BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE ON WHICH RESERVED : 16.12.2020
DATE ON WHICH PRONOUNCED : 06.01.2021
CORAM:
THE HON'BLE MR JUSTICE G.ILANGOVAN
C.M.A(MD) No.528 of 2010
and
MP(MD)No.1 of 2010

The Branch Manager,
National Insurance Company Limited,
706, Tenkasi Road,
Rajapalayam. ... Appellant/2nd Respondent

vs.

1.Ponnusamy (deleted)

2.Karuppayee

3. Karuppasamy

4. Geetha ... Respondents 1 to 4 / Petitioners 1 to 4

5. V.Ponnusamy ... 5th Respondent / 1st Respondent
(R1 deleted vide order of this court dated 06.01.2021 in CMP(MD). 528/2010)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award and decree in M.C.O.P.No.103 of 2005 dated 30.01.2009 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Virudhunagar District at Srivilliputhur.

For Appellant : Mr.S.Srinivasa Raghavan
R1 Deleted Vide order dated 06.01.2021
For R5 : No Appearance
For R2 to R4 : Mr.P.Athimoola Pandian

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the second respondent / Insurance Company against the order/award passed by the Motor Accidents Claims Tribunal, Principal District Court, Srivilliputhur, Virduhunagar District, in M.C.O.P.No.103 of 2005 dated 30.01.2009.

2. The case of the claimant before the Tribunal:-

On 07.05.2004, the deceased along with others were travelling in a TATA Sumo car bearing registration number TN 69 F 8733 from Rajapalayam to Tiruppur. At about 5.30 a.m, on 08.05.2004, when they were nearing the place of occurrence, the driver of the TATA Sumo car drove the same in rash and negligent manner in an attempt to give way to the oncoming vehicle, he severed the same to the left, as a result of which, the vehicle hit against a Tamarind tree standing on the right side of the road.

(ii) In the accident, Chithra and one minor Ajees died and other occupants namely, Samuthiravel, minor Ponnupandi, Periyandavar and Mageshkannan sustained injuries. The vehicle belongs to the first respondent insured with the second respondent. In respect of the offence, a case in Crime No.82 of 2004 was registered on the file of Dharapuram Judicial Magistrate Court. The claimants are the children of the deceased Chithra.

(iii) In respect of the first petitioner, who is the husband and as well as the owner of the offending vehicle was deleted from the petition and a memo has also filed by the petitioners to that effect.

3. The case of the insurance company who is the appellant herein is that the seating capacity of the vehicle was only ten, but, against the permit, 14 persons travelled in the vehicle. Since, there is a violation of the policy condition, the insurance company is not liable to pay the amount. Moreover, the TATA Sumo car was used by the occupants for the private purpose. Moreover, the relationship between the first petitioner and the owner of the vehicle has been suppressed. As mentioned earlier, the first petitioner who is the owner of the vehicle was subsequently deleted and other details were denied as false. Since, other occupants also filed separate petitions, the Tribunal undertook a joint trial clubbing all the cases and a common order was passed.

4. On the side of the petitioners, 8 witnesses were examined, 55 documents were marked. On the side of the respondent, one document was marked and no witness was examined. At the conclusion of the enquiry, the Tribunal came to the conclusion that the occurrence took place due to the rash and negligence driving on the part of the driver of the offending vehicle and accordingly, the owner and the insurance company were made liable to pay the compensation. In respect of this petition, a total compensation amount of Rs.3,29,800/- was fixed.

5. Challenging the quantum as well as the liability, the insurance company is before this Court.

6. At the time of argument, it was pointed out by the appellant that the first respondent Mr.Ponnusamy was also arrayed as the first petitioner in the petition and so, the claim is not maintainable. But as I mentioned earlier, the first petitioner namely Ponnusamy was deleted from the petition, but unfortunately, in the decree it was not mentioned. So the appeal memorandum was also filed by arraying Ponnusamy as the first respondent. Since, it is a mistake

apparent on the face of the record, the other respondents were directed to file a memo to delete the name of the first respondent. They also filed a memo and the same was also recorded by this Court. Now, only the children of the deceased Chithra are before this Court and her husband is not.

