



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.12.2021	Delivered on: 06.04.2022
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1325 of 2018

1.Ayyanar
2.Vasanthi @ Valarmathi
3.Sumathi
4.Alamelu
5.Bakkiya Lakshmi
6.Venkatesan (Minor) ... Appellants/Petitioners
(Minor 6th appellant represented by his father
& next friend, Ayyanar, 1st appellent herein)

Vs.

1.K.Chandran
2.The United India Insurance Company Limited,
No.20, 73C, M.T.H.Road,
Ambattur, Chennai - 600 053. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 21.01.2015 made in M.C.O.P.No.98 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Maduranthagam.

For Appellants : Mr.N.M.Elumalai

For R1 : Mr.A.Mahendrarvarman

For R2 : Mr.C.Paranthaman

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed against the award dated 21.01.2015 made in M.C.O.P.No.98 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Maduranthagam.



2.The appellants are the claimants in M.C.O.P.No.98 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Maduranthagam. They filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the death of one Sarasu, who died in the accident that took place on 21.04.2007.

3.According to appellants, on 21.04.2007 at about 06.30 P.M., while the said Sarasu along with others were travelling as Coolie in the lorry bearing Registration No.TN 32 Z 7173 from Chengalpattu to the Brick Industries at Pazhayanoor, Madurantakam on the National Highways at the Tapal Nedu village, the driver of the lorry applied sudden brake. Due to the said impact, the coolies were thrown out of the lorry and the said Sarasu sustained grievous injuries and she was taken to Government General Hospital. In spite of treatment, the said Sarasu succumbed to injuries on the same day. Therefore, the appellants filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of the said Sarasu against the respondents, being the owner and insurer of the lorry respectively.

4.The 1st respondent-owner of the lorry remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company being the insurer of the lorry filed counter statement and denied all the averments made by the appellants in the claim petition. The 2nd respondent denied the manner of accident as alleged by the appellants. The driver of the lorry was not possessing valid driving license at the time of accident and he was not working under the 1st respondent and there is no master servant relationship between the alleged driver and the 1st respondent. The 1st respondent in violation of Motor Vehicle Act, has permitted the said driver to drive the lorry at the time of accident. Further, the lorry belonging to 1st respondent was not having valid insurance policy and the said lorry was not insured with the 2nd respondent at the time of accident. Hence, the 2nd respondent is not liable to pay any compensation to the appellants. The appellants have to prove that they are the legal heirs of the deceased Sarasu by producing valid documents. The 2nd respondent denied the age, avocation and income of the deceased. The quantum of compensation claimed by the appellants are highly excessive and prayed for dismissal of the claim petition.

6.The 2nd respondent-Insurance Company filed additional counter statement and contended that the deceased traveled in



the lorry as an unauthorized passenger at the time of accident and she was not an employee under the 1st respondent but she was an employee only under one Manivannan, in his bricklin. For the violation of the 1st respondent by permitting the deceased to travel in the lorry as unauthorized passenger, the 2nd respondent-Insurance Company is not liable to pay any compensation to the appellants and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st appellant examined himself as P.W.1 and one Gopalsamy, eyewitness to the accident was examined as P.W.2 and eleven documents were marked as Exs.P1 to P11. On behalf of the 2nd respondent, two witnesses were examined as R.W.1 & R.W.2 and two documents were marked as Exs.R1 & R2.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred only due to rash and negligent driving by the driver of the lorry belonging to 1st respondent and directed the 1st respondent to pay a sum of Rs.4,92,500/- as compensation to the appellants 3 to 6 and dismissed the claim petition as against the 2nd respondent-Insurance Company.

9.Challenging the said award dated 21.01.2015 made in M.C.O.P.No.98 of 2008, the appellants have come out with the present appeal.

10.The learned counsel appearing for the appellants contended that the deceased was working under one Manivannan in his Bricklin. After unloading the bricks and while returning to her home, the accident has occurred. The accident has occurred only due to the negligence on the part of the driver of the lorry belonging to 1st respondent. Further, the driver of the lorry was possessing valid driving license and also the lorry was insured with the 2nd respondent on the date of accident. Hence, the 2nd respondent-Insurance Company is liable to pay the compensation to the appellants. The deceased was a Coolie, aged 39 years and was earning a sum of Rs.8,000/- per month at the time of accident. But, the Tribunal has fixed a meagre sum of Rs.3,500/- per month as notional income of the deceased and granted meagre amount as compensation towards loss of dependency. The amounts awarded by the Tribunal towards loss of estate, funeral expenses and transportation are meagre. The Tribunal failed to award any amount towards loss of consortium to 1st appellant and loss of love and affection to appellants 2 to 6 and prayed for allowing the Civil Miscellaneous Appeal.



