IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.581 of 2013

(Through Video Conferencing)

1.M.Alamelu Mangai

2.Surendar Kumar

3.Saranya

4.Sukanya

5.Nachirammal .. Appellants/Claimants

Vs.

1.P.Mohan

2.Royal Sundaram Alliance Insurance Company Limited,
Having office at Sundaram Towers,
No.45 and 46, Whites Road,
Chennai - 14. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 14.08.2012 passed in M.C.O.P.No.39 of 2011, on the file of the Motor Accident Claims Tribunal cum IV Addl. District Court at Ponneri.

For Appellant : Mr.A.A.Venkatesan

For R1 : No appearance

For R2 : Mr.M.B.Raghavan

J U D G M E N T

Heard the learned counsels for the appellants and the 2nd respondent.

2. This Civil Miscellaneous Appeal has been filed, to set aside the Judgment and Decree dated 14.08.2012 passed by the Motor Accident Claims Tribunal cum IV Addl. District Court at Ponneri in M.C.O.P.No.39 of 2011.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.20,00,000/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the appellants. Aggrieved by the same, the appellants have filed the present Civil Miscellaneous Appeal.

4. Though the claim petition was filed by the appellants/claimants for a compensation of Rs.40,77,528/-, it was however restricted to Rs.20,00,000/- by the appellants/claimants. The appellants are the legal heirs and the dependents of the deceased Mohan, who died in an accident while walking as a pedestrian on Dr.Ambedkar College Road, Pattalam, when the insured lorry bearing registration number TN 30 K 3605 insured with the 2nd respondent Insurance Company hit him.

5. After considering the evidence on record, the Tribunal has awarded a sum of Rs.20,00,000/- as compensation to the appellants/claimants and concluded that the appellants/claimants were eligible for a compensation of Rs.30,82,000/-. Thus, the Tribunal has awarded a restricted compensation of Rs.20,00,000/- since the claim was restricted to Rs.20,00,000/- by the appellants/claimants. Aggrieved by the same, the appellants have filed the present Civil Miscellaneous Appeal.

6. The learned counsel for the 2nd respondent submits that the Civil Miscellaneous Appeal is not maintainable as the appellants/claimants cannot be said to be aggrieved by the impugned Judgment and Decree as the compensation that was awarded as per the claim petition.

7. In this connection, the learned counsel for the 2nd respondent relied on the following decisions of the Hon'ble Supreme Court:-

i. Adikanda Sethi (dead) through LRS and Another Vs. Palani Swami Saran Transports and Another, 1997 (5) SCC 435.
ii. Manager, the New India Assurance Co. Ltd., Nalgonda Vs. Chintnala @ Anaganthi Narasimha and another, 2002 ACJ 524.
iii. K. Annaji Rao & Anr. Vs. Md. Jaboar & Anr, 2003 SCC OnLine AP 836 : (2003) 6 ALD 452.

8. The Andhra Pradesh High Court in K. Annaji Rao & Anr. Vs. Md. Jaboar & Anr, 2003 SCC OnLine AP 836 : (2003) 6 ALD 452, has held as follows:-

> 4. The contention of the learned counsel for the appellants is that since the Tribunal has power to award compensation which is just and reasonable,

though the appellants claimed only three lakh rupees as compensation the Tribunal should have awarded compensation as arrived by it and called upon the appellants to pay the court fee payable, and was in error in restricting the amount of compensation to three lakh rupees only on the ground that they claimed only three lakh rupees. I am unable to agree with the contention of the learned counsel for the appellants. An appeal is maintainable only by a person aggrieved. Person to whom the entire amount claimed is awarded cannot be said to be an aggrieved person. Merely because the Tribunal, while computing the compensation to which the claimants would have been entitled to, held that they would have been entitled to higher compensation than claimed, a person cannot be said be aggrieved because it is always open to a person to restrict his claim. If a claimant, after filing the O.P., feels that he is entitled to more compensation than claimed, should seek leave to amend his claim petition. If he does not think it fit to do so it is not the part of the duty of the Tribunal to award compensation as arrived by it and call on the claimant to pay the court fees. In fact a Division Bench of this Court in L.P.A. No. 5 of 1997, Dated 13.1.2002 clearly held that Tribunal should not grant more compensation than that is claimed in the claim petition.

9. He further submits that having given up the right before the Tribunal, it is no longer open for the claimants to file an appeal as an aggrieved persons. He further submits that earlier during the course of the hearing, talks took between the parties but they could not arrive at a settlement. The 2nd respondent Insurance Company has came forward to settle the dispute by agreeing to pay the remaining balance amount of Rs.10,82,000/- without interest. On the other hand, the appellants are seeking not only the balance amount of compensation of Rs.10,82,000/- but also the interest at 7.5% per annum from the date of the claim petition.

10. I have considered the arguments advanced by the learned counsel for the appellants and the 2nd respondent.

11. A perusal of Section 173 of the Motor Vehicles Act, 1988 provides, that any person aggrieved by an award of a Claims Tribunal can file an appeal to the High Court. It is subject to the provisions of Sub-Section (2) thereof. The restriction imposed under Sub-Section (2) of Section 173 is with regard to non-filing of appeal against any award of a Claims Tribunal where the amount in dispute in the appeal is less than Rs.10,000/-.

12. The question to be answered in the present Civil Miscellaneous Appeal is whether the appellants/claimants can maintain the present appeal against the impugned award which allowed the claim as prayed by the appellant before the Tribunal.

