IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

CORAM:
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
C.M.A.No.3278 of 2019
and
C.M.P.Nos.19072 of 2019 & 2051 of 2020

M/s.Cholamandalam MS General
Insurance Company Limited,
Harnivas Towers, 1st Floor,
No.163, Thambu Chetty Street,
Chennai - 600 001. .. Appellant/2nd Respondent

Vs.

1. D.Abirami
2. Subashini (Minor)
3. Pushparaj (Minor)
4. Rishaban (Minor)
5. Sivalingam (Minor)
(Respondents 2 to 5 Minors rep by
Mother and Next Friend 1st Respondent)
6. Deivanai ..Respondents 1 to 6/Petitioner
7. A.G.Dhesingh ..7th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 27.02.2019, made in M.C.O.P.No.2511 of 2016, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Cuddalore.

For Appellant	:	Mr.M.B.Raghavan
For Respondents 1 to 6	:	Mrs.Ramya V.Rao
For Respondent 7	:	No appearance

J U D G M E N T

The insurance company aggrieved over the Award passed by the Motor Accident Claims Tribunal, in M.C.O.P.No.2511 of 2016, dated 27.02.2019, has filed this appeal.

2. The brief facts leading to the filing of this appeal are as follows:

(i) It is a case of fatal accident. The deceased by name Dharmadurai, on 03.02.2016, was travelling in a goods vehicle bearing registration No.TN 32 AY 2163, owned by the seventh respondent herein, which was insured with the appellant herein. In the said vehicle he transported vegetables and travelled as the owner of the goods.

(ii) Due to the rash and negligent driving of the driver, the vehicle hit the road divider and capsized and the deceased sustained fatal injuries and subsequently declared dead at the Government Hospital, Kallakurichi.

(iii) According to the claimants, the deceased was earning a sum of Rs.20,000/- and he was the sole breadwinner of the family. Hence, claiming a sum of Rs.20,00,000/- as compensation, the wife, children and the mother of the deceased filed the claim petition before the Tribunal.

3. The seventh respondent / owner of the offending vehicle remained ex parte before the Tribunal. The appellant / insurance company contested the claim petition stating that the vehicle involved in the accident was a goods vehicle having seating capacity of two persons including that of the driver of the vehicle. Even though the deceased was travelling as the owner of the goods, at the time of the accident, along with the deceased six other persons were also travelling and some of them also sustained injuries. The vehicle has sitting capacity of two persons and all other persons were unauthorised passengers and there is no policy coverage to the deceased and other persons travelling in the vehicle and it is a violation of policy condition. That apart, the insurance company also disputed the monthly income of the deceased stating that the claim is excessive and highly speculative.

4. In order to prove the claim, the first respondent herein examined herself as P.W.1 and an eyewitnesses to the occurrence was examine as P.W.2 and marked as many as nine documents as Exs.P1 to P9. On the side of the respondents therein, two witnesses were examined as R.Ws.1 and 2 and as many as four documents were marked as Exs.R1 to R4.

5. The Tribunal after considering the materials available on record came to the conclusion that the accident took place due to the rash and negligent driving of the driver of the vehicle. So far as the quantum of compensation is concerned, the Tribunal fixed the notional monthly income of the deceased at Rs.4,500/- per month and added 40% of the monthly income towards future prospects and deducted 1/7 towards his personal expenses and applying the multiplier of 15 arrived at the loss of dependency at Rs.14,04,000/-. In respect of other conventional heads the Tribunal has awarded a sum of Rs.15,000/- towards loss of Estate; Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses thus, totalling a sum of Rs.14,74,000/- was awarded as compensation. Aggrieved over the same, the appellant / insurance company filed the present appeal.

6. Mr.M.B.Raghavan, learned counsel appearing for the appellant/insurance company submitted that the deceased is an

unauthorised passenger and therefore the insurance company is not liable to pay compensation. According to the learned counsel, the vehicle involved in the accident is a goods vehicle with seating capacity of two persons including the driver. As per the FIR in respect of the accident, it is stated that as many as seven persons were travelling in the vehicle at the time of the accident and some of them sustained injuries and they have also filed claim petitions before the Tribunal. In one case, award was also passed exonerating the insurance company and two cases were dismissed for default and some claim petitions are still pending. Further according to the learned counsel for the appellant, though specific plea was raised before the Tribunal regarding liability of the insurance company as there is no policy coverage to unauthorised passengers, the Tribunal without considering the issue, fixed the liability on the insurance company.

