IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.02.2023

PRONOUNCED ON : 07.03.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.3183 of 2013

1.T.Kuppammal
2.Mrs.T.Minavathi
3.Mrs.S.Saraswathi
4.Mrs.S.Santhi
5.T.Kannusamy ... Appellants

vs.

1.R.Selvaraj

2.The National Insurance Co. Ltd.,
Branch Manager,
Bhavani. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Fair and Final Order dated 30.06.2011 passed in M.C.O.P.No.451 of 2006 on the file of the Motor Accident Claims Tribunal-cum-Additional Subordinate Judge at Tiruppur for enhancement of compensation.

For Appellants : Mr.R.Bharath Kumar
For Respondents : Mrs.N.B.Sureka [R2]
R1 - Unclaimed

JUDGMENT

The claimants No.1 to 5 who are the legal heirs of the deceased Duraisamy have preferred this appeal aggrieved by the award passed in M.C.O.P.No.451 of 2006 dated 30.06.2011 on the file of the Motor AccidentClaims Tribunal, Additional Sub-Court, Tiruppur.

2. The Tribunal has granted compensation of Rs.6,32,042/- fastening liability on the 1st respondent alone.

3. Heard both sides and perused the entire records in toto.

4. The learned counsel for the appellants/claimants would specifically contend that when the driver of the offending vehicle had no driving licence, then fastening the liability on the 1st respondent is incorrect

and to strengthen the argument, the judgment of Hon'ble Supreme Court rendered in ***Parminder Singh v. New India Assurance Company Limited and others*** reported in ***2019 (7) SCC 217*** was referred to: Wherein, the Hon'ble Supreme Court has held that '… it is just and fair to direct the respondent Insurance Company to pay the enhanced amount of compensation as indicated in paragraph No.6 above. The respondent Insurance Company is entitled to recover the amount from the owners and driver of the two offending trucks...'

5. It is also relevant to note that the Hon'ble Supreme Court in ***Shamanna v. Oriental Insurance Co. Ltd.,*** reported in ***(2019) 1 SCC (Cri) 863***, wherein, it was held that '… if the driver of the offending vehicle does not possess a valid driving licence, the principle of "pay and recover" can be ordered to direct the Insurance Company to pay the victim, and then recover the amount from the owner of the offending vehicle...'

6. The above said law laid down in Shamanna's case as mentioned supra was followed in Parminder Singh's case by the Hon'ble Supreme Court.

7. On perusal of records, it appears that the driver of the vehicle connected with the accident, namely one Munusamy was examined as RW3 and he has deposed that he did not possess driving licence on the date of accident and he was working as a cleaner. Therefore, it was made clear that the driver of the offending vehicle did not possess valid driving licence at all on the date of accident. If the driver does not possess driving licence, it is a clear violation of policy condition and if the policy condition was breached, then the insurance company cannot be fastened with the liability but however, as opined by the Hon'ble Supreme Court, it is ordered that the insurance company namely, the 2nd respondent shall pay the amount awarded and then to recover the same from the owner of the said vehicle.

8. As regards the loss of income, it was argued that the quantum of compensation awarded is inadequate. Though no document was filed to prove the age of the deceased, upon perusal of available records, the age of the deceased is fixed as 65 years, which cannot be found fault with. It was averred that the deceased was working as Poojari in a temple and in addition to that he was an astrologer and thus he was earning Rs.10,000/-

p.m. To prove the said factum, one Raja who was examined as PW3 has spoken about the avocation of the deceased Duraisamy to the effect that he was performing Pooja in the Raasakoil since 45 years and earned Rs.10,000/- as monthly income. Based on his evidence, the Trial Court has fixed the income of the deceased at Rs.6,000/- p.m., is quite reasonable as the accident taken place in the year 2006.

9. Claimants No.1 to 5 are the wife and children of the deceased Duraisamy. As the 1st claimant lost her husband due to road accident, under the head of loss of consortium, a sum of Rs.20,000/- is granted to the 1st claimant/wife. Towards loss of love and affection a sum of Rs.10,000/- each (Rs.10,000/- X 4 = Rs.40,000/-) is granted to the children of the deceased and a sum of Rs.15,000/- is granted towards transportation charges. In all other aspects, the award of the Tribunal appears to be reasonable and I see no reason to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked as below:

S.No.	***Description***	***Amount awarded by Tribunal***	***Amount awarded by this Court***	***Award confirmed or enhanced or granted or reduced***
1	Loss of Income	Rs. 2,70,000/-	Rs. 2,70,000/-	Confirmed
2	Funeral Expenses	Rs. 10,000/-	Rs. 10,000/-	Confirmed
3	Medical Bills	Rs. 3,52,042/-	Rs. 3,52,042/-	Confirmed
4	Transportation	NIL	Rs. 15,000/-	**Granted**
5	Consortium to the 1st claimant/wife	NIL	Rs. 20,000/-	**Granted**
6	Loss of Love and Affection	NIL	Rs. 40,000/-	**Granted**
	TOTAL	Rs. 6,32,042/-	**Rs. 7,07,042/-**	

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.6,32,042/- awarded by the Tribunal is hereby enhanced to a sum of **Rs.7,07,042/-**. As per the discussions held above, though the 2nd respondent/Insurance Company is absolved from liability, the Insurance Company shall pay the compensation to the claimants at the first instance and thereafter, to recover the same from the owner of the vehicle. Therefore, the 2nd respondent / Insurance Company is directed to deposit the enhanced amount of **Rs.7,07,042/-** to the credit of

M.C.O.P.No.451 of 2006 on the file of the Motor Accident Claims Tribunal-cum-Additional Subordinate Judge at Tiruppur together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs, less, the amount, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the claimant is permitted to withdraw the amount now determined by this Court, as apportioned by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants. No costs.

07.03.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal-cum-

Additional Subordinate Judge, Tiruppur.

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

R.KALAIMATHI, J.,

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Pre-delivery Judgment in
C.M.A.No.3183 of 2013

07.03.2023