IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.2940 of 2013

1. D.Bharathi
2. S.Suseela ... Appellants /Petitioners

Versus

1.R.Murugan
2.HDFC ERGO General Insurance Company Ltd.,
6th Floor, LeelaBusiness Park,
Andheri Kurla Road, Andheri(E),
Mumbai - 400 059 ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 28.01.2013 made in M.C.O.P.No.93 of 2010 on the file of the Motor Accident Claims Tribunal, (I Additional District Court) Vellore, Vellore District.

For Appellants : Mr.M.Sivakumar

For Respondents
For R2 : M/s.Harini
for Mr.N.Vijayaraghavan
R1 : Not ready in notice

J U D G M E N T

This appeal has been laid as against the judgment and decree dated 28.01.2013 made in M.C.O.P.No.93 of 2010 on the file of the Motor Accident Claims Tribunal, (I Additional District Court) Vellore, Vellore District, thereby awarded the compensation to the tune of Rs.84,500/-.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimants is that on 28.08.2009 at 5.00 p.m. when the deceased was crossing the service road near Shenbakkam over-bridge approached from South to North, the car belongs to the first respondent driven by its driver in a rash

and negligent manner from east to west dashed against the deceased. Due to which, the deceased was thrown out and sustained severe injuries on her left cheek and lacerated wounds on her right side forehead and also her stomach. Immediately, she was taken to Sankari Hospital, Vellore. There, the deceased was declared dead. The deceased was aged 50 years at the time of accident and she was earning Rs.4,500/- per month as Mason. Therefore, the claimants filed claim petition seeking compensation at Rs.5,00,000/-.

4. Resisting the same, the second respondent filed counter and disputed the age, income and occupation of the deceased and further, specifically had taken stand that the vehicle which involved in the accident was insured with the second respondent and subsequently by order dated 20.02.2009, insurance was cancelled and the same was also duly intimated to the first respondent i.e. the owner of the vehicle. Therefore, the second respondent is not held to be liable for compensation as claimed by the claimants and sought for dismissal of the claim petition.

5. On the side of the claimants, they examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.8. On the side of the respondents, they examined R.W.1 to R.W.3 and marked Ex.R.1 to Ex.R.9. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal held that the second respondent Insurance Company is exonerated and awarded compensation of Rs.84,500/-, that too payable by the first respondent, namely the owner of the vehicle. Aggrieved by the same, the claimants came forward with the present appeal.

6. The learned counsel appearing for the appellants submits that though the policy of the vehicle was cancelled by the second respondent, by order dated 20.02.2009, the same was not duly communicated to the first respondent. They marked only certificate of posting and they failed to mark any acknowledgment to show that the order of cancellation was duly communicated to the first respondent. Insofar as the quantum is concerned, the deceased was Mason and she was earning Rs.4,500/- per month. Even then, the Tribunal had taken only Rs.1,500/- as monthly income and also without considering the future prospect awarded only a sum of Rs.84,500/- as compensation. Therefore, he prayed for enhancement of the award amount.

7. Per contra, the learned counsel appearing for the second respondent would contend that due to violation of policy, it was duly cancelled on 20.02.2009, which is marked as Ex.R4. Thereafter, it was duly communicated to the first respondent by certificate of posting and it is marked as Ex.R5. Therefore, the tribunal rightly exonerated the second respondent from paying

any compensation and rightly awarded compensation as against the owner of the vehicle. Insofar as the quantum is concerned, the Tribunal rightly had taken a sum of Rs.1,500/- as monthly income of the deceased and prayed for dismissal of the present appeal.

8. Heard Mr.M.Sivakumar, learned counsel appearing for the appellants and M/s.Harini, learned counsel appearing for the second respondent herein.

9. The claimants are the legal representatives of the deceased. When the deceased on 28.08.2009, while crossing the service road near Shenbakkam over-bridge from south to north, the car owned by the first respondent driven by its driver in a rash and negligent manner from east to west dashed against the deceased, due to which she sustained grievous injuries and died while she was taken to hospital.

