IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.789 of 2020

1.Saravanan
2.Muthukrishnan
3.Vasantha ... Appellants

Vs.

1.P.Manjula

2.Bajaj Alliance General Insurance Company Ltd.,
New No.497, 498, 5th Floor,
Poonamalle High Road,
Isana Kattina Building,
Chennai – 106. ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.02.2018 made in M.C.O.P.No.469 of 2014 on the file of the Motor Accidents Claims Tribunal / II – Additional District Court at Poonamallee.

For Appellants : Mr.Ma.P.Thangavel
For Respondents : R1 – No such person
Mr.E.Rajadurai for R2

J U D G M E N T

This appeal has been filed by the appellants/ claimants challenging the judgment and decree passed in M.C.O.P.No.469 of 2014 dated 05.02.2018 on the file of the Motor Accidents Claims Tribunal / II – Additional District Court at Poonamallee.

2.The brief facts of the case is that on 28.04.2014 at about 20.30 hours, the deceased Sujatha was travelling as a pillion rider with her husband in the motorcycle bearing Registration No.TN-12-A-4981 on Tambaram to Puzhal Bye-Pass Road, Kovur Bridge, Tharapakkam opposite to J.V.Aqua Water Company. At that time, the Mini Bus bearing Registration No.TN-20-CW-2458 belonging to the first respondent came in a rash and negligent manner and hit behind the motorcycle, due to which, the deceased sustained grievous injuries and was admitted in S.R.M.C. Hospital, Porur and she died in the Hospital on 05.05.2014.

3.Thereafter, the husband and parents of the deceased Sujatha/ appellants/ claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming a sum of Rs.25 Lakhs as compensation. After adjudication, the Tribunal awarded a sum of Rs.17,99,476/- as compensation along with interest at the rate of 7.5% per annum from the date of petition i.e., 30.06.2014 till the date of realization and proportionate costs and directed the first respondent to deposit the compensation. The Tribunal dismissed the claim petition as against the second respondent Insurance Company. Aggrieved by the same, the claimants have preferred this appeal questioning the liability and quantum of compensation.

4.The learned counsel appearing for the appellants submitted that the vehicle belonging to the first respondent was insured with the second respondent. The policy was in force from 30.01.2014 to 29.01.2015, however, the alleged cheque issued by the first respondent was dishonoured on 05.02.2014. On the sole ground, the Tribunal dismissed the claim petition as against the second respondent Insurance Company, which is not sustainable one.

5.The learned counsel appearing for the appellants further submitted that the issue involved in the present case is covered by the decision of the Hon'ble Apex Court reported in ***2012 ACJ 1307 (SC) [United India Insurance Company Limited Vs. Laxmamma]***, wherein, the Hon'ble Apex Court has held that if intimation is given to the owner of the vehicle prior to the accident then only the Insurance Company need not pay any compensation.

However, in the present case, intimation was not established before the Tribunal. In the absence of any intimation dismissing the claim petition as against the second respondent Insurance Company, is not sustainable one.

6.The learned counsel appearing for the appellants further submitted that the deceased and the first appellant are wife and husband and they were doing the business under the name and style of 'S.S.Furniture Shop' and after the death of the deceased, the first appellant is not able to earn amount as before. Further, the amount awarded by the Tribunal is also meagre. Hence, the appellants are entitled for enhanced compensation.

7.Per contra, the learned counsel appearing for the second respondent Insurance Company submitted that initially a policy was given commencing from the midnight of 30.01.2014 to 29.01.2015 midnight, for which, the first respondent issued a cheque towards premium. The said cheque when presented to the Bank was dishonoured for 'insufficient funds on 05.02.2014. Immediately, the second respondent sent a notice dated 07.02.2014 intimating about the cancellation of policy from its inception to the first respondent by

RPAD on 07.02.2012 and to the concerned RTO, however, the notice sent to the first respondent returned with an endorsement 'no such person'. Hence, the Tribunal rightly dismissed the claim petition as against the second respondent Insurance Company.

8.The learned counsel appearing for the second respondent Insurance Company further submitted that even after the death of the deceased, the shop is running and is not closed and further submitted that the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable and hence, the impugned judgment warrants no interference.

9.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent and perused the materials available on record. Notice sent to the first respondent returned as 'no such person'.

10.The accident and the manner in which the accident took place are not in dispute. Admittedly, the first respondent paid the premium for the policy vide cheque dated 29.01.2014 and the said cheque was dishonoured on 05.02.2014 and the second respondent sent a notice dated 07.02.2014 intimating about the cancellation of policy from its inception to the first respondent on 07.02.2012 and the notice sent to the first respondent returned with an endorsement 'no such person'.

