IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.93 of 2017

1.V.Renganayaki
2.Minor V.Vignesh
3.Minor V.Rajesh
4.Rajammal .. Appellants
(Minors rep. by next friend mother
V.Renganayaki)

Vs.

1.V.Sathish
2.B.M.Vaiyapuri
3.The Oriental Insurance Company Limited,
59, Raja Street,
Gobichettipalayam.
4.The Oriental Insurance Company Limited,
Divisional Office, Parimalam Complex,
Erode. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.04.2009 made in M.C.O.P.No.323 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court at Bhavani.

For Appellants : Mr.MA.P.Thangavel
For Respondents : Mrs.Elaveera Ravindran
for R3 and R4

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 01.04.2009 made in M.C.O.P.No.323 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court at Bhavani.

2.The appellants are the claimants in M.C.O.P.No.323 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court at Bhavani. They filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of one velumani, who died in the accident that took place on 11.11.2006.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the first respondent, driver of the vehilce belonging to the second respondent and directed the respondents 1 and 2 to jointly and severally pay a sum of Rs.4,80,000/- as compensation to the appellants. The Tribunal dismissed the claim petition as against the respondents 3 and 4.

4.The appellants have come out with the present appeal challenging the portion of the award dismissing the claim petition as against the respondents 3 and 4 from its liability as well as for enhancement of compensation.

5.According to the learned counsel appearing for the appellants-claimants, the Tribunal erred in dismissing the claim petition as against the respondents 3 and 4/Insurance Companies from its liability on the ground that the driver of the vehicle did not possess driving licence at the time of accident and he has only learner's driving licence. The Tribunal ought to have ordered pay and recovery and prayed for setting aside the portion of the award dismissing the claim petition as against the respondents 3 and 4/Insurance Companies from its liability. He further contended that the deceased was owning a tea stall and was earning a sum of Rs.10,000/- per month. The Tribunal has fixed only a sum of Rs.3,000/- per month as notional income of the deceased. The deceased was aged 33 years at the time of accident and the Tribunal ought to have applied proper multiplier and also granted 50% enhancement towards future prospects. There are five members in the family including father of the deceased, who died pending claim petition. The Tribunal ought to have deducted $1/5^{th}$ towards personal expenses instead of $1/3^{rd}$. The Tribunal has failed to award any amount towards loss of estate. The amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the respondents 3 and 4/Insurance Companies contended that the driver of the car did not possess driving licence at the time of accident and in contravention of policy condition, he drove the vehicle and caused the accident. The Tribunal has rightly dismissed the claim petition as against the respondents 3 and 4/Insurance Companies from its liability. The Tribunal in the absence of any material evidences to prove the avocation and income of the deceased, has fixed a sum of Rs.3,000/- as monthly income of the deceased. Therefore, the monthly income fixed by the Tribunal is proper. The Tribunal after considering all the materials available on record in proper perspective, has awarded just compensation. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondents 3 and 4/Insurance Companies and perused the entire materials available on record. Though the respondents 1 and 2 have entered appearance through counsel, there is no representation for them.

8.From the materials available on record, it is seen that the Tribunal has dismissed the claim petition against the respondents 3 and 4 only on the ground that the driver of the vehicle did not possess driving licence at the time of accident. The said reasoning for dismissal of the claim petition against the respondents 3 and 4 is erroneous. It is well setted that if the driver of the two wheeler or driver of the four wheeler of the offending vehicle did not posses valid driving licence at the time of the accident, the Insurance Company cannot be exonerated. The Insurance Company must satisfy the award at the first instance and recover the same from the owner of the vehicle. In the judgment reported in 2004 ACJ 1 SC [National Insurance Co. Ltd., Vs. Swaran Singh and others], the Hon'ble Apex Court has held that if the driver of the vehicle did not possess valid driving licence at the time of accident, the Insurance Company can be directed to pay the amount to the claimant and then realise it from the owner of the offending vehicle. In the judgment reported in 2012 1 TN MAC 226 [ICICI Lombard General Insurance Co. Ltd., Vs. Annakkili], it has been held that the Insurance Company cannot be exonerated from the liability to pay the compensation to the 3rd party claim for the reason that the driver had no licence or badge and after paying the amount to claimant, recover the same from the owner of the vehicle. The similar finding has been reiterated in another judgment reported in 2012 1 TN MAC 536 [National Insurance Co. Ltd., Vs. T.Mathiazhagan].

9.By applying the above said principle of law to the present case, the portion of the award dismissing the claim petition as against the respondents 3 and 4-Insurance Companies, on the ground that the driver of the vehicle belonging to the 2nd respondent did not possess driving licence, is set aside and the respondents 3 and 4/ Insurance Companies are directed to pay the compensation to the appellants at the first instance and later on, recover the same from the 1st respondent, owner of the vehicle.

10.As far as quantum of compensation is concerned, from the materials available on record, it is seen that the deceased was owning a tea stall and earning a sum of Rs.10,000/- per month. The appellants have not marked any documents to prove the avocation and income of the deceased. In the absence of any material evidence to prove the avocation and income, the Tribunal has fixed the income of the deceased at Rs.3,000/- per month. The accident is of the year 2006 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.4,500/- is fixed as monthly income of the deceased. According to the appellants, the deceased was aged 33 years at the time of accident. The Tribunal considering Ex.P5/Post-mortem certificate, fixed age of the deceased as 33 years and applied multiplier 17. The multiplier applied by the Tribunal is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier is 16. The Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the appellants are entitled to 40% enhancement towards future prospects. There are four dependants of the deceased and the Tribunal erroneously deducted 1/3rd instead of 1/4th towards personal expenses of the deceased. Therefore, deducting 1/4th towards personal expenses of the deceased and after applying proper multiplier '16', the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.9,07,200/- (Rs.4,500/- + 1,800 [Rs.4,500/- x 40%] x 12 x 16 x 3/4). A sum of Rs.4,000/- and Rs.2,000/- awarded by the Tribunal towards loss of consortium and funeral expenses respectively are meagre and the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts granted by the Tribunal under the other heads are just and reasonable and hence, they are hereby confirmed. 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 or reduced
1.	Loss of dependency	4,08,000	9,07,200	Enhanced
2.	Funeral expenses	5,000	15,000	Enhanced
3.	Loss of consortium	25,000	40,000	Enhanced
4.	Loss of love and affection	40,000	40,000	Confirmed
5.	Transportation	2,000	2,000	Confirmed
6.	Loss of estate	-	15,000	Granted

	Total	4,80,000	10,19,200	Enhanced by Rs.5,39,200/-

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,80,000/- is hereby enhanced to Rs.10,19,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The respondents 3 and 4 are directed to deposit the enhanced 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, at the first instance and recover the same from the second respondent, owner of the offending vehicle. On such deposit, the appellants 1 and 4 are permitted to withdraw their shares of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, mother of the minor appellants 2 & 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 & 3. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkr
To
1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Bhavani.

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

+1 cc to M/s.Elveera Ravindran, Advocate Sr.No. 1864
+1 cc to M/s.Ma.P.Thangavel, Advocate Sr.No. 1773

C.M.A.No.93 of 2017

MG(CO)
RMP(22/07/2020)