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C.M.A.No.2339 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

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THE HON'BLE MR.JUSTICE P.B.BALAJI

C.M.A.No.2339 of 2018

1.Baby Sharmila

2.Chinnammal

3.Savarimuthu

... Appellants

vs.

1.Kuppusamy

2.National Insurance Co. Ltd.,
Branch Office,
K.K.Road, Villupuram District.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow this Civil Miscellaneous Appeal, setting aside the Judgment and Decree dated 29.06.2016 passed in M.C.O.P.No.204 of 2015 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Villupuram and enhance the award amount.

For Appellants : Mr.M.Selvam

For R1 : No appearance

For R2 : Mr.S.Arunkumar

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J U D G M E N T

WEB COPY The present Civil Miscellaneous Appeal is filed against the award passed in M.C.O.P.No.204 of 2015 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Villupuram in and by the Judgment and Decree dated 29.06.2016, by the claimants, seeking enhancement of the award amount.

2.The claimants, wife and parents of the deceased one Mr. Masilamani, who died in a road accident on 30.10.2014, moved the tribunal seeking compensation of Rs.20,00,000/-. The second respondent/insurer filed a counter and objected to the claim.

3.It is not the case of the Insurer/second respondent that the Insurance company is not liable to compensate the claimants for the death of Mr.Masilamani. However, they have not admitted various claims made by the claimants with regard to the income and other claims made under various heads and put the claimants to strict proof of the claim before the Tribunal. The wife of the deceased Masilamani, the first claimant/first



C.M.A.No.2339 of 2018

appellant herein was examined as PW1 and one Mr.Kumaraswamy was examined as PW2 and Ex.P1 to Ex.P8 were marked on the side of the claimants/appellants. No oral and documentary evidence was let in on the side of the respondents. The Tribunal, on considering the oral and documentary evidence available on record before it came to the conclusion that the deceased was a pillion rider and interpreting the terms of the Insurance Policy dated 10.05.2014, Ex.P8, held that even though the Insurer is liable to compensate the claimants, their liability would stand restricted to Rs.1,00,000/- alone.

4.In this context Ex.P8 Policy is considered and it is found that optional PA cover for 'pillion rider' has been paid. However, the Tribunal has erroneously interpreted the 'limit of liability' clause to disallow the claim exceeding Rs.1,00,000/-. This Court finds that the policy, Ex.P8 contains a 'limit of liability' clause, which is extracted hereunder for better appreciation:

“LIMIT OF LIABILITY: Limit of the amount of the Company's liability under the Section II-I(i) in respect of any one accident as per M.V. Act 1988. Limit



of the amount of the Company's liability under Section II-I(ii) in respect of any one claim or series of claims arising out of the event: Upto Rs.1,00,000/-."

5. The interpretation of the Tribunal that the 'limit of liability' would extend to a pillion rider is erroneous and without any substance. This 'limit of liability' would apply to the owner of the vehicle/insured and cannot be extended to a pillion rider, disentitling the pillion rider from claiming compensation or his/her heirs from claiming compensation in the event of a fatal accident. The Tribunal ought to have appreciated the fact that separate premium has been paid for "pillion rider" and that the policy being a comprehensive policy, a third party cannot be denied compensation. Restricting liability of the insurer to Rs.1,00,000/- in so far as the pillion rider is concerned is erroneous. The Tribunal placed reliance on various decisions of Courts to disallow the claim, in excess of Rs.1,00,000/- without noticing that the ratio laid down in those cases were clearly distinguishable on facts of the present case. In fact, the Division Bench of of this case in ***Royal Sundaram Alliance Insurance Company Ltd Vs. A.Meenakshi and 4 Ors*** reported in ***2009(1) TNMAC 249(DB)*** held that even a gratuitous



C.M.A.No.2339 of 2018

passenger is entitled to claim compensation for injuries when the policy is a comprehensive policy. The Division Bench in the said case discussed the entire history relating to third party claims and finally laid down the ratio that even a gratuitous passenger would be entitled to claim compensation and the only exceptions would be where the policy itself clearly excluded certain claims or category of person from making claims. Infact, the counsel for the insurance company/second respondent also fairly conceded to this position.

6. This Court, therefore, does not find any merit in the finding of the Tribunal that the legal representatives of the pillion rider would not be entitled to the compensation of more than Rs.1,00,000/-. This finding of the Tribunal is therefore liable to be set aside and consequently set aside.

7. Having found that the Insurer is liable to compensate the legal representatives of the deceased Masilamani and having set aside the finding of the Tribunal fixing the actual amount of compensation of Rs.1,00,000/-, this Court proceeds to award compensation in the manner following:



C.M.A.No.2339 of 2018

8. In so far as the income of the deceased it is the evidence available before the Tribunal that the deceased worked as a Mason and was earning a sum of Rs.15,000/- per month. However, no documentary evidence has been filed excepting his driving licence to establish the income of the deceased. Admittedly the driving licence will not be sufficient to even prove the factum of employment, leave alone the income that was being earned by the deceased at the relevant point of time. At the same time, this Court cannot close its eyes and taking into account the admitted fact that the deceased was a Mason, this Court feels that a sum of Rs.6500/- can be fixed as monthly income of the deceased. The age of the deceased at the time of the accident was about 24 years. Therefore, future prospects will necessarily have to be taken into account while arriving at a just compensation to the legal heirs of the said deceased Masilamani. This Courts feels that it is just and proper to fix 40% as income on account of future prospect. 18 would be the proper multiplier to be adopted considering the age of the deceased. $6500 + 40\% \times 12 \text{ months} \times 18 - \frac{1}{3}$ ($\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased is to be deducted from the above said total amount) and the net income is arrived at Rs.13,10,400/-. A sum of Rs.40,000/- towards loss of



C.M.A.No.2339 of 2018

consortium would be just and proper and for filial consortium a sum of Rs.80,000/-; Rs.15,000/- towards funeral expenses of the deceased and Rs.15,000/- towards the loss of estate are awarded. In all Rs.14,60,400/- is awarded.

9. It is brought to the notice of the Court that pursuant to the award made by the Tribunal for a sum of Rs.1,00,000/- the Insurer had deposited the same and hence the remaining amount of Rs.13,60,400/- is to be paid by the Insurer along with 7.5% accrued interest from the date of filing of the petition till the date of deposit.

10.As per the judgment of the Tribunal, the first appellant i.e., the wife of the deceased was entitled to 60% of the total award amount together with accrued interest at 7.5% and the parents of the deceased being the appellant Nos.2 and 3 were entitled to 40%, each entitled to 20% of the total award amount together with accrued interest at 7.5%. The Insurance Company/second respondent company shall deposit the enhanced amount of Rs.13,60,400/- with accrued interest at 7.5% from the date of filing of the



C.M.A.No.2339 of 2018

petition till the date of deposit. The said amount shall be deposited within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the appellants/petitioners are permitted to withdraw the same, on making proper application before the Tribunal. In view of the award amount being enhanced, the appellants/claimants are directed to pay the necessary additional Court fee, if any, within a period of two weeks from the date of receipt of a copy of this order.

11.In the result, the Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

23.02.2023

Index : yes/no
Internet : yes/no
Neutral Citation: Yes/No
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C.M.A.No.2339 of 2018

To

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- 1.The Motor Accident Claims Tribunal cum
Special District Judge,
Villupuram.
- 2.National Insurance Co. Ltd.,
Branch Office,
K.K.Road,
Villupuram District.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.



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C.M.A.No.2339 of 2018

P.B.BALAJI.,J.

Ah/kpr

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