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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NOS.3092 OF 2012 & 2074 OF 2014

In C.M.A. No.3092 of 2012

United India Insurance Company Ltd.,
Divisional Office-V,
No.25, Sankaranarayana Building,
M.G. Road, Bangalore

..Appellant/
2nd Respondent

Versus

1.K. Sithammal W/o.Kumar

2.Minor. Rekalakshmi D/o. Kumar

3.Minor. Ranjani D/o. Kumar

(2nd and 3rd respondents herein as who are minors are represented by their Next Friend and Mother K. Sithammal)

4. Kannammal W/o. Chandran @ Chandrakumar

... 1 to 4 Respondents/
1 to 4 Petitioners

5. K. Shadaksharimurthy S/o. K. Kenchappa

...5th Respondent/
1st Respondent

In C.M.A. No.2074 of 2014

1.K. Sithammal W/o.Kumar

2.Minor. Rekalakshmi D/o. Kumar

3.Minor. Ranjani D/o. Kumar

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(Minors 2nd and 3rd respondents are represented
by next friend and guardian by their Mother K. Sithammal)

4. Kannammal W/o. Chandran
@ Chandrakumar

...Appellants/
Petitioner

Versus

1. K. Shadaksharimurthy S/o. K. Kenchappa

2. United India Insurance Company Ltd.,
Divisional Office-V,
No.25, Sankaranarayana Building,
M.G. Road, Bangalore

..Respondents/
Respondents

Common Prayer:

Civil Miscellaneous Appeals filed against the order and decree dated 29.03.2011 made in M.C.O.P.No.200 of 2010 on the file of the Motor Accident Claims Tribunal, Sub-Court, at Sathyamangalam (M.C.O.P.No.323 of 2009 on the file of Sub-Court, Gopi.)

For Appellant	:	Mrs.I.Malar
For Respondent-1-4	:	Mr.Ma. P. Thangavel
For Respondent-5	:	No Appearance

(For CMA No.3092 of 2012)

For Appellants	:	Mr.Ma.Pa.Thangavel
For Respondent-2	:	I. Malar
For Respondent-1	:	No Appearance

(For CMA No.2074 of 2014)

C O M M ON J U D G M E N T

Both appeals in C.M.A.No.3092 of 2012 and in C.M.A. No.2074 of 2014 have been filed by the Insurance company and

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petitioners/claimants respectively against the Judgment and Decree dated 29.03.2011 passed in M.C.O.P.No.200 of 2010 on the file of the Motor Accident Claims Tribunal, Sub-Court, at Sathyamangalam (M.C.O.P.No.323 of 2009 on the file of Sub-Court, Gopi).

2. Since the facts of the case on the two appeals are one and the same, both appeals have been disposed of by this Common Judgment.

3. The appellant in C.M.A No.3092 of 2012 who is the Insurance company, was the 2nd respondent and the appellants in M.C.O.P. No.2074 of 2014 who are legal heirs of the deceased, were the petitioners/claimants before the Claims Tribunal. The owner of the offending vehicle remained absent before this Court as well as before the Tribunal who is the 5th respondent and 1st respondent in M.C.O.P. No.3090 of 2012 and M.C.O.P. NO.2074 respectively. For the sake of convenience, the parties are referred to in the same ranking as before the Claims Tribunal.

4.The brief facts of the case are as follows:

On 17.04.2009, at about 15.30 hours, while the husband of the 1st petitioner was travelling as pillion rider in the motor cycle bearing registration No.TN-33-G-0301 on Arepalayam to Kethesal Road near Karebavi on the extreme left side of the road at moderate speed, at that time, the driver of the 407-Tempo van bearing registration No.KA-10-3249 drove the van in the opposite direction of the road with high speed and in a rash and negligent manner and without observing the road rules and regulation, dashed against the motor cycle wherein the deceased was travelling as pillion rider. Due to ill-fated accident, the husband of the petitioner died on the way to the hospital. In view of the death of the husband of the 1st petitioner, the legal heirs of the deceased have preferred the claim petition in M.C.O.P. No.200 of 2010 on the file of the Motor Accident Claims Tribunal, Sub-Court, at Sathyamangalam (M.C.O.P.No.323 of 2009 on the file of Sub-Court, Gopi) by and which the Claims Tribunal has awarded a sum of Rs.6,24,375/- (Six Lacs Twenty Four Thousand Three Hundred and Seventy Five Only) to the wife, two minor children and mother of the deceased those are the petitioners/claimants before the Tribunal, on the basis of apportionment, by directing the Insurance company to pay the same who is the insurer of the offending vehicle. ie. 407-Tempo Van.

