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CMA.No.1822 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.06.2023

Pronounced on : 29.08.2023

CORAM

THE HONOURABLE Mrs.JUSTICE R. KALAIMATHI

C.M.A.No.1822 of 2020

and

C.M.P.No.13487 of 2020

The Divisional Manager,
M/s.National Insurance Company Ltd.,
Puducheri.

... Appellant

vs.

1. R.Muniyappan
2. R.Thandavamoorthy
3. R.Kasiyammal
4. Munmum Das

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgment dated 27th February 2020, passed in MCOP.No.36 of 2016, by the Motor Accidents Claims Tribunal, (I st Additional District Court) at Tindivanam.

For appellant : Mr.J.Michael Visuvasam

For respondents : Mr.R.Balaguruswamy
for R1 to R3

: No Appearance for R4



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JUDGMENT

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The appellant/ second respondent Insurance Company has preferred this Civil Miscellaneous Appeal against the judgment and decree passed in M.C.O.P.No.36 of 2016 on 27.02.2020 on the file of the Motor Accident Claims Tribunal/ I Additional District Court, Tindivanam questioning the liability as well as quantum.

2. Claim Petition was filed under Section 166(1) of the Motor Vehicles Act, claiming compensation of Rs.10,00,000/- for the death of one Ranganathan who died in the road accident on 28.12.2015 at 12.00 p.m by his Legal Heirs.

3. The learned Tribunal, after hearing both sides arguments and upon considering the oral and documentary evidence has passed an award for an amount of Rs.4,25,040/- payable by the appellant/ second respondent / Insurance Company.

4. The learned counsel appearing for the appellant/second respondent Insurance Company would vehemently contend that the vehicle



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involved in the accident is a Private Ambulance Van bearing Regn.No.WB-25-E-4411 had no fitness certificate at the relevant point of time. To this effect, Mr. Parthasarathy who is the Staff of Road Transport Office, Tindivanam was examined as R.W.1 and one Sivakumar, Staff of Insurance Company has been examined as R.W.2 to prove the fact that the said vehicle was plied without fitness certificate. It is his further argument that in Ex.P.2 Copy of Motor Vehicle Inspector Report and also in Column No.8, these details are found. RW2 has also stated that the fitness certificate was not renewed. It was further contended that the deceased was a farmer, aged about 75 years and the income of the deceased was fixed at Rs.6,500/- per month is on the higher side. Instead of deducting 1/3rd, 50% deduction has to be made as his sons were not dependent on the deceased. He also further contended that in view of the same, pay and recovery may be ordered and compensation awarded by the tribunal may be reduced.

5. Per contra, the learned counsel for the claimants would contend that though admittedly the deceased was aged about 75 years, he was hale and healthy and as a farmer, he was earning Rs.6,000/- per month. He would further submit that since their sons are major, it cannot be



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construed that they are not dependents and prayed for dismissal of the appeal.

6. Heard the arguments of learned counsel for the appellant/ second respondent -Insurance Company and the respondents/claimants and perused the materials on record.

7. With regard to above said plea, RW1, staff of Transport Office,Tindivanam has been examined as R.W.1, it is evident that the vehicle which caused accident, on 04.01.2016 was inspected by the motor vehicle Inspector and in his report it is recorded to the effect that the fitness certificate was not renewed. The staff of Insurance Company was examined as R.W.2 has also spoken about the above said fact. Therefore, owner of the Ambulance has violated the policy condition.

8. In ***New India Assurance Co.Ltd., Shimla Vs. Kamala and Others***, reported in 2001 (3) SCC 342, while considering the scope of Section 149 of The Motor Vehicles Act, the Hon'ble Supreme Court has observed that the insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there



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is violation of any policy condition. But, the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to receive from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. The Apex Court further held that in the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the claims Tribunal shall direct the insured to pay that amount to the insurer. In default, the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person.

9. In the present case, the vehicle involved is Ambulance. As pleaded by the Insurance Company that the vehicle did not have fitness certificate on the date of accident was duly proved by examining the Road Transport Staff. Therefore, it is pellucid that the owner of the said Ambulance has breached the policy condition. As the deceased is third party to the claim, since the policy was in force on the date of accident, the Insurance company is liable to pay the claimants at the first instance and to recover the same thereafter.