11.The learned counsel appearing for the 1st respondent - owner of the lorry contended that on the date of accident, the driver of the lorry was possessing valid driving license and also the lorry was insured with the 2nd respondent-Insurance Company. But the Tribunal erroneously directed the 1st respondent to pay the compensation to the appellants and dismissed the claim petition as against the 2nd respondent-Insurance Company. The 2nd respondent-Insurance Company is only liable to pay the compensation to the appellants. The total compensation awarded by the Tribunal is excessive and prayed for a direction to the 2nd respondent-Insurance Company to pay the compensation to the appellants.

12.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased travelled in the lorry as unauthorized passenger and the Tribunal considering the same, has rightly directed the 1st respondent - owner of the lorry to pay the compensation to the appellants and dismissed the claim petition as against the 2nd respondent. The appellants have not proved the avocation and income of the deceased by producing valid documents. In the absence of any material evidence with regard to avocation and income of the deceased, a sum of Rs.3,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The 1st appellant - husband of the deceased is not the dependant of the deceased and also the 2nd appellant, one of the daughter of the deceased got married and hence, they are not entitled to get any compensation. The Tribunal considering the entire materials on record, has awarded a sum of Rs.4,92,500/- as compensation to the appellants 3 to 6, which is not meagre.

13.The learned counsel appearing for the 2nd respondent-Insurance Company filed written arguments and contended that the 1st appellant, who is the complainant has stated in the F.I.R. that he and his wife Sarasu along with others are returning home after purchase of provisions for cooking. But, in the claim petition, the appellants have stated that they were returning to Madurantakam after unloading the bricks at Chengalpattu. Therefore, the appellants cannot change their stand taken by them in the F.I.R. and file claim petition for claiming compensation. The Tribunal considering the same, has rightly dismissed the claim petition as against the 2nd respondent-Insurance Company and directed the 1st respondent-owner of the lorry to pay the compensation to the appellants. In support of his contention, the learned counsel relied on the following judgments and prayed for dismissal of the appeal:



(i) Civil Appeal No.5385 of 2001, [New India Assurance Company Limited Vs. Asha Rani & Ors.];

(ii) Civil Appeal No.2526 of 2007, [Oriental Insurance Company Limited Vs. Premlata Shukla & Ors.];

(iii) Civil Appeal No.7399 of 2008, [National Insurance Company Limited Vs. Rattani and others];

(iv) (2009) 5 MLJ 707, [Royal Sundaram Alliance General Insurance Company Limited Vs. P.Ayyakannu and others] and

(v) 2018 (2) TNMAC 731 (DB), [Bharathi AXA General Insurance Company Limited Vs. Aandi and others].

14.Heard the learned counsel appearing for the appellants, learned counsel appearing for the 1st respondent as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

15.It is the contention of the appellants that on the date of accident the deceased travelled in the lorry as coolie and not as unauthorized passenger. To prove their case, the 1st appellant examined himself as P.W.1, one Gopalsamy, eyewitness to the accident was examined as P.W.2. Both P.W.1 & P.W.2 in their chief examination have admitted that after unloading the bricks and while returning home, the accident has occurred. But in Ex.P1/F.I.R., the complainant, 1st appellant herein, has stated that while he and his wife along with others were returning home in the lorry after buying provisions for cooking, the accident has occurred. Further, P.W.1 in his cross examination has admitted that he has not mentioned in F.I.R. that on the date of accident the deceased travelled in the lorry as coolie. Further, he also admitted in his cross examination that based on the situation of that day he has stated in the F.I.R. that on the date of accident they went to buy provisions for cooking. There is no explanation on behalf of the appellants for this contradictory statement. The 1st appellant, who is the husband of the deceased has given the complaint to the Police and based on which the F.I.R. was registered against the driver of the lorry belonging to 1st respondent. But, the 1st appellant in his chief examination has deposed a different version of accident. The Tribunal considering the evidence of P.W.1, P.W.2, R.W.1, R.W.2 and contents of Exs.P1, R1 & R2, held that the deceased traveled in the lorry as unauthorized passenger. There is no error in the said finding of the Tribunal.

16.It is the further case of the appellants that the Tribunal ought to have directed the 2nd respondent-Insurance Company to pay the compensation instead of directing the 1st respondent-owner of the lorry to pay the compensation to the



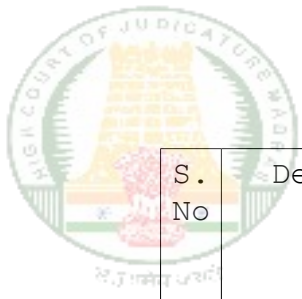
appellants on the ground that on the date of accident, the 1st respondent's lorry was insured with the 2nd respondent-Insurance Company and also the driver of the lorry was possessing valid driving license on the date of accident. As per the principles laid down in the Division Bench of this Court reported in 2018 (2) TNMAC 731 DB (Bharati AXA General Insurance Co. Ltd., v. Aandi and others) and the judgment of the Hon'ble Apex Court reported in Civil Appeal No.7399 of 2008 (National Insurance Co. Ltd., Vs. Rattani and others), relied on by the learned counsel appearing for the 2nd respondent, the Insurance Company is not liable to pay the compensation to the gratuitous passengers. Therefore, there is no error in the award of the Tribunal directing the 1st respondent-owner of the lorry to pay the compensation to the appellants.