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5. Being aggrieved by the award, the Insurance company has filed the appeal in C.M.A. No.3092 of 2012, having raised questions with regard to the entire liability fixed on its side and compensation on higher side awarded to the petitioners/claimants and the petitioners/claimants have filed the appeal in C.M.A. No.2074 of 2014, having sought for enhancement of compensation awarded to them.

6. The learned counsel appearing for the Insurance company would submit that the Tribunal erred in fixing the negligence on the driver of the Tempo Van, without considering the rash and negligent driving of the two wheeler bearing registration No.TN-33-G-0301 wherein the deceased was travelling as pillion rider. Since the driver of the two wheeler takes on part for the accident, the Insurer of the two wheeler should have been bound for the liability to be payable the compensation to the petitioners/claimants. However, the Tribunal, without fixing liability on the basis of contributory negligence on both sides, has fixed the liability on the side of the owner and Insurer of the 407-Tempo Van only leaving the Insurer of the two wheeler. Further, the Tribunal has not considered the deposition of the R.W.2, Regional Transport Officer, wherein it was stated that the driver of the Tempo Van did not possess a valid licence to drive commercial vehicle. In the light of the above said averment made by the R.W.2, Regional Transport Officer, the compensation has to be directed to be paid by the owner of the vehicle only in view of violation of the policy rules and regulations whereas the Tribunal has directed the Insurance company, insurer of the offending vehicle, to pay the compensation to the petitioners/claimants. In view of the above, the Insurance company would not be liable to pay the compensation to the legal heirs of the deceased for the death of their sole breadwinner and should have been relieved from the liability. It is further submitted that the petitioners were awarded taking monthly income of the deceased and adopting multiplier on higher side. Hence, the award passed by the Tribunal is not sustainable and liable to be set aside.

7. The learned counsel for the petitioners/claimants would submit that in the accident, the rider and pillion rider of the two wheeler died on the way to the hospital. After thorough investigation only, the Police has registered an F.I.R. against the driver of the tempo Van. On the basis of F.I.R., the Tribunal has come to the conclusion with regard to the factum and manner of the accident that the driver of the Tempo Van, driving the Tempo-Van vehicle in a rash and negligent manner, has dashed the Two wheeler,. Accordingly, The Tribunal has awarded the compensation to the petitioners/claimants after considering the entire oral and documentary evidence in proper

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perspective and in the absence of any contrary evidence let by the Insurance company. Since no supporting documents and evidence were placed before the Tribunal with regard to the rash and negligence driving of the two wheeler, the Tribunal has rightly fixed the liability on the side of the respondents who are the owner of the Tempo-van vehicle and the Insurance Company who is the insurer of the offending vehicle. The petitioners/claimants who are the legal heirs of the deceased, has suffered a lot in maintaining the family due to the death of the sole breadwinner of the family without source of income. The wife of the deceased, without her husband support and income, is managing hardly having two minor children and mother of the deceased. Despite the petitioners/claimants were seeking for compensation a sum of Rs.10,00,000/- due to the death of their sole breadwinner, the Tribunal has awarded meagre amount as compensation of Rs.6,24,375/- along with interest without adding the future prospect along with the income of the deceased. The learned counsel has brought to the notice of this Court that the Claim amount of the petitioners in their appeal has been amended as Rs.15,00,000/- instead of Rs.10,00,000/- by order in M.P. No.1 of 2014 dated 18.08.2014 of this Court. Hence, this Court may be pleased to enhance the compensation as sought by the petitioners in this appeal.