7. Per contra, the learned counsel appearing for the respondents 1 to 6 / claimants submitted that the deceased in this case has travelled as the owner of the goods, which is permissible in law and the insurance company cannot escape from its liability merely on the ground that he is an unauthorised passenger. The evidence available on record clearly shows that the deceased only travelled as owner of the goods in the vehicle and in those circumstances the Tribunal has fixed the liability on the appellant/insurance company. The learned counsel also disputed the quantum of compensation awarded by the Tribunal.

8. I have considered the rival submissions.

9. The primordial contention of the learned counsel appearing for the appellant / insurance company is that the vehicle involved in the accident was a goods vehicle having seating capacity of two persons including the driver and at the time of the accident seven persons including the deceased travelled in the vehicle as unauthorised passengers and hence the insurance company cannot be fastened with liability.

10. No doubt, the liability of the insurer is confined to the number of persons insured and the insurance company cannot be made liable to pay compensation for the persons beyond policy coverage. For any person travelling in the vehicle in excess, then permitted, under the policy, then the owner of the vehicle only liable to compensate them. Under Section 149(1) of the Motor Vehicles Act, the insurance company is liable to make payment to those persons and the insurance company is entitled to recover the same from the owner of the vehicle. The Hon'ble Supreme Court in United India Insurance Co. Ltd. Vs. K.M.Poonam and others reported in 2011 (2) SCALE 568 in paragraph 24 has held as follows:

> "24. The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same. In other words, as in the present case, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of Section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle. In the instant case, any of the persons travelling in the vehicle in excess of the permitted number of six passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could then recover it from the insured owner of the vehicle."

11. In the instant case, admittedly two persons were permitted to travel in the vehicle and it is the specific case of the claimants that the deceased was travelling in the vehicle as the owner of the goods and the evidence on record also supports the same. In such circumstances, the insurance company cannot escape from its liability by saying that seven persons travelled as unauthorised passengers and they are not liable to pay compensation. If at all any claim is pending against the insurance company, it is always open to raise those objections in the other claim petitions. In such circumstances, as per the policy condition, the insurance company is liable to pay compensation of the claimants.

12. So far as the quantum of compensation is concerned, according to the claimants the deceased was a vegetable vendor and earning a sum of Rs.20,000/- per month. Even though there is no evidence available on record to show that he was earning Rs.20,000/- per month, considering the nature of business he was doing, this Court is of the view that the deceased would easily earn a sum of Rs.6,500/- per month. Considering the age of the deceased, which is 35 years, 25% of the monthly salary has to be added towards future prospects, which comes to Rs.8,125/-. Further, 1/4 has to be deducted towards his personal expenses and applying multiplier of 14 the loss of dependency will comes to Rs.10,23,792/-. Towards loss of consortium, the first respondent / wife of the deceased is entitled to Rs.40,000/-. The children and the mother of the deceased are entitled to Rs.40,000/- each towards parental consortium and filial consortium respectively. Rs.5,000/- is awarded towards transport expenses. So far as other heads are concerned, the Tribunal has rightly granted compensation and there is no reason to interfere with the same.

13. In view of the above, the compensation awarded by the Tribunal is modified as follows:

Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Loss of dependency	14,04,000	10,23,792	Reduced
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Parental consortium	-	1,60,000	Granted
4.	Filial consortium	-	40,000	Granted
5.	Loss of Estate	15,000	15,000	Confirmed
6.	Funeral expenses	15,000	15,000	Confirmed
7.	Transport expenses	-	5,000	Granted
	Total	14,74,000	12,98,792 (Rounded to Rs.13,00,000)	Reduced by Rs.1,74,000/-

14. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,74,000/- is hereby reduced to Rs.13,00,000/- together with

interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant / insurance company is directed to deposit the 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 judgment to the credit of M.C.O.P.No.2511 of 2016, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Cuddalore. On such deposit, the respondents 1 and 6 / claimants 1 and 6 are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. So far as the amount awarded to the respondents 2 to 5 / claimants 2 to 5 are concerned, the amount should be deposited in a fixed deposit in a nationalised bank initially for a period of three years and the first respondent/first claimant is permitted to withdraw the accrued interest periodically. The appellant is entitled to refund of Court fee, in any, on the reduced amount of compensation now determined by this Court. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Special Subordinate Judge
Motor Accident Claims Tribunal,
Cuddalore.

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

C.M.A.No.3278 of 2019 and
C.M.P.Nos.19072 of 2019 & 2051 of 2020

SV(CO)
SP(04/02/2021)