BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD) No.1493 of 2008

National Insurance Company Limited
165, Nethaji Road, Manjakuppam
Cuddalore ... Appellant/2nd Respondent

-vs-

1.Usharani

2.Minor.Anusuya Devi

3.Minor.Deepa Devi
[Minor respondents 2 and 3 are rep.by
their mother and R1 guardian herein]
...Respondents 1 to 4/Petitioners

4.Thireshammal

5.S.Sivasankaran ... 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decree, dated 28.03.2008, passed in M.A.C.O.P.No.276 of 2005, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tenkasi.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.R.J.Karthick for R1 to R4
R5 - Dismissed
Vide Court Order dt.29/11/2017

J U D G M E N T

Assailing the Judgment and Award, dated 28.03.2008, passed in M.A.C.O.P.No.276 of 2005, by the Motor Accident Claims Tribunal / Principal Sub Court, Tenkasi, the Insurance Company has come up with this appeal, wherein, the Tribunal has awarded a sum of Rs.8,78,836/- in favour of the claimants for the death of the deceased Vanaraj in the accident that had taken place on 27.03.2005.

2. The wife, daughters and mother of the deceased Vanaraj have contended before the Tribunal that on 27.03.2005, the deceased was travelling as pillion rider in a TVS50 Motorcycle bearing registration No.TN72 X9923. According to them, the rider of the two wheeler was proceeding slowly and by observing the rules along Tenkasi - Madurai High Road from south to north direction. At that time, a Tata Sumo bearing registration No.PY01 L0405 belonged to the fifth respondent and insured with the appellant - Insurance Company came in a rash and negligent manner and hit against the two wheeler. In the said accident, the deceased Vanaraj sustained multiple injuries all over the body and immediately, he was taken to the Government Hospital, Kadayanallur and after providing first aid, he was referred to Tirunelveli Government Hospital, however, on the same day, he succumbed to the injuries. It is the contention of the claimants that the driver of the Tata Sumo was responsible for the accident and a case in Crime No.239 of 2005 was registered against him by Kadayanallur Police under Sections 279, 337 and 338 I.P.C. and subsequently, altered into one under Section 304(A) I.P.C. and they sought compensation of Rs.18,96,000/-. It is the case of the claimants that the deceased was working as a Social Forest Watchman and doing agricultural works and earning a sum of Rs.8,000/- per month.

3. In the counter filed by the appellant - Insurance Company, they have disputed the age, income and avocation of the deceased. It is stated that the claim was exorbitant and excessive. According to the Insurance Company, the driver of the Tata Sumo did not hold valid driving licence at the time of the accident.

4. Before the Tribunal, on the side of the claimants, P.Ws.1 and 2 were examined and Exs.P1 to P9 were marked and on the side of the Insurance Company, R.W.1 was examined and Exs.R1 to R3 were marked.

5. The Tribunal, after analyzing the evidence adduced by the parties, held that the driver of the Tata Sumo was responsible for the accident and awarded a compensation of Rs.8,78,836/- along with interest at the rate of 7.5% per annum. Aggrieved over the same, the present civil miscellaneous appeal has been filed.

6. Mr.J.S.Murali, learned counsel appearing for the appellant - Insurance Company, would argue that the Tribunal failed to appreciate the evidence adduced on behalf of the appellant - Insurance Company in a proper manner and wrongly fixed liability on them. Further, the Tribunal has misdirected itself by holding that the appellant - Insurance Company has not taken sufficient steps to prove that the driver of the Tata Sumo did not hold valid and effective driving licence, despite the fact that the appellant - Insurance Company had discharged their burden of proof by issuing notice to the owner as well as driver of the vehicle. It is next contended that the award amount is excessive and it has to be reduced. It is further contended that despite service of notice, the owner of the vehicle did not take part in the proceedings before the Tribunal and hence, he was set *ex parte*. So, he is not entitled for notice in this appeal in view of Order XLI Rule 14(2) of the Code of Civil Procedure.

7. Per contra, Mr.R.J.Karthick, learned counsel appearing for the respondents 1 to 4 / claimants justified the findings of the Tribunal and prayed for dismissal of the appeal.

8. Heard Mr.J.S.Murali, learned counsel appearing for the appellant - Insurance Company and Mr.R.J.Karthick, learned counsel appearing for the respondents 1 to 4 / claimants and carefully perused the materials available on record.