8. Heard, Ms. I. Malar, the learned counsel appearing for the Insurance Company and Mr.Ma.P. Thangavel, the learned counsel appearing for petitioners/claimants. Since there is no representation on the side of the owner of the vehicle, who is arrayed in these appeals as 5th respondent in C.M.A. No.3092 of 2012 and as 2nd respondent in C.M.A. No.2074 of 2014, had been set ex-parti before this Court as well as before the Tribunal.

9. Before the Tribunal, on the side of the petitioners/claimants, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P14 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.R1 and Ex.R2 were marked.

10. On perusal of the award, it is seen that the Tribunal has come to the conclusion with regard to the factum and manner of the accident that the driver of the Tempo-Van has driven the vehicle in a rash and negligent manner due to which the aforesaid accident was occurred on that day after having considered Ex.P.1 F.I.R registered against the Driver of the Tempo-Van as Tort-feasor by the police official after conducting investigation in a proper manner on the aforesaid road accident. In the aforesaid accident, both the rider and pillion rider were succumbed to the fatal injuries on the way to the hospital.

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Moreover, at the time of the trial, the driver of the Tempo-Van was not examined to support the contention of the Insurance company to prove the rash and negligence driving of the driver of the Two wheeler and no contrary oral and documentary evidence was let in by the Insurance company to prove their contention. Under this circumstance, the Tribunal has corroborated the factum and manner of the accident in view of the rash and negligent driving of the Tempo-Van driver. Accordingly, the Tribunal has fixed the liability on the side of the owner of the Tempo-Vehicle and Insurer of the Tempo Vehicle. As the offending vehicle was insured with the Insurance company, the Tribunal has directed the Insurance company to pay the compensation of Rs.6,24,375/- to the legal heirs of the deceased after perusing the entire oral and documentary evidence let in by both parties. Hence, this Court is in entire agreement with the findings of the Tribunal with regard to the accident alleging that the driver of the Tempo-van has driven the vehicle in rash and negligent manner and dashed against the two wheeler driven by the rider and pillion rider by which the rider and pillion rider of the two wheeler died in the road accident. In view of the above observation, there is no dispute in regard to the factum and manner of the accident under Section 163-A of the Motor Vehicle Accident Act. However, the Insurance company has made another contention that the driver of the Tempo-Van did not have valid driving licence at the time of the accident which was also confirmed by R.W.2, Regional Transport Officer. In view of the above, the Insurance company has sought this Court to relieve it from the liability as if the the Insurance policy rules and regulations has been violated and when there is no valid driving licences at the hand of the driver of the offending vehicle. It is well settled law that the Insurance company cannot escape from the liability in paying the compensation to the claimants unless there is a fake licence or invalid licence possessed by the driver of the offending vehicle. Hence, the Insurance company is liable to pay the compensation to the petitioners/claimants.

11. On the other hand, as the compensation amount awarded by the Tribunal has not satisfied to the petitioners/claimants, they have sought this Court to enhance the compensation amount by way of the appeal in C.M.A. No.2074 of 2014. In the mean time, pending disposal of this appeal, the petitioners/claimants have filed M.P. No.1 of 2014 praying this Court to amend the claim amount as Rs.15,00,000/- instead of Rs.10,00,000/-. The same was ordered by this Court on 18.08.2014 as prayed for. Hence, now, it is to be considered as to whether the Tribunal has awarded compensation after taking into consideration entire oral and documentary evidence in a proper manner since the quantum of the compensation awarded to the petitioners/claimants

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has been questioned by the Insurance company and the petitioners/claimants as on higher side and lower side respectively.

