IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.08.2023

Coram

The Honourable Mr.Justice SUNDER MOHAN

C.M.A.No.1120 of 2023

1.Kalaiselvan (deceased)
2.Palaniammal
3.Jothi Nallendrasamy

...Appellants

Versus

1.Thiruselvan
2.ICICI Lombard General Insurance Co. Ltd.,
1st Floor, Arihant Plaza,
84, 85, Walltax Road,
Chennai – 600 003.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed on 17.10.2014 in M.C.O.P.No.3203 of 2011 on the file of Chief Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellants	:	Mr.B.Senthilkumar
For Respondent – 1	:	Set ex-parte
For Respondent – 2	:	Mr.B.Sivakollappan

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellants/claimants seeking to enhance the compensation awarded by the learned Chief Judge, Motor Accidents Claims Tribunal, Chennai (in the Court of Small Causes, Chennai) in M.C.O.P.No.3203 of 2011 vide award dated 17.10.2014.

2. The brief facts of the case are as follows:

On 14.07.2010 at about 9.30 p.m, while one Chitra was travelling as a pillion rider in a motorcycle bearing Registration No.TN 45 AQ 3191 driven by the 3rd appellant in Poonamallee Trunk Road near Jasim Court towards eastern direction, a motorcycle bearing Registration No.TN 50 D 2828 driven by the 1st respondent proceeding in the same direction, hit the motorcycle driven by the 3rd appellant, due to which, the accident had occurred. In the accident, the said Chitra as well as the 3rd appellant had sustained grievous injuries and hence, they were admitted in SRMC Hospital for treatment. However, while the said Chitra was undergoing treatment at SRMC Hospital, she died on 24.07.2010. Aggrieved over the death of said Chitra, the appellants had filed a claim petition in

M.C.O.P.No.3203 of 2011 against the respondents, claiming a sum of Rs.25,00,000/- as compensation.

3. The 2nd respondent/Insurance Company had filed counter statement denying all the averments made by the appellants/claimants in the aforesaid claim petitions. In the counter statement, it is stated that on the date of accident, the 1st respondent was driving the motorcycle without any valid driving license and thereby, violated the policy conditions and hence, the 2nd respondent/Insurance Company is not liable to indemnify the 1st respondent; that though the 2nd respondent/Insurance Company issued notice to the 1st respondent on 19.11.2011 to produce his driving license, he failed to produce the same. Therefore, the 2nd respondent/Insurance Company prayed for dismissal of claim petition.

4. Before the Tribunal, on the side of the appellants/claimants, 1st appellant examined himself as P.W.1; 3rd appellant examined himself as P.W.2 and Dr.K.J.Mathiazhagan, Doctor was examined as P.W.3 and 16 documents were marked as Exhibits P1 to P16. On the side of the respondents, two witnesses were examined viz., R.W.1 & R.W.2 and three documents were marked as Exhibits R1 to R3.

5. On appreciation of the oral and documentary evidence produced before it, the Tribunal held that the accident had occurred due to the rash and negligent riding of the 1st respondent and directed the 1st respondent to pay a sum of Rs.1,38,992/- as compensation to the appellants 1 & 2 for violation of policy conditions and dismissed the claim petition as against the 3rd appellant and 2nd respondent/Insurance Company.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellants/claimants have preferred the present appeal before this Court.

7(a). Mr.B.Senthilkumar, learned counsel for the appellants/claimants submitted that at the time of accident, the 1st respondent was not having a valid driving license, but, he was having a valid insurance policy. Hence, the Tribunal ought to have directed the 2nd respondent/Insurance Company to pay the compensation to appellants 1 & 2 at the first instance and thereafter, recover the same from the 1st respondent, however, without doing so, it had erroneously held that the 1st respondent is liable to pay the compensation to the appellants 1 & 2. Therefore, the learned counsel prayed for an direction to the 2nd respondent/Insurance Company to pay the compensation to the appellants 1 & 2 at the first instance and thereafter, to recover the same from the 1st respondent.

