IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.2359 of 2015

1. M.Nallammal
2. K.Muthusamy ... Appellants/ Petitioners

versus

K.Chandrasekaran (died)

1. National Insurance Co. Ltd.,
D.O.2, Balaji Towers,
Ramakrishna Road,
Salem - 636 007.

2.Perianna Gounder,
3. Santhi ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 challenging award in judgment and decree dated 17.10.2012 made in MCOP No.1919 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District Judge and Special Judge for EC Act cases, Salem.

For Appellants : Mr.SP.Yuvaraj

For Respondents : Mr.K.Padmanabhan for R1
RR2 & 3 - Not ready in notice

JUDGMENT
(Heard Video Conference)

This appeal has been filed by the claimants challenging the award dated 17.10.2012 passed by the Motor Accidents Claims Tribunal (Additional District Judge and Special Judge for EC Act Cases), Salem in MCOP No.1919 of 2008.

2. Heard Mr.SP. Yuvaraj, learned counsel for the appellants / claimants and Mr.K. Padmanabhan, learned counsel for the 1st respondent / Insurance Company.

3. This Court has perused and examined the impugned award before the Tribunal.

4. The appellants / claimants have challenged the impugned

award on the following grounds :-

a) The Tribunal has erroneously exonerated the liability of the first respondent insurance company under the impugned award.

b) The quantum of compensation awarded by the Tribunal is inadequate and it has to be enhanced.

5. With regard to the first contention, the appellants / claimants have produced the insurance policy, which has been marked as Ex.R1 before the Tribunal and would submit that being a package policy, the Tribunal has by total non application of mind has exonerated the liability of the Insurance Company, despite the fact that under the package policy, the 1st respondent / Insurance Company is liable to compensate for the death of a pillion rider, who was travelling in the insured vehicle. As seen from the impugned award, the Tribunal has erroneously observed that the subject insurance policy is an Act policy, whereas infact, it is a package policy as seen from Ex.R1. Being a package policy, there is no dispute that the 1st respondent / Insurance Company is liable to compensate for the death of a pillion rider, who was travelling in the insured motor cycle. An FIR has also been registered only against the rider of the motor cycle and the FIR has been marked as Ex.P1. No contra evidence has also been produced by the 1st respondent / Insurance Company to disprove the contents of FIR. However, under the impugned award by total non application of mind to the subject insurance policy and by erroneously holding that the insurance policy is an Act policy, the Tribunal has erroneously exonerated the liability of the Insurance Company. Being a package policy and as per the settled law and as per the terms and conditions contained therein, the 1st respondent / Insurance Company is liable to pay the compensation to the appellants / claimants, who are the dependants of the deceased. Hence, the first contention raised by the appellants / claimants is answered in favour of the appellants /claimants by holding that the Insurance Company is liable to compensate the claim of the appellants / claimants for the death of the deceased who was a pillion rider in the insured motor cycle at the time of the accident.

6. With regard to the second contention viz., the quantum of compensation is concerned, the Tribunal under the impugned award has assessed the compensation payable to the appellants / claimants as detailed hereunder :-

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency Rs.4,500/- - 1/3 3000 x 12 x 17	6,12,000
Funeral expenses	5,000
Total	6,17,000

7. The accident happened on 03.08.2008. Since, no documentary evidence was produced by the appellants / claimants to prove the monthly salary of the deceased, the Tribunal has assessed the monthly salary on notional basis at Rs.4,500/-. The deceased was a bachelor at the time of the accident. This Court is of the considered view that the assessment made by the Tribunal on the notional monthly income of the deceased at Rs.4,500/- is a correct assessment and therefore, the same is confirmed.

8. However, under the impugned award, the Tribunal has failed to award any compensation towards loss of future prospects to the appellants / claimants which they are legally entitled to as per the decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 16 SCC 680. In accordance with the said judgment of the Hon'ble Supreme Court, this Court fixes the loss of future prospects at 40% . The appellants / claimants are the parents of the deceased and certainly they are the dependants of the deceased.

9. The Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased, despite the fact that the deceased was a bachelor at the time of the accident, whereas the correct deduction is 1/2, as per the settled law. Hence, this Court modifies the same to 50% instead of 1/3rd erroneously deducted by the Tribunal. Hence, the loss of dependency of the appellants / claimants is re-assessed at Rs.6,42,600/- as detailed hereunder :-

Rs.4,500/- + 40% x 1/2 x 12 x 17 = Rs.6,42,600/-

10. The Tribunal has erroneously failed to award any compensation towards loss of love and affection to the appellants / claimants, who are parents of the deceased. This Court after giving due consideration to the evidence and materials available on record awards a compensation of Rs.30,000/- to the appellants / claimants towards loss of love and affection at Rs.15,000/- each.

11. The Tribunal has also erroneously awarded a lesser compensation towards funeral expenses at Rs.5,000/-, which has to be necessarily enhanced to Rs.15,000/- in accordance with Pranay Sethi's judgment referred to supra.

12. The Tribunal has also erroneously failed to award any compensation towards loss of estate to the appellants / claimants, which they are legally entitled to as per the settled law. This Court therefore awards a compensation of Rs.15,000/- towards loss of estate as per Pranay Sethi's judgment, referred to supra.

13. For the foregoing reasons, the impugned award dated 17.10.2012 passed by the Motor Accident Claims Tribunal (Additional District Judge and Special Judge for EC Act Cases), Salem in MCOP No.1919 of 2008 is set aside by this Court by holding that the 1st respondent / Insurance Company is liable to compensate the appellants / claimants and by directing them to pay a compensation of Rs.7,02,600/- together with interests as detailed hereunder :-

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of dependency *Rs.4,500/- - 1/3= 3000 x 12 x 17 #Rs.4,500/- + 40% x 1/2 x 12 x 17	6,12,000 *	6,42,600 #
Funeral expenses	5,000	15,000
Loss of love and affection Rs.15,000/- each	-	30,000
Loss of estate	-	15,000
Total	6,17,000	7,02,600

14. Further, the appellants / claimants have pleaded negligence against the Driver of the insured vehicle and in the oral evidence produced by them before the Tribunal, they have taken a consistent stand that only due to the rash and negligent driving by the rider of the insured motor cycle, the accident has happened. FIR has also been registered only against the rider of the insured motor cycle. However, due to a typing mistake, the claim has been filed under Section 163-A of the Motor Vehicles Act, even though the pleadings will make it clear that the said claim was filed only under Section 166 of Motor Vehicles Act. Hence, the claim can be treated only as a claim

made under Section 166 of the Motor Vehicles Act and not under Section 163-A of the said Act.

15. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.6,17,000/- to Rs.7,02,600/-, as indicated above. No costs.

6. The 1st respondent / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.1919 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge and Special Judge for EC Act Cases), Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants / claimants as per the same ratio of apportionment made by the Tribunal through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellants / claimants before receiving the copy of this Judgment.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Additional District Judge and
Special Judge for EC Act Cases
Motor Accident Claims Tribunal,
Salem.

2. The Section Officer,
V.R. Section
High Court of Madras, Chennai - 104.

+1CC to M/s.S.P.Yuvaraj, Advocate, Sr.No.40868

CMA No.2359 of 2015

SJ(CO)
SB(17/11/2021)