7. The appellant mainly contended that the owner cannot maintain a petition for compensation against himself by arraying insurance company also as a party and this is a well settled position of law and that is why the first petitioner name was deleted. Even though, the other petitioners are the children of the owner, they can very well maintain the petition for compensation against his father, namely the owner of the vehicle, for the death of their mother and this position is not objected by the appellant.

8. Regarding the manner of occurrence, no argument was advanced. Reading of the First Information Report and as well as the evidence of all the petitions, it is seen that the driver of the vehicle in an attempt to give way to oncoming vehicle, severed the same to the left and in that process, lost control and the vehicle hit a road side Tamarind tree. So, the very nature of the occurrence clearly shows that the driver of the offending vehicle was rash and negligent. The finding of the Tribunal on this aspect requires no interference and accordingly, it is sustained.

9. Regarding coverage also, no dispute has been raised. A perusal of the policy shows that total 9 persons are covered, even though in the counter, it has been stated that against policy condition, 14 persons travelled in the vehicle, the same was not pressed during the argument in the appeal.

10. Insofar as quantum is concerned, a request was made by the respondents to raise the same as compensation awarded by the Tribunal is on the lesser side. In the petition, the monthly income of the deceased was noted as Rs.2,500/- and age has also noted as 40. The Tribunal on the basis of the details noted in the postmortem certificate, took as correct and fixed the age as 40. The deceased appears to be a house wife, so there was no document to support her monthly income. The Tribunal took Rs.2,500/- as such without making any reduction or increase after deducting the customary amounts, the monthly loss of estate was assessed at Rs.1,500/-. So, multiplier was taken as 16. But, as per the ***Smt.Sarla Verma & Ors vs. Delhi Transport Corporation & Anr.***, case, the multiplier must be 15 for the age group of persons 36 to 40 by adding the customary amounts, it awarded Rs.3,29,800/-. Now the question which arises for consideration is whether any enhancement is required on the facts and circumstances of this case.

11. The respondent has relied upon the judgment of this Court reported in ***Andal and Others Vs. Avinav Kanna & Ors., 2019 (1) TNMAC***

54 (DB), for the purpose of argument that the Hon'ble Supreme Court of India in a judgment reported in ***Syed Sadiq, etc Vs. Divisional Manager, United India Insurance Co.Ltd, 2014 (1) TNMAC 459***, has fixed notional income at Rs.6,500/- for a Vegetable Vendor, that was in the year 2008, by taking into account the cost of inflation index, this Court fixed the same as Rs.11,085/-. So, according to the respondent, this amount must be taken into account for fixing the quantum.

12. But, as I mentioned earlier, the Tribunal has taken into account the monthly income as mentioned in the petition without any reduction or increase. So, the petitioner cannot make an argument that subsequent to that order, notional income have been fixed at Rs.6,500/- must be taken into account. Moreover, the uniform notional income so far as house wives were taken as Rs.36,000/- per year, more particularly, in the judgment reported in ***National Insurance Company Limited Vs. Minor Deepika, 2009 (6) MLJ 1005***. So, the request made by the respondent that it must be fixed at Rs.6,500/- cannot be accepted. But, as per the ***National Insurance Company Limited Vs. Pranav Sethi*** case, the future prospect must be 40%. Even though, the deceased Chithra was not self-employed, the annual loss of estate must be calculated on that basis as Rs.19,800 x '15' = 2,97,000/-. With this amount, the Parental Consortium at the rate of Rs.40,000/- each (Total Rs.1,20,000/-) and another Rs.15,000/- for funeral expenses must be awarded to the respondents 2 to 4 with interest at the rate of 7.5% p.a.

Loss of Income	-	2,97,000
Parental Consortium	-	1,20,000
Funeral Expense	-	15,000
Total		4,32,000

13. **This appeal fails and dismissed.** No costs. The compensation amount is enhanced to a sum of Rs.4,32,000/-. The respondents 2 to 4 are entitled to receive an equal share of the compensation with proportionate accrued interest and the respondents 2 to 4 are permitted to withdraw the amount immediately. The deficit Court fee must be paid by the respondents. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pkn

Note:
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Motor Accidents Claims Tribunal,
Principal District Judge,
Srivilliputhur, Virudhunagar District.

Copy to
2.The Record Keeper,(2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-420[F] dated 07/01/2021)

C.M.A(MD) No.528 of 2010
06.01.2021

PK(CO)
KB(26.02.2021) 5P 5C