenses | 5,000/- | 15,000/- | Enhanced |
| 4. | Loss of estate | - | 15,000/- | Granted |
| | Total | Rs.3,66,000/- | Rs.6,74,800/- | enhanced by Rs.3,08,800/- |

16.The compensation awarded by the Tribunal at Rs.3,66,000/- is hereby enhanced to Rs.6,74,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.No.3136 of 2005 on the file of Motor Accidents Claims

Tribunal, II Small Causes Court, Chennai. On such deposit, the claimants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal.

17.In the result C.M.A.No.2092 of 2013 filed by the Insurance Company is dismissed and C.M.A.No.2265 of 2014 filed by the claimants is partly allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The II Judge,
Motor Accidents Claims Tribunal,
Small Causes Judge
Chennai.

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

+1 CC to Mr.S.Arunkumar, Advocate sr 37095.
+2 Ccs to Mr.N.Beulah John Selvaraj, Advocate sr 36980.

C.M.A.Nos.2092 of 2013 & 2265 of 2014

NR(CO)
SP(07/12/2020)