IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2051 of 2016
and
CMP No.15013 of 2016

New India Insurance Co. Ltd.,
No.45, Moore Street, 5th Floor,
Chennai – 600 001. ... Appellant/2nd Respondent

..Vs..

1.Murugan

2.Mallika ...Respondent 1 & 2/Petitioners/Claimants

3.G.Ramasamy ...3rd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.04.2016 made in MCOP.No.2746 of 2012 on the file of the Motor Accident Claims Tribunal, (II Judge) Small Causes Court, Chennai.

For Appellant : Mr.G.Anandan

For R-1 & R-2 : Mr.F.Terry Chella Raja

For R-3 : No appearance

J U D G M E N T

(This Appeal has been taken up for hearing through Video Conferencing)

This appeal has been filed by the appellant/Insurance company challenging the award dated 15.04.2016 passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. Heard Mr.G.Anandan, learned counsel for the appellant – Insurance Company and Mr.F.Terry Chella Raja, learned counsel for respondents 1 & 2 / claimants. The third respondent has remained exparte both before the Tribunal as well as this Court.

3. The appellant / Insurance company has challenged the impugned award on the following grounds -

(a) The Tribunal has erroneously failed to grant Pay and Recovery rights and

(b) The quantum of compensation awarded by the Tribunal is excessive.

The details of the compensation awarded by the Tribunal to the respondents / claimants are as follows -

Heads	Award Amount (Rs.)
Compensation for loss of dependency	7,20,000/-
Compensation for loss of love and affection	2,00,000/-
Loss of estate	50,000/-
Funeral expenses	25,000/-
Total	9,95,000/-

4. The accident happened on 0902.2011 which resulted in the death of Umadevi who was 13 years old, 7th standard student studying at Government High School, Mohalalar, Thirukovilur Taluk, Villupuram District. The Tribunal has fixed the notional monthly income of the deceased at Rs.5,000/- which in the considered view of this Court cannot be treated to be excessive, as alleged by the Appellant/Insurance Company. Infact, in several cases, for the accident of the year 2011, this Court has fixed the notional monthly income at higher sum. The learned counsel for the appellant has relied upon a decision of the Hon'ble Supreme Court in the case of Kishan Gopal and another Vs. Lala and others reported in 2013 (5) CTC 212 (SC) and contended that the notional monthly income fixed by the Tribunal at Rs.5,000/- is not in accordance with the aforesaid judgment of the Hon'ble Supreme Court. The said contention is rejected by this Court in view of the fact that in Kishan Gopal's case referred to supra, the accident happened in the year 1992 whereas in the case in hand, the accident happened in the year

2011. Therefore, the said judgment referred to by the learned counsel for the appellant is not applicable to the facs of the instant case.

5. With regard to the quantum of compensation awarded by the Tribunal under various other heads namely -

(a) Compensation towards loss of love & Affection	...	Rs.2,00,000/-
(b) Loss of Estate	...	Rs. 50,000/-
(c) Funeral expenses	...	Rs. 25,000/-

are concerned, though the same are excessive and not in accordance with the decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (16) SCC 680, this Court is of the considered view that the total compensation of Rs.9,95,000/- awarded by the Tribunal under the impugned award cannot be considered to be excessive for the following reasons -

(a) The notional monthly income of the deceased for an accident of the year 2011 has been fixed by the Tribunal only at Rs.5,000/- which is low;

(b) The Tribunal has not awarded any compensation towards loss of future prospects which the respondents/claimants are legally entitled to, as per settled law.

6. With regard to the second contention raised by the appellant/Insurance company that Pay and Recovery rights were not granted by the Tribunal despite the appellant having proved before the Tribunal that the insured had committed policy violation is concerned, there is force in the contention of the appellant/Insurance Company.

7. Before the Tribunal, the appellant/Insurance company has filed five documents which were marked as Exs.R1 to R5 and one witness was examined on their side namely Mr.P.Mariappan as RW1, Head constable. Before the Tribunal, the insured remained exparte and even before this Court, he has remained exparte. The police official, RW1, Mr.P.Mariappan has deposed before the Tribunal that at the time of accident, the insured vehicle was not possessing a valid permit. However, it is seen from the impugned award that there is no discussion with regard to the said contention raised by the appellant/Insurance company that

the insured vehicle was not possessing a valid permit at the time of accident. When there is clinching evidence produced by the appellant/Insurance company to prove that the insured vehicle was not possessing a valid permit at the time of accident which has been corroborated by the police official (RW1) and that too, when the insured has remained exparte, the Tribunal ought to have granted Pay and Recovery rights to the appellant/Insurance company. However, the Tribunal has erroneously failed to grant the same to the appellant/Insurance company. Therefore, this Court is granting the Pay and Recovery rights to the appellant/Insurance company and they are entitled to recover the compensation amount from the insured, namely the third respondent herein who was the first respondent in the claim petition before the Tribunal in MCOP No.2746 of 2012, once they pay the same to the respondents / claimants

8. For the foregoing reasons, the compensation awarded by the Tribunal at Rs.9,95,000/- alongwith interest @ 7.5% per annum is confirmed directing the appellant/Insurance company to pay the compensation amount to the respondents/claimants at the first instance and recover the same from the third respondent herein.

Conclusion :

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed directing the Appellant - Insurance Company to deposit the compensation amount together with interest from the date of claim till the date of deposit and costs, as assessed by the Tribunal under the impugned award dated 15.04.2016 in MCOP.No.2746 of 2012, after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On deposit of the compensation amount before the Tribunal, the appellant/Insurance Company is permitted to recover the same from the third respondent herein who was the first respondent before the Claims Tribunal. On deposit of award amount being made by the Appellant / Insurance Company, the Tribunal is directed to transfer the award amount to the bank account of the respondents/claimants through RTGS within a period of one week thereafter. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(TNMLL)

//True copy//

Sub Assistant Registrar

rgr

To

The II Judge,
Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.

Copy To

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

+1cc to M/s.M.Malar, Advocate SR.No.35244

C.M.A.No.2051 of 2016

SRA(CO)
GMY(29/10/2021)