10. PW1 deposed that the deceased was Assistant to Mason and she was earning minimum a sum of Rs.4,500/- per month. There is no contra evidence produced by the respondents. Further, the Tribunal also failed to award any compensation for future prospects of the deceased. Insofar as liability is concerned, the vehicle owned by the first respondent was insured with the second respondent. Subsequently, by order dated 20.02.2009, it was cancelled by the second respondent and the same was communicated by certificate of posting. The cancellation of policy is marked as Ex.R4 and the certificate of posting of the said order is marked as Ex.R5. As rightly pointed out by the learned counsel for the appellants, the second respondent failed to produce any proof to show that the certificate of posting was duly served on the first respondent in respect of cancellation of policy. Mere filing of certificate of posting does not amount to service of letter. In this regard, the learned counsel for the appellants relied upon the judgment in the case of New India Assurance Company Limited Vs. Azhagusumathi and 2 others reported in 2015 (1) TN MAC 179, wherein it is held as follows:

> 13. In the instant case, it has been proved that the cheque Ex.B1 was dishonoured on presentation with the bank for want of sufficiency of funds and that the policy issued by the insurance company for the period from 25.06.2003 till 24.06.2004 was cancelled under Ex.B5 and further, the dishonour of cheque as well as the cancellation of policy was intimated to the owner by a registered post in Ex.B6 as also to the RTO and the postal receipts for sending the letters by registered post is marked as Ex.B6 series.
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> 14. As per Section 27 of General Clauses Act, 1897 which deals with topic 'Meaning of service by post' says that where any Central Act or regulation authorizes or requires a document to be served by post,

then unless a different intention appears, the service shall be deemed to be effected by properly addressing', prepaying and posting it by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in ordinary course of post. The Section, thus, raises the presumption of due service or proper service if the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. Of course, the said presumption is rebuttable. But in the present case Exs.B4, B6 and B7 would show that the letter intimating about the dishonour of cheque followed by cancellation of policy has been sent to the address of the owner given in the policy by registered post, of course, without any acknowledgement due. The said letter having been sent properly addressing and posting it by registered post, it would raise a presumption that the service been effected on the addressee to whom the communication was sent. Therefore, the appellant having intimated the notice of cancellation by registered post to the owner and the RTO, the service of notice of cancellation can be treated as sufficient and the insurance company can take advantage that it has duly intimated to the owner of the offending vehicle and the authorities concerned regarding cancellation of policy due to the dishonour of cheque. Hence, the insurer cannot be held liable to indemnify the owner and it is absolved from liability. The reasoning given and the finding recorded by the Tribunal in this regard is erroneous. Both the questions are answered accordingly. However, the claim of third party cannot be defeated for the self created predicament of the insurer in issuing the policy without actually receiving the premium. Hence, the insurance company shall pay the compensation to the claimants which it may realise from the owner of the offending vehicle.

In the above judgment, this court held that when the insurance company failed to file any document to show that the communication was duly served to the owner of the vehicle in respect of cancellation of policy, the insurance company is liable to pay compensation and may be at liberty to recover the same from the owner of the vehicle.

11. In the case on hand, admittedly the second respondent

failed to prove that the cancellation of insurance policy dated 20.02.2009 was duly served to the first respondent. Therefore, the second respondent is liable to pay compensation to the claimants and thereafter they are at liberty to recover the same from the first respondent.

12. Insofar as the quantum of compensation is concerned, the salary has to be taken into account at Rs.4,500/- per month. After deducting 1/3 for her personal expenses, 2/3 amount comes to Rs.3,000/-. Accordingly the loss of earnings is calculated as follows :-

= [(Rs.3,000/- + 10% FP) X 12 X11]
= [(Rs.3,300/- X 12 X11]
= 4,35,600

Therefore, a sum of Rs.4,35,600/- has to be awarded under the head of loss of earnings to the claimants.

13. Accordingly the compensation awarded by the Tribunal stands modified as under :-

Sl.No	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of Earnings	Rs.50,000/-	Rs.4,35,600/-
2	Transport charges	Rs.10,000/-	Rs.10,000/-
3	Loss of Estate	Rs.2,500/-	Rs.5,000/-
4	Funeral expenses	RS.2,000/-	Rs.10,000/-
5	Love and affection	Rs.20,000/-	Rs.20,000/-
	Total	Rs.84,500/-	Rs.4,80,600/-

14. In the result the Civil Miscellaneous Appeal is allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.84,500/- to Rs.4,80,600/-.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The apportionment of the modified enhanced award amount is as follows:-

1st appellant/claimant - 50%
2nd appellant/claimant - 50%

(iv) The second respondent herein / insurance company is directed to deposit the award amount, less the amount, if any, already deposited, along with interest and costs within a period of six weeks from the date of receipt of copy of this Judgment. Thereafter, the second respondent herein is at liberty to recover the said amount from the first respondent herein.

(v) On such deposit, the appellants / claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(vi) The appellants/claimants are not entitled to any interest for the condoned delay (default) period, if any.

(vii) There shall be no order as to costs.

Sd/-
Assistant Registrar(P&A)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District Judge,
Motor Accident Claims Tribunal,
Vellore, Vellore District.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.24352

C.M.A.No.2940 of 2013

PPA(CO)
CB(09/11/2021)