11.It is useful to extract hereunder the relevant portion of the decision of the Hon'ble Apex Court reported in ***2012 ACJ 1307 (SC) [United India Insurance Company Limited Vs. Laxmamma]***:

> *"In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of sections 147 (5) and 149(1) of the Motor Vehicles Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque towards*

premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify third parties which that policy covered ceased and the insurance company is not liable to satisfy awards of compensation in respect thereof. Thus, it is clear from the settled position of law that if the Insurance Company cancelled the policy and informed the insured as also the R.T.O. about such cancellation before the accident of the vehicle, it has no liability."

12.Perusal of the decision cited supra makes it clear that when there is no proper intimation, the second respondent Insurance Company is liable to pay compensation and recover the same from the first respondent. Hence, the Tribunal not fastening the liability on the second respondent is not sustainable one and the second respondent is liable to pay the compensation and recover the same from the first respondent/ owner of the vehicle.

13.Hence, this Court directs the second respondent Insurance Company to pay the award amount at the first instance and recover the same from the owner of the vehicle/ first respondent.

14.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.15,12,000/- for loss of income, Rs.2,17,476/- for medical expenses, Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and arrived at a total compensation of Rs.17,99,476/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

15.The tribunal has fixed the monthly income of the deceased as Rs.7,500/- and has added 40% future prospects and after deducting 1/3 towards personal expenses, has awarded the amount for loss of income by adopting the multiplier 18. The accident took place during the year 2014. The Hon'ble Apex Court in Syed Sadiq case fixed a sum of Rs.6,500/- as notional monthly income of the vegetable vendor in the year 2008. The deceased was doing business along with her husband when she was alive. Hence, this Court fix the monthly income of the deceased as Rs.9,000/- and after deducting 1/3 of the amount for personal expenses, the amount comes to Rs.6,000/-. The deceased was aged 27 years at the time of death.

Hence, the correct multiplier to be adopted is 17. This Court is inclined to award future prospects separately. Hence, the actual loss of income works out to Rs.12,24,000/- [Rs.6,000/- X 12 X 17 = Rs.12,24,000/-]. This Court awards 40% of actual loss of income for future prospects, which comes to Rs.4,89,600/- [40% of Rs.12,24,000/- = Rs.4,89,600/-].

16.Since the claimants are husband and parents of the deceased, the amount awarded by the Tribunal for loss of consortium is deleted. Instead this Court awards a sum of Rs.1,20,000/- (Rs.40,000/- each) for loss of love and affection. The amount awarded under the other heads, in the opinion of this Court are just and reasonable and the same are confirmed.

17.Accordingly, the compensation amount is re-assessed as follows:

S.No.	***Description***	***Amount Awarded by the Tribunal***	***Amount Awarded by this Court***
1.	Loss of income	Rs.15,12,000/-	Rs.12,24,000/-
2.	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
3.	Loss of love and affection	---	Rs. 1,20,000/-
4.	Future prospects 40%	---	Rs. 4,89,600/-
5.	Loss of estate	Rs. 15,000/-	Rs. 15,000/-

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
6.	Medical expenses	Rs. 2,17,476/-	Rs. 2,17,476/-
7.	Loss of consortium	Rs. 40,000/-	---
	Total	Rs.17,99,476/-	Rs.20,81,076/-

18.The claimants are entitled to total compensation of Rs.20,81,076/- along with interest at the rate of 7.5% p.a. from the date of claim petition i.e., 30.06.2014 till the date of realization.

19.The civil miscellaneous appeal is allowed on the above terms. The judgment and decree passed in M.C.O.P.No.469 of 2014 dated 05.02.2018 by the Motor Accidents Claims Tribunal / II – Additional District Court at Poonamallee, is modified to the above extent.

20.The second respondent Insurance Company is directed to deposit the modified/ enhanced award amount along with interest at the rate of 7.5% per annum from the date of claim petition i.e., 30.06.2014 till the date of realization before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment and recover the same from the owner of the vehicle/ first respondent.

21.On such deposit being made, the appellants/ claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, along with proportionate interest, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellants/ claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellants/ claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents Claims Tribunal / II – Additional District Court at Poonamallee, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants.

22.The civil miscellaneous appeal is allowed. No costs.

12.12.2023

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal /
II – Additional District Court at Poonamallee.

M.DHANDAPANI,J.
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C.M.A.No.789 of 2020

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