IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.629 of 2015 and
M.P.No.1 of 2015

M/s.Cholamandalam General Insurance Co.Ltd.,
Dare House, 2nd Floor,
No.2, NSC Bose Road, Chennai. .. Appellant/2nd Respondent

Vs.

1.Saradha

2.Minor Manibharathi

3.Rajamani
(Minor, represented by mother
and next friend, Saradha/1st respondent
herein)

4.Kasamuthu .. Respondents/Petitioner & 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.03.2013 made in M.C.O.P.No.506 of 2011 on the file of the Motor Accidents Claims Tribunal, First Additional District and Session Court, Tiruppur.

For Appellant : Ms.C.Harini
for Mr.M.Boopalan

For R1 to R3 : Mr.MA.P.Thangavel

For R4 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against award dated 06.03.2013 made in M.C.O.P.No.506 of 2011 on the file of the Motor Accidents Claims Tribunal, First Additional District and Session Court, Tiruppur.

2.The appellant is the second respondent in M.C.O.P.No.506 of 2011 on the file of the Motor Accidents Claims Tribunal, First Additional District and Session Court, Tiruppur. The respondents 1 to 3 filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Muthu, who died in the accident that took place on 12.05.2010.

3.According to the respondents 1 to 3, on 12.05.2010, at about 15.45 hours, while the deceased Muthu was travelling in the Auto Ape along with vessels taken for temple function from Alwarkurichi to Singampatti bearing Registration No.TN-76-F-2493, near Periya Thottam, Periyar Nagar Bus Stop, at Thayampalayam Kovai - Trichy Main Road, the driver of the Auto drove the same in a rash and negligent manner, without adhering to traffic rules and regulations dashed against a stone at the left side of the road, due to which, the above said Auto capsized. As a result of which, the deceased Muthu sustained fatal injuries and died on the spot. Based on the above averments, the respondents 1 to 3 have filed the claim petition before the Tribunal claiming compensation against the 4th respondent as well as appellant.

4.The 4th respondent remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the driver of the vehicle did not possess valid driving licence at the time of accident and it is a violation of Section 3 of MVI Act. It is further stated that the insured vehicle is a goods carrier vehicle meant for carrying the goods alone, whereas, the deceased had travelled in the said vehicle contrary to the policy and permit conditions and the deceased was a gratuitous passenger at the time of accident and hence, the Insurance company is not liable to pay any compensation to the respondents 1 to 3.

6.Before the Tribunal, the wife of the deceased was examined as P.W.1, two others were examined as P.W.2 and P.W.3 and marked 11 documents as Exs.P1 to P11. On the side of the appellant, one Jeevanandam was examined as R.W.1 and Pradeep Kumar was examined as R.W.2 and marked seven documents as Exs.R1 to R7.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Auto belonging to the 4th respondent and directed the appellant-Insurance Company to pay a sum of Rs.3,85,200/- as compensation to the respondents 1 to 3/claimants.

8.Against the said award dated 06.03.2013 made in M.C.O.P.No.506 of 2011, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fastening the liability on the appellant when the owner-cum-driver of the insured vehicle did not possess driving licence to drive the insured vehicle on the date of accident. The Tribunal also failed to appreciate the evidence of R.W.1/official from the RTO and Exs.R2 to R7 which substantiated the contention of the appellant that the 4th respondent did not possess driving licence at the time of accident and committed serious breach of policy conditions. The Tribunal ought to have exonerated the appellant from its liability as the 4th respondent did not possess the driving licence and the Tribunal erred in holding that the appellant is liable to pay the compensation. The claim of the respondents 1 to 3 is not covered under Section 147 of the Motor Vehicle Act. The insured vehicle was a goods vehicle which is permitted only to carry goods with seating capacity of two including the driver and the deceased travelled as gratuitous unauthorized passenger and more persons travelled than permitted seating capacity. The total compensation of Rs.3,85,200/- awarded by the Tribunal is unsustainable and liable to be set aside and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 1 to 3 contended that the deceased travelled in the insured vehicle as owner of the goods. The respondents 1 to 3 have pleaded so and examined P.W.3 who deposed that the deceased travelled along with goods at the time of accident and F.I.R is registered against the 4th respondent. In the F.I.R, it is clearly mentioned that the deceased travelled along with the goods as owner of the goods. The appellant has not let in any evidence to disprove the contention of respondents 1 to 3 and failed to prove that the deceased did not travel along with goods. The learned counsel appearing for the respondents 1 to 3 further contended that the total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

