IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2448 of 2015

1.Eswari
2.B.S.Gopalakrishnan
3.B.S.Girijadevi ...Appellants/ Petitioners

Vs

1.Thangapandian
2.J.Jayaprabha
3.HDFC General Insurance Co. Ltd.,
Coimbatore ...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair order and decree passed in MCOP.No.70/2010 on the file of the Motor Accidents Claims Tribunal, Gobichettipalayam; III Additional District and Sessions Court, Erode at Gobichettipalayam, dated 21.06.2012 for enhancement of compensation awarded to the appellants to an extent of Rs.4,75,000/- (Rupees Four Lakhs seventy five thousand only).

For Appellant : Mr.M.Nandha Kumar for Mr.S.Ramesh Kumar

For Respondents : R1 & R2- Exparte
Mr.J.Michel Visuvasam for R3

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimants challenging the impugned Award dated 21.06.2012 passed by the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Erode at Gobichettipalayam in MCOP.No.70 of 2010.

2.The Appellants/claimants have challenged the impugned Award on the following grounds:

(a) The Tribunal has erroneously exonerated the liability of the third respondent Insurance Company.

(b) The quantum of compensation awarded by the Tribunal is not a just compensation and therefore it has to be enhanced.

3.The Tribunal under the impugned award exonerated the liability of the third respondent Insurance Company and has directed the respondents 1 and 2 to pay a compensation of Rs.4,75,000/- to the Appellants/claimants as detailed hereunder:

Head	Amount awarded by the Tribunal
Loss of Income	Rs.4,40,000 (Rs.40,000 x 11)
Loss of Love and Affection	Rs.30,000 (Rs.10,000/- x 3)
Funeral expenses	Rs.5,000
Total	Rs.4,75,000/-

4.The Tribunal has exonerated the liability of the third respondent Insurance Company on the ground that on the date of the accident i.e. on 22.08.2008, there was no valid Insurance Policy. Since the third respondent Insurance Company had already cancelled the Insurance Policy issued in favour of the respondents 1 and 2 on the ground that the cheque towards insurance premium got dishonored for insufficiency of funds, the Insurance Company was exonerated from liability.

5.Heard Mr.M.Nandha Kumar, learned counsel for the Appellants and Mr.J.Michel Visuvasam, learned counsel for the third respondent. The respondents 1 and 2 have remained exparte both before the Tribunal as well as this Court.

6.This Court has perused and examined the materials and evidence available on record before the Tribunal.

7.Ex.R8 is the communication sent by the third respondent Insurance Company to Mr.V.Anantha Kumar, the insured who was the previous owner of the vehicle intimating him about the cancellation of the Insurance Policy issued in his favour due to non realization of premium cheque issued by him. Ex.R9 is the extract from the dispatch register maintained by the third respondent Insurance Company which reveals that Ex.R8 was sent to Mr.V.Anantha Kumar on 27.05.2008.

8.As seen from the aforementioned documents, it is clear that on the date of the accident i.e. on 22.08.2008, there was no valid Insurance Policy.

9.Ex.R2 is a notice sent by the third respondent counsel to the present owner of the vehicle viz., the first and second respondents herein intimating them that the Insurance Policy issued in favour of the previous owner Mr.V.Anantha Kumar was cancelled even before the date of the accident and therefore there is no effective valid Insurance Policy standing in the name of the insured on the date of the accident. Ex.R6 is the returned cover to prove that the notice sent to the present owner of the vehicle viz., the second respondent herein has been returned unserved.

10.The Tribunal has taken into consideration all the aforementioned documents and only thereafter has exonerated the liability of the third respondent on the ground that on the date of the accident i.e. on 22.08.2008, there was no valid Insurance Policy standing in the name of the respondents 1 and 2 or in the name of the previous owner viz., V.Anantha Kumar.

11.The judgment relied upon by the learned counsel for the Appellant in the case of United India Insurance Company Limited vs. Laxmamma and Others reported in (2012) 5 SCC 234 in fact supports the case of the third respondent Insurance Company more than the Appellant. In the decision referred to supra, the Hon'ble Supreme Court held that intimation of the cancellation of the Insurance Policy has to be sent to the insured in order to enable the Insurance Company to get themselves exonerated from any liability. In the case on hand, the Insurance Company has complied with all the requirements by intimating the insured about the cancellation of the Policy due to non payment of the insurance premium and the accident has happened only after the said intimation. Therefore, the first contention of the Appellants that the Tribunal has erroneously exonerated the liability of the third respondent Insurance Company has to be rejected by this Court.

12.With regard to the quantum of compensation awarded by the Tribunal to the Appellant against the owner of the vehicle is concerned, the same will have to be enhanced for the following reasons:

(a) The accident happened in the year 2008. The deceased was an agriculturist and the Appellants/claimants are his dependants. The Tribunal has fixed the notional monthly income of the deceased at Rs.5,000/-. If the Tribunal had taken into consideration the year of the accident it ought to have fixed the notional monthly income of the deceased at a higher sum.

(b)After giving due consideration to the year of the accident which happened in the year 2008, this Court fixes the notional monthly income of the deceased at Rs.6,500/- following the decision of the Hon'ble Supreme Court in the case of Syed Sadiq and Others vs. Divisional Manager, United India Insurance

Company Limited reported in (2014) 2 SCC 735.

(c)The Tribunal has also failed to award any compensation towards loss of future prospects which the Appellants/claimants are legally entitled to as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and others reported in (2017) 16 SCC 680.

13.The deceased was aged 52 years at the time of the accident. As per Pranay Sethi judgment referred to supra, this Court awards 10% towards loss of future prospects to the Appellants/claimants.

14.With regard to quantum of compensation awarded under various other heads, this Court is not interfering with the same, as the overall compensation awarded to the Appellants/claimants cannot be considered to be inadequate as alleged by the Appellants.

15.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.4,75,000/- to Rs.6,64,200/- as detailed hereunder:

Head	Amount awarded by the Tribunal	Enhanced/modified by this Court
Loss of Income	Rs.4,40,000 (Rs.40,000 x 11)	Rs.6,29,200 (Rs.6,500 + 10% = Rs.7150*12=85,800-1/3 deducted Rs.28,600 = Rs.57,200 x11)
Loss of Love and Affection	Rs.30,000 (Rs.10,000/- x 3)	Rs.30,000
Funeral expenses	Rs.5,000	Rs.5,000
Total	Rs.4,75,000/-	Rs.6,64,200/-

16.In the result, the appeal is partly allowed. The respondents 1 and 2 are directed to deposit the modified award amount of Rs.6,64,200/- as assessed by this Court together with interest at the rate fixed by the Tribunal under the impugned award from the date of claim petition till the date of realization excluding the period between 02.11.2011 and 22.11.2011, less the amount, if any, already deposited to the credit of M.C.O.P.No.70 of 2010 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Erode at Gobichettipalayam 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 through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellants/claimants before receiving the copy of this Judgment. No costs.

The findings of the Trial Court exonerating the liability of the third respondent Insurance Company is confirmed by this Court.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accident Claims Tribunal,
III Additional District and Sessions Court,
Erode at Gobichettipalayam.

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

+1cc to Mr.J.Michel Viswasam, Advocate, S.R.No.36118
+1cc to Mr.S.Ramesh Kumar, Advocate, S.R.No.35915

C.M.A.No.2448 of 2015

RLD(CO)
SB(25/11/2021)