IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.2938 of 2017
and C.M.P.No.17292 of 2017

The United India Insurance Company Ltd.,
Silingi Building, 4th Floor,
No.13/4, Greams Road,
Chennai-600 006. .. Appellant/2nd Respondent

Versus

1.C.Saravanan
2.C.Srinivasan
3.C.Sakthivel ..1 to 3 Respondents/Petitioners
4.Chakkarapani .. 4th Respondent/1st Respondent

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.06.2017 made in M.C.O.P.No.6780 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Court, Chennai.

For Appellant : Mr.A.Dhiraviyanathan

For R1 to R3 : Mrs.Ramya V.Rao

For R4 : Ex-parte

JUDGMENT

The claimants are the sons of the deceased Panchali. The 4th respondent in the claim petition is the husband of the deceased Panchali. On the fateful day, the 4th respondent was riding the two wheeler bearing Registration No.TN-13-A-6627 insured with the 2nd respondent/Insurance Company. The deceased was riding pillion in the motorcycle driven by her husband/4th respondent. When the vehicle was proceeding at about 5.00 hours on 22.05.2015, near H.B.Petrol Bunk, Tambaram to Maduravoil bye pass road, it is claimed that the 4th respondent driven the vehicle in a rash and negligent manner due to which the deceased fell down from the vehicle. The deceased Panchali was taken to Government General Hospital for first-aid and from there she was taken to Government General Hospital, Chennai for further treatment. After taking treatment for two days, the deceased succumbed to the injuries. Therefore, the claimants have filed the claim petition claiming a sum of Rs.15,00,000/- as compensation from the Insurance Company.

2. The Insurance Company filed a counter affidavit and also additional counter affidavit before the Tribunal stating that in connection with the accident a first information report was registered in Crime No.9 of 2015 dated 22.05.2015 for the offences under Sections 279 and 338 of IPC. The complaint was given by one Hari Chandran, a vegetable vendor and he saw the deceased lying in a pool of blood. On the basis of the statement given by Hari Chandran, the first information report was registered. Even as per the complaint, the 4th respondent who is the husband of the deceased had driven the vehicle in a rash and negligent manner and the deceased was thrown off from the vehicle. Further, it was contended that the 4th respondent has no valid driving licence to drive the two wheeler and therefore also the Insurance Company cannot be mulcted any liability to pay compensation when there is no other vehicle involved and the deceased herself was negligent while riding as a pillion rider which resulted in the accident.

3. Before the Tribunal, on behalf of the claimants, the 2nd claimant was examined as P.W.1 and one C.Kumar was examined as P.W.2 and Exs.P1 to P9 were marked. On the side of the 2nd respondent, one Mr.T.Suresh was examined as R.W.1 and Ex.R1-investigation report was marked.

4. The Tribunal upon analyzing the oral and document evidence held that P.W.2, an eye-witness has clearly deposed that the vehicle was driven by the 4th respondent in a rash and negligent manner, due to which the deceased was thrown off the vehicle. As regards compensation, the Tribunal taken a sum of Rs.6,000/- as monthly income of the deceased, added 30% thereof towards future prospects to arrive at Rs.7,800/- as notional income. After giving 1/3rd deduction and by applying multiplier '14', the Tribunal awarded a sum of Rs.8,73,600/- as compensation towards loss of dependency. A sum of Rs.10,000/- each for the three claimants was awarded towards loss of love and affection. A further sum of Rs.5,000/- was awarded towards transportation and another sum of Rs.25,000/- towards funeral expenses. In all, a sum of Rs.9,33,600/- was awarded as total compensation. Aggrieved by the same, this present appeal is filed by the appellant/Insurance Company.

5. The learned counsel for the appellant/Insurance Company vehemently contended that at the time of accident, the deceased was not holding a valid driving licence to drive the two wheeler. Even otherwise, when the deceased was riding pillion it is her responsibility to travel safe and due to her negligence she fell down from the vehicle on her own. The 4th respondent was the husband of the deceased who drove the vehicle in a rash and negligent manner which would stand testimony to the fact that the pillion driver was thrown off from the vehicle due to the speed with which the vehicle was driven. It was further stated that the claimants cannot come within the meaning and definition of dependents as the 1st claimant was 34 years old, the 2nd claimant was 32 years and the 3rd claimant was 30 years and therefore, they cannot be said to be dependents of the deceased. Even otherwise there was no documentary evidence filed before the Tribunal to show the earning capacity of the deceased. While so, the Tribunal went wrong in taking a sum of Rs.6,000/- per month as monthly income of the deceased.