7(b). As far as quantum of compensation is concerned, the learned counsel submitted that before the Tribunal, P.W.1 (1st appellant) deposed that the deceased was a graduate in Bachelor of Ayurvedic Medicine and Surgery and she was working as an Assistant Doctor in M/s.Amrit Ayush Hospital, T.Nagar, Chennai and earning a sum of Rs.12,000/- per month; and the appellant/claimants marked the Degree Certificate of the deceased Chitra as Ex.P8. But, without considering the deposition of P.W.1 and Ex.P8, the Tribunal had fixed a meagre amount of Rs.6,000/- as notional monthly income of the deceased. Therefore, the learned counsel prayed this Court to enhance the notional monthly income of the deceased.

7(c). The learned counsel further submitted that the amount of Rs.50,000/- awarded by the Tribunal under the head, 'Loss of Love & Affection' to the appellants 1 & 2 is on the lower side. Therefore, the learned counsel prayed this Court to enhance the amount awarded towards the head, 'Loss of Love & Affection' to Rs.80,000/-. In support of his submissions, he placed reliance on the judgment passed by this Court in the case of ***Nirmal Kumar & Ors. Vs. S.Ganeshamurthy*** reported in ***2021 (1) MWN (Civil) 81.***

8. The 1st respondent remained *ex-parte* before the Tribunal. This Court vide order dated 20.01.2022 in C.M.P.No.437 of 2022 issued notice to the 1st respondent, but, the same was returned with the postal endorsement, "Left". The learned counsel for the appellants/claimants submitted that notice to the 1st respondent may be dispensed with and hence, notice to the 1st respondent is dispensed with.

9. *Per Contra*, Mr.B.Sivakollappan, learned counsel appearing for the 2nd respondent/Insurance Company submitted that at the time of accident, the 1st respondent was having a valid insurance policy. However, he did not have a valid driving license and hence, the Tribunal had rightly fixed the liability on the 1st respondent. He further submitted that though P.W.1 had deposed that the deceased working as an Assistant Doctor and she was earning Rs.12,000/- per month, the appellants/claimants did not produce any documentary proof before the Tribunal to establish the profession and monthly income of the deceased. Since there was no income proof, the Tribunal had fixed a sum of Rs.6,000/- as notional monthly

income of the deceased, which is just and reasonable and hence, there is no need to enhance the same.

10. Heard the learned counsel for the appellants/claimants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

11. It is an admitted fact that at the time of accident, the 1st respondent was having a valid insurance policy, but, he was not having a valid driving license. The deposition of R.W.1 reveals that the driving license of the 1st respondent got expired on 03.03.2009 and the same was renewed only on 28.10.2011 i.e., subsequent to the accident. It is a well settled law that if a rider of the two wheeler or driver of the four wheeler did not possess the valid driving license at the time of accident, being the insurer of the said vehicle, the Insurance Company must satisfy the award at the first instance and thereafter, recover the same from the owner of the vehicle.

12. In the case of ***National Insurance Co. Ltd., Vs. Swaran Singh & Ors.*** reported in ***2004 ACJ 1 (SC0***, the Hon'ble Apex Court had held that if

the driver of the vehicle did not possess the valid driving license at the time of accident, the Insurance Company can be directed to pay the amount to the claimant and then, realize it from the owner of the offending vehicle. Similarly, in the case of ***ICICI Lombard General Insurance Co. Ltd., Vs. Annakkili & Ors.*** reported in ***2012 (1) TN MAC 226***, this Court had held that the Insurance Company cannot be exonerated from the liability to pay the compensation to the third party claim for the reason that the driver had no license or badge and after paying the amount to claimant, recover the same from the owner of the vehicle. Similar view was taken by this Court in the case of ***National Insurance Co. Ltd., Vs. T.Mathiazhagan*** reported in ***2012 1 TN MAC 536***. Hence, the 2nd respondent/Insurance Company is directed to pay the compensation and thereafter, recover it from the 1st respondent.

13. So far as quantum of compensation is concerned, except the deposition of P.W.1, no documentary proof was produced on the side of the appellants/claimants to establish their averments in the claim petition that the deceased Chitra was working as an Assistant Doctor in M/s.Amrit Ayush Hospital, T.Nagar, Chennai and she was earning a sum of Rs.12,000/- as monthly income. However, this Court feels that the notional

monthly income fixed by the Tribunal is very meagre.