17.As far as quantum of compensation is concerned, It is the claim of the appellants in the claim petition that at the time of accident, the deceased was a Coolie, aged 39 years and was earning a sum of Rs.8,000/- per month. Except oral evidence, the appellants have not produced any documentary proof to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.3,500/- per month as notional income of the deceased. The accident is of the year 2007 and a sum of Rs.3,500/- per month fixed by the Tribunal as notional income of the deceased is meagre. Considering the year of accident and nature of work done by the deceased, a sum of Rs.4,000/- per month is fixed as notional income of the deceased. As per Ex.P6/postmortem certificate, the deceased was aged 39 years at the time of accident. But, the Tribunal has not granted any enhancement towards future prospects of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to 40% enhancement towards future prospects of the deceased. The deceased was aged 39 years at the time of accident and the Tribunal following the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], has rightly applied multiplier '15'. There are six dependants of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. Thus, by fixing a sum of Rs.4,000/- per month as notional income, granting 40% enhancement towards future prospects, applying multiplier '15' and deducting 1/4th towards personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.7,56,000/- {Rs.5,600/- [Rs.4,000/- + Rs.1,600/- (40% of Rs.4,000/-)] X 12



X 15 X ¾}. The Tribunal has not awarded any amount towards loss of consortium to the 1st appellant on the ground that he is not depending on the income of the deceased. The said finding of the Tribunal is erroneous. The 1st appellant, being the husband of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium. Further, the Tribunal also has not awarded any amount to the 2nd appellant on the ground that she was married. The 2nd appellant, being the daughter of the deceased is also entitled to get compensation. The 3rd appellant also got married as per the evidence of P.W.1 in his cross examination. Hence, it is reasonable to award a sum of Rs.20,000/- each to the appellants 2 & 3 towards loss of love and affection. The Tribunal has not awarded any amount towards loss of love and affection to the appellants 4 to 6. The appellants 4 to 6, being the children of the deceased are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The amounts awarded by the Tribunal towards loss of estate and funeral expenses are meagre and hence, the same are enhanced to Rs.15,000/- each. The amount awarded by the Tribunal towards transportation is just and reasonable and the same is confirmed. The Tribunal has not apportioned any amount to the appellants 1 & 2 on the ground that they are not depending on the income of the deceased. The said erroneous finding of the Tribunal is not correct and the appellants 1 & 2 are also entitled to get compensation. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	4,72,500/-	7,56,000/-	Enhanced
2.	Funeral expenses	5,000/-	15,000/-	Enhanced
3.	Loss of estate	10,000/-	15,000/-	Enhanced
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Loss of consortium to 1 st appellant	-	40,000/-	Granted
6.	Loss of love and affection to appellants 2 & 3	-	40,000/-	Granted



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
7.	Loss of love and affection to appellants 4 to 6	-	1,20,000/-	Granted
	Total	Rs.4,92,500/-	Rs.9,91,000/-	Enhanced by Rs.4,98,500/-

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,92,500/- is hereby enhanced to Rs.9,91,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st respondent is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.98 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Maduranthagam. On such deposit, the 1st appellant is entitled to a sum of Rs.1,50,000/- as compensation and the appellants 2 & 3 are entitled to a sum of Rs.20,000/- each as their compensation and the appellants 4 to 6 are entitled to get a sum of Rs.2,67,000/- each as their respective share of the award amount as compensation now determined by this Court, along with proportionate interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. The share of the minor 6th appellant (i.e., Rs.2,67,000/-) is directed to be deposited in any one of the Nationalized Banks, till the minor 6th appellant attains majority. On such deposit, the 1st appellant, being the Father of the minor 6th appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor 6th appellant. It is made clear that the appellants are not entitled to any interest for the delay period, as per the order of this Court dated 14.06.2018 made in C.M.P.No.2459 of 2018 in C.M.A.SR.No.8522 of 2018. This appeal is dismissed as against the 2nd respondent-Insurance Company. No costs.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR



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To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Maduranthagam.

Copy to

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.N.M.Elumalai, Advocate Sr.23294
+2cc to Mr.C.Paranthaman, Advocate Sr.23885

C.M.A.No.1325 of 2018

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