THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.Nos.2627 of 2022 and 274 of 2023
and
C.M.P.No.2120 of 2023 in C.M.A.No.274 of 2023

CMA.No.2627 of 2022:

1.Mallika

2.Minor Nivetha

3.Minor Gomathi

4.Minor Punita

5.Palanaal ...Appellants

Vs.

1.Periyasami

2.The National Insurance Company Ltd.,
Gobichettipalayam Branch,
No.7, Raja Street,
Gobichettipalayam Taluk,
Erode District. ...Respondents

Prayer in CMA.No.2627 of 2022: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award of the Motor

Accident Claims Tribunal, III Additional District & Sessions Court, Gobichettipalayam, Erode, made in MCOP.No.110 of 2020 dated 28.10.2021.

CMA.No.274 of 2023:

The National Insurance Company Ltd.,
Gobichettipalayam Branch,
No.7, Raja Street,
Gobichettipalayam Taluk,
Erode District. ...Appellants

Vs.

1.Mallika

2.Minor Nivetha

3.Minor Gomathi

4.Minor Punita

5.Palanaal

6.Periyasami ...Respondents

Prayer in CMA.No.274 of 2023: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 28.10.2021 made in MCOP.No.110 of 2020 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Gobichettipalayam.

For Appellants in CMA.2627/2022 and
Respondents 1 to 5 in CMA.274/2023 : Mrs.P.T.Saleem Fathima

For 2nd respondent in CMA.2627/2022
and Appellant in CMA.274/2023 : Mr.S.Arun Kumar

For 1st respondent in CMA.2627/2022
and 6th respondent in CMA.274/2023 : No appearance

JUDGMENT

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

While the Insurance Company challenges the award of a sum of Rs.28,55,000/- as compensation for the death of one Muthusamy in the road accident that took place on 15.02.2020 at around 2.30 p.m., the claimants are on appeal seeking enhancement of the said amount.

2. Claiming that the accident occurred due to the rash and negligent driving of the lorry bearing Reg.No.TN-49-AB-1201 by its driver and asserting that the deceased was earning a sum of Rs.25,000/- per month, the claimants have sought for a compensation of Rs.20,00,000/-.

3. The same was resisted by the Insurance Company contending that the driver of the lorry did not possess a valid driving license on the date of the accident and there was negligence on the part of the deceased Muthusamy, since he was not wearing a helmet and he did not possess a license to drive the two wheeler.

4. Before the Tribunal the 1st claimant was examined as PW1 and one Santhosh, eye witness was examined as PW2. An official of the Insurance Company was examined as RW1. While Exs.P1 to P29 were marked on the side of the claimants. Ex.R1, the policy, was marked on the side of the Insurance Company.

5. The Tribunal held that it was the negligence of the driver of the lorry which was the cause for the accident. It based its conclusion on negligence on the FIR which was marked as Ex.P1, alteration of charges which was marked as Ex.P2, the motor vehicle report of both the vehicles which were marked as Exs.P4 and P5 and the sketch which was marked as Ex.P6. The Tribunal also faulted the Insurance Company for not placing any evidence contrary to the evidence of PW2 on the question of negligence.

6. On the quantum, the Tribunal took the monthly notional income at Rs.15,000/-, adding 40% towards future prospects, deducting 1/3rd towards personal expenses of the deceased and adopting the multiplier of '15', the Tribunal arrived at the total loss of dependency at Rs.25,20,000/-'. The Tribunal also awarded a sum of Rs.10,000/- towards transportation, a sum of Rs.1,00,000/- towards loss of consortium for the 1st claimant and Rs.50,000/- each for loss of love and affection for the claimants 2 to 5. It added a sum of Rs.25,000/- towards funeral expenses and arrived at the total compensation at Rs.28,55,000/-. Though the Tribunal found that the driver of the lorry did not possess a driving license, for driving a heavy vehicle the Tribunal concluded that the Insurance Company is liable since the driver had license for driving the light motor vehicle. Aggrieved, the Insurance Company has come up with the appeal and the claimants have also filed independent appeal seeking enhancement.

7. We have heard Mr.S.Arun Kumar, learned counsel appearing for the Insurance Company and Mrs.P.T.Saleem Fathima, learned counsel appearing for the Claimants.