14. Considering the year of accident, age and profession of the deceased at the time of accident, this Court is of the opinion that it would be just and reasonable to fix Rs.9,000/- as notional monthly income of the deceased. Thus, by adding 40% towards future prospects of the deceased, deducting 50% towards personal expenses of the deceased and applying the multiplier '18', the compensation under the head, 'Loss of Pecuniary Benefits' is calculated as follows:

Rs.9,000 + Rs.3,600 (40% of Rs.9,000) x ½ x 12 x 18 = Rs.13,60,800/-

15. The appellants/claimants being the parents of the deceased are entitled to filial consortium. However, the Tribunal did not award any amount under the head, 'Filial Consortium'. It is to be noted that the 1st appellant was alive at the time of filing of claim petition, but, thereafter, he died on 20.01.2015 and the learned counsel for the appellants/claimants has also filed a Memo dated 21.06.2023 to that effect. Therefore, this Court is inclined to award Rs.80,000/- as 'Filial Consortium' to the parents of the deceased.

16. Being the brother of deceased, the 3rd appellant is entitled to get compensation under the head, 'Loss of Love & Affection'. Hence, this Court is inclined to award Rs.40,000/- to the 3rd appellant under the head, 'Loss of Love & Affection'. Further, the Tribunal did not award any amount under the head, 'Loss of Estate'. Hence, a sum of Rs.15,000/- is awarded under the head, 'Loss of Estate'. The amount of Rs.25,000/- awarded by the Tribunal towards Funeral Expenses is on the higher side and therefore, the same is reduced to Rs.15,000/-. That apart, this Court is of the view that the amount of Rs.25,000/- awarded by the Tribunal under the head, 'Loss of Expectation of life' is unnecessary and therefore, the same is set aside.

17. The compensation awarded by the Tribunal towards the heads viz., Transport Expenses and Medical Expenses are just and reasonable and hence, the same are confirmed. The break-up details of the enhanced compensation are as follows:

Sl.No.	***Heads***	***Amount awarded by the Tribunal (Rs.)***	***Amount awarded by this Court (Rs.)***	***Award Confirmed or Enhanced or Granted or Reduced***
1	Loss of Pecuniary Benefits	Rs.6,48,000/-	Rs.13,60,800/-	Enhanced
2	Loss of Love & Affection to the 3rd appellant	Rs.50,000/-	Rs.40,000/-	Reduced
3	Funeral Expenses	Rs.25,000/-	Rs.15,000/-	Reduced
4	Loss of Expectation of Life	Rs.25,000/-	---	Set Aside

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award Confirmed or Enhanced or Granted or Reduced
5	Transport Expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
6	Medical Expenses	Rs.1,69,796/-	Rs.1,69,796/-	Confirmed
7	Filial Consortium	---	Rs.80,000/-	Granted
8	Loss of Estate	---	Rs.15,000/-	Granted
Total		Rs.9,22,796/-	Rs.16,85,596/-	Enhanced by Rs.7,62,800/-

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.9,22,796/- awarded by the Tribunal is enhanced to Rs.16,85,596/- (Rupees Sixteen Lakhs Eighty Five Thousand Five Hundred and Ninety Six only) together with interest at 7.5% per annum from the date of petition till the date of deposit. Out of the enhanced award amount, the 2nd appellant is entitled to Rs.16,45,596/- and the 3rd appellant being the brother of the deceased is entitled to Rs.40,000/- towards Loss of Love & Affection. The second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs.16,85,596/-, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit (excluding the delay period, if any), to the credit of M.C.O.P.No.3203 of 2011, within a period of six weeks from the date of receipt of a copy of this judgment, at the first

instance and recover the same from the 1st respondent. On such deposit being made, the appellants 2 & 3 are permitted to withdraw their respective share of the award amount along with proportionate interest and costs. The appellants 2 & 3 are directed to pay the necessary Court fee, if any, on the enhanced award amount, before receiving a copy of this judgment. No costs.

02.08.2023

mrr

Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

1.The Chief Judge,
Motor Accidents Claims Tribunal, Chennai
(in the Court of Small Causes, Chennai).

2.The Section Officer,
Vernacular Records Section,
High Court, Madras.

SUNDER MOHAN, J.

mrr

C.M.A.No.1120 of 2023

02.08.2023