12.It is the contention of the respondents 1 to 3 that the deceased travelled in the Auto along with vessels taken for Temple function as unauthorised passenger. They substantiated the said contention by examining the 1st respondent, wife of the deceased as P.W.1 as well as P.W.3, who was an eye-witness travelled along with the deceased in the said vehicle at the time of accident. In the F.I.R marked as Ex.P1, it has been stated that the deceased travelled along with goods, but the appellant has not examined the driver of the offending vehicle or any eye-witness to prove that the deceased did not travel along with goods and travelled only as gratuitous passenger. The appellant has examined R.W.1 and R.W.2 and marked Exs.R1 to R7 only to prove that the 4th respondent did not possess driving licence at the time of accident. In view of the above materials, this Court is of the view that the respondents 1 to 3 proved that deceased travelled along with goods at the time of accident.

13.The respondents filed the claim petition under Section 163A of Motor Vehicle Act. The Tribunal has followed structural formula in second schedule and arrived the compensation at Rs.3,43,200/- towards loss of income, which is proper and the same is confirmed by this Court. As per the second schedule, the 1st respondent is entitled to only Rs.5,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate. The respondents 2 and 3 are not entitled for any compensation towards loss of love and affection. Hence, the same is set aside by this Court. A sum of Rs.15,000/- awarded by the Tribunal towards loss of consortium is reduced to Rs.5,000/-. A sum of Rs.5,000/- awarded by the Tribunal towards funeral expenses is reduced to Rs.2,000/-. The amount of Rs.2,000/- awarded by the Tribunal towards transportation is set aside. The respondents 1 to 3 have claimed a sum of Rs.15,000/- towards medical expenses and to prove the same, they have filed Ex.P6/medical bills. The Tribunal has not awarded any amount towards medical expenses. As per second schedule, the Tribunal can award actual medical expenses not exceeding a sum of Rs.15,000/-. Considering the claim of the respondents 1 to 3 and Ex.P6, a sum of Rs.15,000/- is granted towards medical expenses. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.2,500/- is granted for loss of estate.

14.The contention of the learned counsel appearing for the appellant that the Tribunal ought to have exonerated the appellant as the 4th respondent did not possess valid driving licence is without merits. When the driver of the vehicle did not possess a driving licence, the Insurance Company cannot be exonerated in its entirety for not possessing the driving licence while driving the insured vehicle in violation of policy condition. The Insurance Company is to be directed to pay the compensation awarded at the first instance and recover the same from the owner of the vehicle, the 4th respondent/owner-cum-driver of the insured vehicle. The award of the Tribunal directing the appellant to pay the compensation is modified directing the appellant to pay the compensation at the first instance and recover the same from the 4th respondent. 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 income	3,43,200/-	3,43,200/-	confirmed
2.	Loss of consortium to 1st respondent	15,000/-	5,000/-	reduced
3.	Transportation	2,000/-	-	Set aside
4.	Funeral expenses	5,000/-	2,000/-	reduced
5.	Medical expenses	-	15,000/-	granted
6.	Loss of estate	-	2,500/-	granted
7.	Loss of love and affection to respondents 2 and 3	20,000/-	-	Set aside
	Total	Rs.3,85,200/-	Rs.3,67,700/-	reduced by Rs.17,500/-

15.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,85,200/- is hereby modified to Rs.3,67,700/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court, together 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 judgment, at the first instance and recover the same from the 4th respondent/owner of the vehicle. On such deposit, the respondents 1 and 3 are permitted to withdraw their respective share of the modified award amount 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. The appellant/Insurance Company is permitted to withdraw the excess amount if any lying in the deposit to the credit of M.C.O.P.No.506 of 2011, if the entire award amount has already been deposited by them. The share of the minor, namely the 2nd respondent is directed to be deposited in any one of the

Nationalized Banks, till the minor/2nd respondent attains majority. On such deposit, the 1st respondent, being the mother of the minor, 2nd respondent, is permitted to withdraw the accrued interest once in three months for the welfare of the minor/2nd respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Gbi

To

1.The First Additional District and Session Judge,
Motor Accidents Claims Tribunal,
Tiruppur.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No. 18308
+1cc to Mr.P.Thangavel, Advocate, S.R.No. 18057

C.M.A.No.629 of 2015 and
M.P.No.1 of 2015

SAI(CO)
GN(06/01/2021)