8. Mr.S.Arun Kumar, learned counsel appearing for the Insurance Company would vehemently contend that the Tribunal erred in concluding that the Insurance Company is liable to satisfy the award after having held that the driver had no valid driving license to drive the heavy transport vehicle viz., lorry. The learned counsel would contend that the Tribunal ought to have applied Section 149(4) of the Motor Vehicles Act and should have granted liberty to the Insurance Company to recover the award amount. In support of his contention, the learned counsel would rely upon Ex.P4, the motor vehicle Inspector report of the lorry, which shows the driver of the lorry was holding license only to drive the light motor vehicle and not a heavy vehicle.

9. Contending contra, Mrs.P.T.Saleem Fathima, learned counsel appearing for the claimants/respondents would submit that the Tribunal was justified in making the Insurance Company liable, inasmuch as there was policy covering risk and the driver of the lorry had a license. Pointing out that the claimants have filed independent appeal, Mrs.P.T.Saleem Fathima would contend that fixing Rs.15,000/- towards monthly income is very low, considering the date of accident viz., 15.02.2020. She would also point out that the Tribunal ought to have deducted 1/4th towards personal expenses since the deceased left behind three children and widow instead of 1/3rd adopted by the Tribunal.

10. We have considered the rival submissions. We are unable to accept the contention of the learned counsel for the respondents as regards the license. A perusal of Ex.P4 would show that the driver of the lorry had only license to drive light motor vehicle and not the heavy vehicle. Therefore, there is a breach of policy condition by the insured. Technically the Insurance Company is not liable to satisfy the award. However, in view of Section 149(4), the Tribunal ought to have given liberty to the Insurance Company to satisfy the award and recover the amount from the owner of the vehicle. Denial of such recovery to the Insurance Company in our considered opinion is clearly erroneous. We therefore conclude that the Insurance Company is liable to satisfy the award. It will however have a right of recovery, from the owner of the vehicle to the accident, of the liability that accrues to it under the award.

11. Adverting to the quantum of compensation, though we do not find any evidence to adopt a higher amount as monthly income, we find deduction of 1/3rd by the Tribunal is on the higher side. As already pointed out, the deceased has left behind his mother, widow and three children. Therefore, there were five dependents. The Tribunal ought to have applied only 1/4th deduction and not 1/3rd. If we are to apply 1/4th deduction, the loss of dependency would be as follows:-

[15,000 + 40% {6000}] – 1/4th {5250} x 12 x 15

= Rs.28,35,000/-

12. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium for wife and Rs.50,000/- each towards loss of love and affection to the children and the mother. This is against the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd Vs. Pranay Sethi and others*** reported in ***2018 (1) LW 331,*** where the Hon'ble Supreme Court has held that Rs.40,000/- would be just compensation on the ground of loss of consortium and loss of love and affection. We therefore award a sum of **Rs.40,000/- each** to the five claimants towards loss of consortium and loss of love and affection. Awards on the grounds of funeral expenses and transportation and loss of estate are modified at **Rs.15,000/-** for funeral expenses, **Rs.15,000/-** loss of estate and **Rs.5,000/-** for transportation. Thus, the total award woks out to **Rs.30,70,000/-.**

13. Both the appeals are **partly allowed.** In the appeal filed by the Insurance Company viz., CMA.No.274 of 2023, the Insurance Company is given liberty to satisfy the award and recover the same from the owner of the vehicle. In the appeal filed by the claimants viz., CMA.No.2627 of 2022, the award of the Tribunal is set aside and the total compensation payable is determined at Rs.30,70,000/- with interest at 7.5% as awarded by the Tribunal. The award is apportioned as follows:-

The mother of the deceased will take a sum of Rs.2,70,000/-. The wife and children of the deceased will each take Rs.7,00,000/- with proportionate interest. The Insurance Company will have eight (8) weeks time to deposit the entire award amount and on such deposit, the major claimants are permitted to withdraw the amount as awarded to them. The shares of the minor claimants are directed to be kept in the Fixed Deposit in a Nationalized Band and the 1st claimant/ mother is permitted to withdraw the quarterly interest for the maintenance of the minors. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) **(K.G.T.,J.)**
27.02.2023

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Index :No

Internet :Yes

Neutral citation :No

Speaking order

To:-

The III Additional District & Sessions Judge,
Motor Accident Claims Tribunal,

Gobichettipalayam, Erode.

R.SUBRAMANIAN, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

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C.M.A.Nos.2627 of 2022 & 274 of 2023

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