13. The appellant had restricted the claim to Rs.20,00,000/- though had quantified the same as Rs.40,77,528/- in the claim petition filed under Section 166 of the Act. The Tribunal came to a conclusion that the appellants/claimants were entitled to a sum of Rs. 30,82,000/- but has awarded only a sum of Rs.20,00.000/- to the appellants/claimants as the appellants/claimants had restricted the claim amount to the aforesaid amount.

14. The fact that the appellants/claimants have filed an appeal itself indicates that the appellants/claimants are "aggrieved" by the award of the claims Tribunal. Whether the appellants/claimants are entitled to the relief claimed in the present appeal is altogether a different issue, which has to be decided independently. An appeal cannot be rejected on a very hyper technical ground that since the appellants/claimants had restricted the claim to Rs.20,00,000/- which was awarded by the Tribunal and therefore, the appellants/claimants cannot be said to be aggrieved by it for the purpose of Section 173 of the Motor Vehicle Act, 1988.

15. The Tribunal created under Section 165 of the Motor Vehicle Act, 1988 is meant for awarding just compensation to victims or their dependent(s). Notwithstanding, defective pleadings in the claim, the Tribunal as also this Court is required to guide the claimants to claim just compensation and if the Tribunal fails to do so, an aggrieved persons can certainly approach this Court under Section 173 of the Motor Vehicle Act, 1988, to redress their grievances. There is no estoppel.

16. In Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, (2016) 9 SCC 627 : (2016) 3 SCC (Cri) 713, the Hon'ble reiterated the view in Helen C. Rebello Vs. Maharashtra SRTC, (1999) 1 SCC 90 : 1999 SCC (Cri) 197, i.e., if the amount that "would be due to the dependents of the deceased even otherwise", the same shall not be deductible from the compensation amount payable under Motor Vehicle Act, 1988.

17. In Anant Vs. Pratap, (2018) 9 SCC 450: 2018 SCC OnLine SC 1082, the Hon'ble Supreme Court held that the purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident following the views expressed in Yadava Kumar Vs. National Insurance Co. Ltd., (2010) 10 SCC 341 : (2010) 4 SCC (Civ) 168. In the latter judgment, the concept of "just compensation" was explained as follows:-

> "15. It goes without saying that in matters of determination of compensation both the Tribunal and the Courts are statutorily charged with a responsibility of fixing a "just compensation". It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of "just compensation" obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field."

18. In Sunita Vs. State of Rajasthan,2019 SCC OnLine SC 195 the Hon'ble Supreme Court held as follows:-

> It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.

19. In Thiruvallavuar Transport Corporation Vs. Sukuntala 2001 ACJ 1322, this Court held that even in an appeal under Section 173 of the Act, the provisions of Order 41 Rule 33 of Civil Procedure Code will apply and therefore, the Appellate Court can enhance the compensation in absence of an appeal or cross appeal in an appeal filed by the owner of the offending vehicle.

20. If Order 41 Rule 33 of Civil Procedure Code is applicable, I do not find any reason why the present Civil Miscellaneous cannot be entertained at the behest of the appellants/claimants. To do complete justice the Court can pass appropriate order which it considers just and necessary in the facts and circumstances of the case.

21. In my view, the Tribunal ought to have given an option to the appellants/claimants to pay the deficit court fee on the aforesaid compensation of Rs. 30,82,000/- arrived by it instead of straight away restricting the compensation to Rs.20,00,00/- merely because the appellants/claimants had restricted the claim to the aforesaid amount.

22. The Tribunal also ought to have considered the constraints under which the appellants/claimants' claim petition under the Act. A humane approach to the approach would have solved the issue by balancing the interest of the appellants/claimants and the 2nd respondent Insurance Company by awarding the just compensation determined by it and by directing appropriate interest on the enhanced compensation from the date of claim petition till the date of actual payment. In fact, it is no part of the duty of the 2nd respondent to deny just compensation to victims or their dependent(s).

23. Both the appellants/claimants and 2nd respondent Insurance, Company have also indicated that the 2nd respondent Insurance Company was not averse to the idea of releasing the enhanced compensation to the appellants/claimants but was unwilling to pay interest from the date.

24. However, interest is consequential and would always date back to the date of the claim petition. Even if an application for enhanced compensation was made by way of an amendment to the claim petition before the Tribunal it could have been allowed and the interest payable would date back from the date of the claim petition. The 2nd respondent Insurance Company cannot take advantage of its mistake and whittle down rights of the appellants/claimants. After all the amount which was legitimately due to the appellants/claimants would have earned interest in the hands of the 2nd respondent Insurance Company and therefore, there is loss to it. It is this amount which is to be paid to the appellants/claimants. As there is no loss to the 2nd respondent Insurance, interest is directed to be paid at 4% from the date of the claim petition till the date of deposit on the enhanced compensation.

25. Therefore, to meet the ends of justice, the 2nd respondent Insurance Company is therefore directed to pay the balance amount of Rs.10,82,000/- (30,82,000 - 20,00,000) together with interest at 4% per annum from the date of the claim petition till the date of deposit, within a period of six weeks from the date receipt of a copy of this Judgment.

26. If the amount of compensation awarded by the Tribunal has not been deposited, the 2nd respondent Insurance Company is also directed to deposit the same together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit as was ordered in the impugned Judgment and Decree by the Tribunal, less the amount already deposited if any, within the aforesaid period.

27. On such deposits, the appellants/claimants are entitled to withdraw same in the same proportion as was ordered by the Tribunal, less any amount already withdrawn, by filing suitable applications before the Tribunal.

28. This Civil Miscellaneous Appeal stands partly allowed with the above observation. No cost.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To:

The IV Additional District Court, Judge,
Motor Accident Claims Tribunal,
Ponneri.

C.M.A.No.581 of 2013

TM(CO)
GMY(14/09/2020)