IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A. NO.1065 OF 2018
AND
CMP.NO.8745 OF 2018

The Divisional Manager,
M/s. Reliance General Insurance Co. Ltd.,
Chennai

.. Appellant/2nd Respondent

Versus

1. Valli
2. Minor Monika
3. Minor Keerthika
   [Minors rep. by their guardian & next friend Valli]
4. Kuppu

...Respondents 1 to 4/Petitioners

5. Kumar

...5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 27.04.2017 made in MCOP. No.188 of 2010 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Cheyyar.

For appellant	:	Mr.S.Arun Kumar
For respondents		
for RR1 to 4	:	Mr.K.G.Senthil Kumar
for R5	:	Set ex-parte before the Tribunal

J U D G M E N T

(The Judgment of the Court was delivered by R.Subbiah, J)

The appeal is heard through video conferencing.

2. This appeal has been filed by the Insurance Company challenging the award dated 27.04.2017 made in MCOP.No.188 of 2010 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Cheyyar.

3. The respondents 1 to 4 herein are the claimants before the Tribunal and they are the wife, 2 minor daughters and father of the deceased Velu, who died on the road accident that had occurred on 02.05.2010 involving a Lorry bearing Registration No.TN 28 F 1099, owned by the fifth respondent and insured with the appellant/ Insurance Company.

4. It is the case of the claimants before the Tribunal that on 02.05.2010, the first respondent, along with others, travelled in a Lorry bearing Registration TN 28 F 1099 to Melmalayanur to visit a Temple. The first respondent's husband one Velu along with one Sekar were also proceeding to Melmalayanur in a two wheeler bearing Registration No.TN 25 T 7367. While returning from Melmalayanur, the two wheeler in which Velu and Sekar were proceeding, made an attempt to overtake the Lorry bearing Registration No. TN 28 F 1099, which was proceeding in front of them. While doing so, the driver of the Lorry drove the vehicle in a rash and negligent manner and hit the 2 wheeler. In that process, the rider of the 2 wheeler lost balance and both Velu and Sekar fell down and sustained grievous injures. The said Velu, husband of the first respondent, died on the spot. According to the claimants, the deceased was the only bread winner in their family. He was doing agricultural work and earning a sum of Rs.20,000/- per month. Due to the death of the deceased the claimant were deprived of the contribution made by the deceaed. Hence, the claimants made a claim for a sum of Rs.9,00,000/- as compensation.

5. The said claim was resisted by the appellant / Insurance Company by filing a Counter statement. It is the specific defence of the Insurance Company that the rider of the 2 wheeler as well as the driver of the Lorry did not have valid

driving licence at the time of the accident, which is a violation of the Insurance Policy. Therefore, the Insurance Company is not liable to pay compensation to the claimants indemnifying the owner of the vehicle.

6. In order to prove the claim on the side of the claimants, the first respondent / wife of the deceased examined herself as PW1 and one Sekar was examined as PW2 and 6 documents were marked as Exs.P1 to P6. In order to prove the defence on the side of the Insurance Company, RW1, Sub-Inspector of Police and RW2, an official from the Insurance Company were examined and 2 documents were marked, viz., Ex.R1, Insurance Policy and Ex.R2, Final Report.

7. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident was the result of rash and negligent driving of the Lorry bearing Registration TN 28 F 1099 and passed an award for a sum of Rs.17,37,000/-. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

S.No.	Heads under which the amount is awarded by the Tribunal	Amount in Rs.
1.	Loss of Income	15,30,000
2.	Consortium to 1st respondent	50,000
3.	Loss of Love and Affection in respect of respondents 2 and 3	1,00,000
4.	Filial Consortium 4th respondent	25,000
5.	Funeral Expenses	25,000
6.	Transportation	5,000
7.	Damages to clothing	2,000
	Total	17,37,000

8. Now, it is the submission of the learned counsel for the appellant / Insurance Company that the Tribunal fixed an exorbitant sum of Rs.7,500/- as monthly income without any valid proof and also awarded excessive amounts under different heads. Consequently, the sum of Rs.17,37,000/- awarded as compensation

to the claimants, is on the higher side and the same needs proper reduction.

9. It is the further contention of the learned counsel for the appellant / Insurance Company that the Insurance Company examined two witnesses, viz., RW1, Sub-Inspector of Police and RW2, an official from Insurance Company, and proved that the driver of the Lorry has no valid licence. In spite of that, the Tribunal directed the Insurance Company to pay the compensation amount without giving liberty to recover the same from the owner of the Lorry bearing Registration TN 28 F 1099. Thus, he prays to grant "pay and recovery" right.

10. Per contra, the learned counsel for the respondents 1 to 4 / claimants made his submissions supporting the award passed by the Tribunal and prayed to dismiss the appeal.

11. The 5th respondent / owner of the Lorry bearing Registration TN 28 F 1099 did not even appear before the Tribunal and hence, he was set ex-parte.

12. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

13. It is the submission of the learned counsel for the Insurance Company that the Tribunal has fixed an exorbitant sum of Rs.7,500/- as monthly income of the deceased without any valid proof and awarded higher compensation. However, we are of the view that considering the avocation of the deceased and also taking into account the cost of living prevalent at the time of the accident, the sum of Rs.7,500/- taken as monthly income of the deceased, is reasonable. The Tribunal by taking a sum of Rs.7,500/- as monthly income of the deceased and by deducting 1/3 towards personal expenses, arrived a sum of Rs.5,000/-. Then, by adding 50% towards future prospects, arrived the loss of dependency at Rs.7,500/-. Resultantly, the annual income was arrived at Rs.90,000/- [7,500 x 12]. Further, by applying multiplier “17”, the "Loss of Income" was arrived at Rs.15,30,000/-. Thereafter, the Tribunal by awarding amounts under various heads granted a total compensation of Rs.17,37,000/-. Such compensation awarded by the Tribunal is

fair and reasonable and we are not inclined to reduce the same and hence, they are confirmed.

14. So far as the right of pay and recovery is concerned, we find that the driver of the Lorry did not possess valid driving licence at the time of the accident, which amounts to violation of policy conditions. The said aspect was proved by the Insurance Company. In such circumstances, the Tribunal ought to have directed the Insurance Company to pay the compensation at first instance and thereafter, permitted them to recover the same from the owner of the Lorry.

15 (i) In the result, the appeal is dismissed. The total sum of Rs.17,37,000/- awarded by the Tribunal towards compensation is hereby confirmed, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The Insurance Company is directed to deposit the total compensation before the Tribunal, after adjusting the amount if any, already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 and 4 are permitted to withdraw their respective shares. Insofar as the minor claimants 2 & 3 are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother, once in three months. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed.

(ii) Thereafter, the Insurance Company is permitted to recover the above compensation amount from the 5th respondent / owner of the Lorry bearing Registration TN 28 F 1099. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

pvs

To

The Motor Accident Claims Tribunal /
Subordinate Court, Cheyyar

Copy To

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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.10531

C.M.A. No.1065 of 2018
and CMP.No.8745 of 2018

GJ(CO)
RLP(16/11/2021)