IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.3.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.3717 of 2013
M.P.No.1 of 2013

Royal Sundaram Alliance Insurance Co. Ltd.,
3rd Floor, Subramaniam Buildings,
No.1, Club House Road, Chennai – 2.
... 2nd Respondent/Appellant

..Vs..

1. N.Palaniammal
2. Pushpalatha
3. N.Sivakumar

... Petitioners/ Respondents 1to3

4. M/s.Cargo Wings Madras Pvt. Ltd.,
NH 40, Opp. Bharat Petroleum Pump,
Bilaspur, Gurgaon, Haryana.

... 1st Respondent/Respondent-4

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 28.6.2013 made in M.C.O.P.No.908 of 2010 on the file of Subordinate Judge (Motor Accidents Claims Tribunal) Sathyamangalam.

For Appellant	:	Mr.K.Vinod for M/s.E.Veera Ravichandran
For Respondent No.1&2	:	Mr.Ma.Pa.Thangavel
For Respondent No.3	:	Notice served

JUDGMENT

Brief facts of the claimants' case is as follows:

On 15.10.2010 at about 10.45 a.m., while the deceased Natarajan was riding his motorcycle bearing registration No.TN-38-AD 5980 at Coimbatore to Avinashi NH-47 road near Dhanalakshmi Sizing Mill from west to east direction on the extreme left side of the road, a container lorry bearing registration No.HR-55-F-4897 driven by its driver in the opposite direction, in a rash and negligent manner with high speed and without using horn without observing the road rules, hit against the deceased's motorcycle and thereby caused accident, resulting in the deceased Natarajan sustained fatal injuries all over the body and died on the spot itself. The petitioner was shifted to Government hospital, Hosur where he had taken treatment as inpatient. A case has been registered by Karumathampatty Police in Cr.No.1112 of 2010 under Sec.279, and 304(A) of I.P.C. Thus, the legal heirs of the deceased have filed a claim petition claiming Rs.20,00,000/- as compensation from the respondents.

2. On the side of the claimants, P.W.1 to 3 were examined and Ex.P1 to P-15 were marked. On the side of the respondent, R.W.1 to 3 were examined no document was marked. 4th respondent herein remained exparte before the tribunal.

3. Tribunal, based on the oral and documentary evidence adduced by both sides, has came to the conclusion that due to rash and negligent driving of the container lorry by its driver, the accident occurred and while awarding a sum of Rs.10,05,000/- as compensation to the claimants along with interest at the rate of 7.5% per annum from the date of claim petition till realization and directed the appellant/ Insurance Company to pay the award amount to the claimants and recover the said amount from the owner of the vehicle. The tribunal has fixed the notional income of the deceased at Rs.10,000/- and after deducting 1/3rd towards personal expenses, tribunal arrived income of the deceased as Rs.80,000/- p.a. and adopted 11 multiplier. Thus, the total compensation awarded by the tribunal under various heads are as follows:

Heads	Compensation awarded by the tribunal in Rs.
Loss of dependency Rs.80,000 x 11	8,80,000/-
Loss of Consortium	10,000/-
Love & affection Rs.10,000/- each	30,000/-
Funeral expenses	5,000/-
Loss of estate	10,000/-
Total	10,05,000/-

4.Challenging the said award, Insurance Company has filed the present appeal both against the liability as well as the quantum of compensation awarded by the tribunal.

5.Heard the learned counsel appearing for the appellant/Insurance Company, learned counsel appearing for the respondents/claimants and perused the materials available on record.

6. The respondents/claimants filed a claim petition claiming Rs.20,00,000/- as compensation for the death of husband of the first respondent and father of the respondents 2 and 3. The main contention of the appellant is that since the driver of the container lorry had no valid driving licence and therefore, there was clear violation of policy condition and hence, the appellant/Insurance Company is not liable to pay compensation.

7. The Hon'ble Supreme Court in the case of NATIONAL INSURANCE CO. LTD VS. SWARAN SINGH & ORS [SPECIAL LEAVE PETITION (CIVIL) 9027 OF 2003] has held as follows:

> (iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.
>
> (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.
>
> (v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.
>
> (vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches

on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.''

8. In the judgment cited supra, the Hon'ble Supreme Court categorically stated that even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence contributed to the cause of the accident.

9. In the case on hand, admittedly, the vehicle involved in the accident is container lorry bearing registration No.HR-55F-4897 insured with the appellant/Insurance Company and the driver of the offending insured vehicle is having licence to drive light motor vehicle only and drove the aforesaid container lorry. It was not proved by the appellant/Insurance company before the tribunal that the breach of policy conditions contributed to the cause of accident. Therefore, the appellant/Insurance Company cannot be allowed to avoid its liability.

10. In sofar as the quantum of compensation, according to the respondents/claimants, the deceased was doing Real Estate business, agriculture, Milk vending, hotel business and earned Rs.5,00,000/- per annum and furnished Bank account statements and the same were marked as Ex.P14 and P15 to show that transaction was done for a sum of Rs.6,56,789/- and Rs.6,17,886/- in the deceased bank account during the relevant period. However, the tribunal has fixed Rs.10,000/- per month as notional income of the deceased and adopted 11 multiplier as per Sarala Varma case and awarded Rs.8,80,000/- towards loss of dependency. Rs.80,000/- towards loss of estate, Rs.10,000/-

each to the petitioners towards love and affection Rs.10,000/- towards loss of consortium and Rs.5,000/- for funeral expenses. Therefore, this Court is of the view that the tribunal has awarded just and reasonable compensation to the claimants.

11. In view of the foregoing reasons and the decision cited, there is no warrant to interfere with the award of the tribunal and as such, the award passed by the tribunal is confirmed.

12. Consequently, the appeal stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge (Motor Accidents Claims Tribunal) Sathyamangalam.

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

+1cc to Mrs.Elveera Ravindran, Advocate SR.No. 14769
+1cc to M/s.Ma.P.Thangavel, Advocate SR.No. 14922

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SPD(CO)
B.VC(12.08.2021)