

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3323 of 2011

1. Govindammal
 2. Dhanasekar
 3. Sarathamani
- Appellants/Claimants

Vs.

1. P.Periyasamy
2. The New India Assurance Co., Ltd.,
No.375 Anna Salai,
Canara Bank, II Floor,
Saidapet, Chennai - 15. Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 28.09.2010 made in M.C.O.P.No.114 of 2007 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Fast Track Court No.III, Dharapuram, Erode District.

For Appellants : Mr.N.S.Sivakumar

For R1 : Mr.N.Manokaran

For R2 : Mrs.R.Sreevidhya

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 28.09.2010 made in M.C.O.P.No.114 of 2007 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Fast Track Court No.III, Dharapuram, Erode District.

2. The case of the appellant is that on 16.07.2006 at about 3.45 p.m., one Kumarasamy was riding the TVS 50 XL Super bearing Registration No.TN-33-T-4413 from Peruntholuvu to his residence.

When he was coming near Sethu Ramalingam Thottam in Muthianaraichal to Sampanthampalayam Road from North to South direction, the first respondent's van bearing Registration No.TN-41-Z-9711 came in a rash and negligent manner and dashed against him. As a result, he sustained grievous injuries and immediately he was taken to Government Hospital, Kangayam. After the first aid was given there, he was referred to C.M.C.Hospital, Coimbatore. But, he died on the way. At the time of accident, he was aged 60, and before the accident, he was doing agricultural work and was earning Rs.4,000/- per month. Since he died in the accident, his legal heirs, who are the appellants herein, filed a petition before the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Fast Track Court No.III, Dharapuram, Erode District, claiming Rs.5,00,000/- as compensation under various heads.

3. The second respondent, who is the insurer of the first respondent's van, filed a counter affidavit before the Tribunal stating that the accident was occurred only due to the rash and negligent driving of the first respondent's driver, and also, the policy taken by the first respondent was not covered on the date of accident. Hence, they were not liable for the claim. Further, it has been stated that the alleged age, occupation and income of the deceased were not true and the amount of compensation claimed was highly excessive.

4. During the trial, on the side of the appellants/claimants, the first appellant herself was examined as PW1, one Thiru.Rathinakumar was examined as PW2, one Thiru.Thanasekaran was examined as PW3 and Exs.P1 to P8 were marked. On the side of the respondents, the first respondent himself was examined as RW1 and Ex.R1 was marked.

5. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellants and awarded Rs.1,40,000/- as compensation as given below :

S.No.	Description	Amount
1.	Loss of Income	1,20,000
2.	Transport and Funeral Expenses	5,000
3.	Loss of Consortium	10,000
4.	Loss of Love and Affection	5,000
	Total	1,40,000

6. Aggrieved by the award, the appellants have filed this appeal before this Court stating that the Tribunal erred in

fixing the compensation at Rs.1,40,000/- as against the claim of Rs.5,00,000/- and erred in absolving the insurer from liability. The appellants have also relied upon various citations in support of their case.

7. The learned counsel for the appellants has submitted before this Court that the deceased was doing agricultural work and was earning Rs.4,000/- per month. The Tribunal without taking note of the said fact erroneously fixed the income at Rs.3,000/- per month and awarded meager amount towards Loss of Income. Further, he has submitted that the policy taken by the first respondent was in existence at the time of accident and the same has been proved before the Tribunal by producing Ex.P8 Copy of Receipt of payment towards Premium. But the Tribunal without considering the same wrongly exonerated the insurance company from liability to pay compensation to them.

8. The learned counsel for the Insurance Company has submitted that the premium was paid by way of cheque and the receipt of payment was issued on 07.07.2006. The policy came into force only from 26.07.2006 i.e. after encashment of the cheque, but the accident was occurred earlier to which i.e. on 16.07.2006. Hence, they were not liable for the claim. The learned counsel has also relied upon various citations in support of her case.

9. Heard the learned counsel for the appellant and the learned counsel for the respondents, and perused the materials available on record.