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10. As per Ex.P.3 Postmortem Certificate, age of the deceased Ranganathan was 75 years. Further, the deceased was stated to be a Farmer. The date of accident is 28.12.2015. The tribunal has fixed the monthly income of the deceased is fixed at Rs.6,500/- which appears to be reasonable.

11. The learned counsel for the appellant/ second respondent Insurance Company would submit that the sons of the deceased are not dependents and hence 50% has to be deducted for personal and living expenses of the deceased.

12. In **Manjuri Bera Vs The Oreintal Insurance Company Ltd and Others** reported in **2007(10)SCC 643**, the Apex Court has held that all the legal heirs of the deceased are entitled for compensation irrespective of the fact that they are dependent or not. As per law laid down by the Hon'ble Supreme Court in the case of **Sarla Verma & Others Vs. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**, multiplier details have been standardized. The relevant Multiplicand to be adopted is 5. Therefore, the following formality emerges in-order to calculate the loss of dependency :



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The age of the deceased is 75 years.

Monthly income of the deceased is fixed as Rs.6,500/- after deducting 1/3 it comes to Rs.4,344/- .

Multiplier to be adopted 5.

Thus the loss of dependency is calculated by the tribunal is calculated as
Rs.4,344/- x 12 x 5 = Rs.2,60,040/- .

13. The learned Tribunal has granted for the Loss of Love and Affection, Rs.1,00,000/- to the first and second petitioners(Rs.50,000/- each), Rs.25,000/- for Funeral Expenses and for Loss of Consortium Rs.40,000/- is granted to the wife of the deceased. Total compensation awarded is Rs.4,25,040/-. For loss of Estate Rs.15,000/- is granted.

14. With regard to other heads, the amount awarded by the Tribunal appears to be reasonable and needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Loss of dependency	Rs.2,60,040/-	Rs.2,60,040/-	Confirmed



Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
2	For Loss of Love and Affection to 1st and 2nd claimants (Rs.50,000/- each)	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
3.	For Funeral expenses	Rs.25,000/-	Rs.25,000/-	Confirmed
4	For Loss of Consortium to the wife	Rs.40,000/-	Rs.40,000/-	Confirmed
5	Loss of estate	---	Rs.15,000/-	Granted
	Total	Rs.4,25,040/-	Rs.4,40,040/-	

The same is rounded off to Rs.4,40,000/-, out of which, wife of the deceased/3rd respondent is entitled to Rs.3,60,000/- and the sons of the deceased/1st and 2nd respondents are entitled to Rs.40,000/- each.

15. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.4,25,040/-** to **Rs.4,40,000/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

16. In the result,



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(i) The Civil Miscellaneous Appeal is **allowed**. No costs. Consequently, the connected miscellaneous petition is closed.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.4,25,040/- to Rs.4,40,000/-**.

(iii) The Appellant / 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.4,40,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum **from the date of filing of the petition** till the date of deposit to the credit of M.C.O.P.No.36 of 2016 on the file of the Motor Accidents Claims Tribunal, (I Additional District Court) at Tindivanam, within a period of eight weeks from the date of receipt of a copy of this Judgment, at the first instance and to recover the same from the owner of the vehicle/4th respondent herein.

(iv) On such deposit being made, the 1st respondent and 2nd respondent are entitled to receive Rs.40,000/- each and the 3rd respondent / wife of the deceased is entitled to receive Rs.3,60,000/-. The respondents



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1 to 3/claimants are permitted to withdraw their shares along with interest and costs, less the amount if any already withdrawn, by making necessary cheque applications by the claimants before the Tribunal. The claimants are directed to pay the requisite 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 claimant.

29.08.2023

Vv

Index:Yes/No

Internet:Yes/No

To

The Motor Accidents Claims Tribunal,
(I Additional District Court)
Tindivanam



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R. KALAIMATHI,J.

Vv

Pre Delivery Judgment made in
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