6. On the above contentions, this Court heard the learned counsel for the respondents 1 to 3 and perused the materials available on record.

7. It is no doubt true that the deceased, while riding pillion, had fell off from the vehicle driven by her husband and she sustained grievous injuries. In spite of treatment given to her for two days she succumbed to the injuries. Admittedly, the vehicle driven by the 4th respondent was insured with Insurance Company and it was not disputed. What is disputed is that the 4th respondent, who drove the vehicle did not posses a driving licence to drive the vehicle. This Court do not find any force in such submission of the learned counsel for the appellant. Merely because the 4th respondent did not possess a valid driving licence to drive the vehicle, it will not preclude the claimant from claiming compensation amount from the Insurance Company. The Motor Vehicles Act is a benevolent legislation intended to add succor to the family of the victims of the motor vehicles. Therefore, time and again, it was held by this Court as well as the Hon'ble Supreme Court that even though if the driver of the vehicle did not possess a valid driving licence, it will not be a ground to reject the claim for compensation. Having regard to the above legal position, this Court is of the view that the liability fastened upon the Insurance Company by the Tribunal is proper and it does not call for any interference by this Court.

8. As regards the quantum, even assuming that the deceased is a home maker and she is not an earning member, it will not be a ground to reject the claim petition. If the

deceased is not an earning member, still the contribution made by the deceased has to be considered not in terms of money but in terms of physical labour put in by her. This was the ratio laid down by a decision of the Division Bench of this Court in the case of National Insurance Company Limited vs. Gayathri and another) reported in 2021 (1) TNMAC 1 (DB) (Madras), in Para No.21, the Division Bench held as follows:-

> "21. The deceased was a home maker. The claimants admitted that she is not an earning member. In such a situation, the Tribunal has to decide the claim petition by taking note of the contribution of the deceased to the family, not in terms of money, but in terms of her physical labour, while awarding compensation. As a female, aged 27 years, the responsibility to be shouldered by the deceased is enormous and manifold. She is an unpaid servant employed in the house throughout the day. She has to take care of the children, engage in cooking, cleaning the house, buying the goods that may reasonably be required for running the show etc., Further, the task shouldered by the home maker to uphold the virtues of the family is endless. It is also to be mentioned that even an employee who is employed in a firm for wages or a businessman engaged in business, may get rest during weekends and on public holidays, but the nature of work of a home maker demands that she has to continuously engage herself in household work in some form or the other throughout the year. Therefore, the responsibility shouldered by a house wife cannot be curtailed or belittled in any manner. In the present case, the claimant had lost her mother at a young age, inter-alia, deprived of the parental care. Taking note of the above, for the purpose of compensating the death of the deceased in this case, Tribunal has notionally fixed a meagre sum and arrived at a just and fair compensation. We are not, therefore, inclined to interfere with the amount awarded by the Tribunal in favour of the claimant, which in our opinion is a just and fair compensation."

9. In that case, the Division Bench had confirmed the award passed by the Tribunal by fixing a sum of Rs.5,000/- per month as compensation. In this case, the Tribunal fixed a sum of Rs.6,000/- per month as compensation in the accident had occurred on 22.05.2015 during which period, the fixation of compensation of Rs.6,000/- is proper and cannot be said to be exorbitant. In such view of the matter, this Court is of the opinion that the amount of compensation awarded by the Tribunal

is a just and fair compensation and it does not call for any interference by this Court.

10.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.9,33,600/- awarded by the Tribunal as compensation to the respondents 1 to 3, along with interest and costs, is confirmed. The appellant-Insurance Company is directed to deposit the award amount, along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.6780 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Court, Chennai, at the first instance and recover the same from the 4th respondent /rider and owner of the motorcycle. On such deposit, the respondents 1 to 3 are permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any already withdrawn, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

gbi

To

1.The Chief Judge,
Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to M/s.Ramya V.Rao, Advocate SR.No.7223

C.M.A.No.2938 of 2017

GMR(CO)
GMY(04/03/2022)