9. Since the finding of the Tribunal on the negligence aspect is not seriously disputed by the appellant - Insurance Company, to elaborate on this aspect is unnecessary. With regard to the liability aspect, a perusal of the counter would show that the appellant - Insurance Company has taken a specific plea that the driver of the Tata Sumo had no valid and effective driving licence at the time of the accident. It is seen that the appellant - Insurance Company issued notice (Ex.R2) to the owner of the offending vehicle seeking particulars with regard to driving licence of the driver of Tata Sumo. Though it was sent to the proper address, but the owner of the vehicle refused to receive the same. Under Ex.R3, the appellant - Insurance Company issued notice to the driver of the vehicle himself seeking particulars of his driving licence and it was also not responded. Marimuthu Arulsamy (R.W.1) gave evidence on behalf of the appellant - Insurance Company to the effect that the driver of Tata Sumo was not issued with valid and effective driving licence at the time of the accident. The details narrated above would show that the appellant - Insurance Company had taken effective steps and discharged their burden to prove that the offending vehicle was driven by an unlicenced person. However, the Tribunal rejected the case of the appellant - Insurance Company on the sole ground that a responsible person from the Regional Transport Office was not examined on behalf of the appellant - Insurance Company. This Court, in a catena of decisions, has held that unless the driving licence particulars are given to the Regional Transport Office, they would not be in a position to say whether the driver was having licence at the time of the accident or not. So, merely because the appellant – Insurance Company did not examine a person from the Regional Transport Office, it could not be held that they did not discharge their burden of prove. Hence, the finding of the Tribunal with regard to liability is set aside.

10. Admittedly, the claimants are third party. Ex.R1 – copy of Insurance Policy reveals that the offending vehicle had insurance coverage with the appellant – Insurance Company on the date of the accident. It is well settled that even if there is any violation of the policy conditions, in respect of claim from third parties, the Insurance Company has to satisfy the award amount first and then recover it from the owner of the vehicle.

11. Insofar as the quantum is concerned, it is the case of the claimants that the deceased Vanaraj died at the age of 38 years and he was earning Rs.8,000/- per month by working part-time as Social Forest Watchman and also doing agricultural works. However, they did not produce any documentary evidence to establish the income of the deceased. So, the Tribunal fixed the yearly income at Rs.4,408/- which is 1/3rd of the income of the first claimant / wife of the deceased (P.W.1) and by applying the multiplier "16", awarded Rs.8,46,336/- (Rs.4,408/- X 12 X 16) towards loss of income.

12. The evidence of P.W.1 shows that her deceased husband was working part-time in the Forest Department. So, it would be appropriate to fix a notional income at Rs.4,500/-, from which 1/3rd has to be deducted towards his personal expenses and hence, the contribution to his family would be Rs.3,000/- per month. As per the decision of the Honourable Apex Court in the case of ***Sarala Verma and others vs. Delhi Transport Corporation [2009 (6) SCC 121]***, the appropriate multiplier would be "15". Hence, the loss of income is arrived at Rs.5,40,000/- (Rs.3,000/- X 12 X 15). Considering the fact that the first claimant became widow at the age of 30 years, this Court awards Rs.50,000/- towards loss of consortium. The claimants 2 and 3 are the daughters of the deceased and they were aged about 9 and 8 years and the fourth claimant is the mother of the deceased and she was aged 60 years at that relevant time. So, they are entitled to Rs.40,000/- towards loss of love and affection. For funeral expenses, the Tribunal awarded Rs.2,500/-. This Court enhances it to Rs.5,000/-. In addition, this Court awards Rs.15,000/- towards loss of estate. The rate of interest fixed by the Tribunal at 7.5% per annum remains unaltered and the same is confirmed. Accordingly, the Award passed by the Tribunal is modified from Rs.8,78,836/- to Rs.,6,50,000/- as follows:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount / enhanced / reduced by this Court (Rs.)	Total (Rs.)
1.	Loss of Income	8,46,336.00	(-) 3,06,336.00	5,40,000.00
2.	Loss of Consortium	10,000.00	(+) 40,000.00	50,000.00
3.	Loss of Love and Affection	20,000.00	(+) 20,000.00	40,000.00
4.	Funeral Expenses	2,500.00	(+) 2,500.00	5,000.00
5.	Loss of Estate	Nil	(+) 15,000.00	15,000.00
	Grand Total	8,78,836.00	(-) 2,28,836.00	6,50,000.00

13. The appellant - Insurance Company is directed to deposit the the above modified award amount with accrued interest and costs, less the amount already deposited, before the Tribunal within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants, including the minor claimants, since they would have attained majority by this time, are permitted to withdraw their respective shares in the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs, as per the ratio of apportionment made by the Tribunal. Further, the appellant - Insurance Company is at liberty to recover the award amount from the owner of the vehicle as per the law laid down by the Honourable Supreme Court in ***Oriental Insurance Co. Ltd., vs. Nanjappan and others [(2004) 13 SCC 224]***.

14. For the foregoing reasons, the civil miscellaneous appeal is partly allowed and the Judgment and Award, dated 28.03.2008, passed in M.A.C.O.P.No.276 of 2005, by the Motor Accident Claims Tribunal / Principal Sub Court, Tenkasi, are modified to the extent as indicated above. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

KRK

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1.The Principal Sub Judge,
Motor Accident Claims Tribunal,
Tenkasi.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.J.S.MURALI, Advocate (SR-24238[F] dated 07/12/2020)

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