12. On perusal of the award, it is seen that according to the averment of the P.W.3, the deceased was engaged in the Postal Department as post man on the contract basis and he had drawn Salary calculating on his working days. For the proof of the income of the deceased, Ex.P9 and Ex.P12 were marked during the trial before the Tribunal as Salary Slip for the month of March'2009 and April'2009 respectively. The Tribunal has taken into consideration Ex.P9, the salary slip for the month of March' 2009 for fixing the loss of the income wherein the income of the deceased marked as Rs.4,424/- only leaving Ex.P9, the monthly salary slip of April' 2009 wherein the net income of the deceased was marked as Rs.5,429/- since there was no proper explanation with regard to reduction of Dearness Allowance on the side of the petitioners/claimants. However, the accident occurred in the month of April' 2009. ie. on 17.04.2009, in which the breadwinner of the family died on the same day. The salary slip for the month of April '2009 was generated and the salary was also credited to the account of deceased. In view of the loss of income should have been calculated considering the latest salary slip drawn by the deceased, this Court has taken Ex.P.9, Salary slip for the month of April'2009 as proof of the income of the deceased. Accordingly, the monthly income of the deceased is fixed as Rs.5,429/- instead of Rs.4,424/- as fixed by the Tribunal according to Ex.P12. Since the age of the deceased has been fixed at 36 years according to Ex.P2, Port-mortem report, as per the decision of the Hon'ble Supreme Court in Sarala verma case, the Tribunal has adopted the multiplier of 15 in the right manner. However, as per the contention of the learned counsel for the petitioners/claimants, the future prospect was not added along with the income of the deceased on perusal of the award. Normally, the future prospect would be added while computing the compensation to be paid to the dependents. Hence, the future prospect at 40% is added along with the income of the deceased since the deceased was working on the contract basis in the postal department and he may be confirmed in the postal department after several years if he would have been alive. Thus, the monthly income of the deceased is calculated as follows:

= (Rs.5429 + 40% X 1/4 X 15 X 12)

=Monthly Income Rs.5,429 + 40% future prospect Rs.2,171/- =Rs.7600/-. As there are 4 dependents 1/4th amount is to be deducted towards the personal expenses, i.e.Rs.7,600 (-) 1/4th amount of Rs.1,900/-=Rs.5,700/-. Then, after adding multiplier

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of 15 along with Rs.5,700/-, the loss of monthly income of the deceased is arrived at Rs.85,500/-. The annual income of the deceased would come to Rs.85,500/- X 12= 10,26,000/-. Thus, the loss of the income of the deceased is arrived as Rs.10,26,000/-. Further, the compensation under the other heads are confirmed since they were awarded reasonably according to the oral and documentary evidence placed before the Tribunal. The compensation awarded to the petitioners/claimants are enunciated hereunder as per the head-wise.

SL. No.	Particulars	Amount (in Rs.)
1	Loss of Income of the deceased as stated above	10,26,000.00
2	Loss of consortium	10,000.00
3	Love and Affection	10,000.00
4	Funeral Expenses	5000.00
5	Transport	2000.00
	Total Amount	10,53,000.00

13.Thus, the compensation awarded by the Tribunal has been enhanced by Rs.4,28,625/- from Rs.6,24,375/- to Rs.10,53,000/- with interest @7.5% per annum from the date of petition till the date of realisation. The Insurance company is directed to deposit the award amount enhanced by this Court to the credit of M.C.O.P. No.200 of 2010 on the file of the Motor Accident Claims Tribunal, (Sub-Court) at Sathyamangalam, (M.C.O.P. No.323 of 2009 on the file of the Sub-Court, Gopi.) after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of copy of this Judgment.

14. On such deposit, the 1st petitioner being the wife of the deceased is entitled for a sum of Rs.2,53,000/-, 2nd and 3rd petitioners are being minor children of the deceased are entitled for a sum of Rs.3,00,000/- each and the 4th petitioner being the mother of deceased is entitled for a sum of Rs.2,00,000/- out of the total award amount. Since the 2nd and 3rd petitioners are minors, their share amount shall be deposited in any Nationalized Bank till they attain majority. The quarterly interest on the deposit of the Minors can be withdrawn by their mother for their expenses. After attaining the majority, the 2nd and 3rd petitioners can withdraw their shares from the Bank. The petitioners/claimants are directed to pay the required Court fee for the enhanced award amount before getting the copy of the Judgment.

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15. In the result, the C.M.A. No.2074 of 2014 filed by the petitioners/claimants is allowed and the C.M.A.No.3092 of 2012 filed by the Insurance company is dismissed. Accordingly, the impugned award passed by the Tribunal is modified. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

Lbm

To:

1. The Motor Accident Claims Tribunal,
   Sub-Court, at Sathyamangalam
   (M.C.O.P.No.323 of 2009 on the file of Sub-Court, Gopi.)

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

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.10935
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.11592

C.M.A.Nos.3092 of 2012 & 2074 of 2014

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