10. It has been contended by the learned counsel for the appellants before the Tribunal that the date mentioned in the receipt was the date of commencement of policy. So at the time of accident, there was a policy coverage for the first respondent's vehicle. In support of his contention, the learned counsel has also relied upon various citations of this Court before the Tribunal. On the side of the first respondent, it has been argued that the premium was paid 15 days prior to the date of accident and the receipt of payment of premium has been marked as Ex.P8.

11. On the side of the second respondent, the learned counsel has argued that the premium was paid by way of cheque and the receipt of payment was issued on 07.07.2006. The policy would come into effect only after encashment of the cheque and further it came into effect only from 26.07.2006. Hence they were not liable for the claim. The learned counsel has further argued that the receipt of payment of premium marked as Ex.P8 was only a Xerox copy and the original premium receipt was not marked by the first respondent.

12. It is an admitted fact that the accident had occurred only on 16.07.2006 and the receipt of payment of premium was issued on 07.07.2006. Even though it has been argued by the Insurance company that there was no policy-in-force at the time of accident, on perusal of the records, it is seen that the owner of the vehicle had paid the premium through cheque before the accident itself and the receipt of payment of premium was issued on 07.07.2006. The premium had been paid 9 days prior to the date of accident. While that being so, the policy period ought not to be fixed by the Insurance company after encashment of the cheque. Further, the cheque issued by the first respondent was encashed by the Insurance company without getting bounced. The Insurance company ought to have encashed the cheque at an earlier date. When they have issued the receipt, the delay cannot be attributed on the claimant. In these circumstances, the contention of the Insurance company that there was no policy coverage at the time of accident, cannot be accepted. Hence, this Court deems it fit and proper to direct the Insurance company to pay the compensation to the appellants.

13. As far as quantum of compensation is concerned, it is observed that the appellants have not placed any material before the Tribunal to prove the income of the deceased, therefore, the Tribunal has fixed the income at Rs.3,000/- per month. Further, in Ex.P2 Postmortem Certificate, the age of the deceased was found to be 65 at the time of accident, therefore, the Tribunal has fixed the same as his age. As per the case in Sarla Verma and others vs Delhi Transport Corporation and another, reported in 2009 ACJ 1298, the multiplier for a person aged 65 is 7. But the Tribunal has wrongly applied 5 multiplier and awarded Rs.1,20,000/- towards Loss of Income, and this Court is inclined to modify the same. Accordingly, the multiplier is modified as 7 and a sum of Rs.1,68,000/- ($2000 \times 12 \times 7$) is awarded for Loss of Income. The sum of Rs.10,000/- awarded for Loss of Consortium and the sum of Rs.5,000/- awarded for Loss of Love and Affection is found to be meager. Hence, this Court is inclined to enhance the same. Accordingly, Rs.50,000/- is awarded for Loss of Consortium and Rs.10,000/- is awarded for Loss of Love and Affection. The sum of Rs.5,000/- awarded for Transport and Funeral expenses is found to be proper and reasonable. Hence, this Court is hereby confirms the same.

14. In view of the observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

S.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of Income	1,20,000	1,68,000	Enhanced
2.	Transport and Funeral Expenses	5,000	5,000	Confirmed
3.	Loss of Consortium	10,000	50,000	Enhanced
4.	Loss of Love and Affection	5,000	10,000	Enhanced
	Total	1,40,000	2,33,000	Enhanced by 93,000

15. As per Ex.P6 Legal Heirship Certificate marked by the appellants, it has been found that the second and third appellants are not the dependents of the deceased. Hence, as stated by the Tribunal, the first appellant alone is entitled for the compensation.

16. As earlier discussed by this Court, the Insurance company is liable to pay the compensation to the appellants. Hence, the second respondent insurance company is directed to deposit the said amount of Rs.2,33,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first appellant/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

17. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Raja

To

1. The Motor Accident Claims Tribunal /
Additional District and Sessions
Judge, Fast Track Court No.III,
Dharapuram, Erode District.
2. The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.Manokaran, Advocate, S.R.No. 24919

C.M.A.No.3323 of 2011

MG(CO)
GN(17/12/2020)



WEB COPY