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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.784 of 2013

1. V.Santhammal

2. V.Krishnammal

3.V.Muthu Mariappan ....Appellants/Claimants

Vs.

1. M.Muthu Krishnan

2.Bajaj Allianz General Insurance Company Limited,
through its General Manager,
GE Plaza, Airport Road,
Yerawada, Pune – 411 006.
... Respondents/ Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to call for the records in M.C.O.P.No.12 of 2007 dated 22.01.2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ambasamudram and enhance the award from Rs.1,32,000/- to Rs.3,00,000/- by modifying and fixing the liability against the Respondents jointly by allowing this appeal.

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For Appellants : Mr.Ananth C.Rajesh
For R1 : No Appearance
For R2 : Mr.J.S.Murali

JUDGMENT

The present appeal has been filed by the claimants seeking enhancement of the compensation of the award passed by the Motor Accident Claims Tribunal, Subordinate Court, Ambasamudram in M.C.O.P.No.12 of 2007 dated 22.01.2010 and fixing the liability on the Insurance Company.

2. According to the claimants, the deceased was a pedestrian. On 01.04.2007, at about 22.15 hours, a motor cycle owned by the first respondent dashed against the deceased person in a rash and negligent manner and the deceased was thrown away and sustained grievous injuries all over the body. Though, he was immediately taken to the Government Hospital, Ambasamudram, he succumbed to the injuries.

3.According to the claimants, the deceased was working as a Watchman and was earning a sum of Rs.5,000/- per month. Therefore, the claimants made a claim of Rs.5 lakhs as compensation.

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4.The owner of the offending vehicle remained *ex-parte* and the Insurance Company had filed counter contending that the driver of the offending vehicle did not have any driving license and therefore, they are not liable to pay compensation. The Insurance Company also disputed the quantum as prayed for by the claimants.

5.The Tribunal had arrived at the finding that the vehicle belonging to the first respondent was driven by a person not having any driving license at the time of accident. Thereafter, the Tribunal fixed the monthly income of the deceased person at Rs.2,000/- and arrived at compensation of Rs.90,000/- under the head of loss of income. The Tribunal has further awarded a sum of Rs.10,000/- to each one of the claimant towards loss of consortium and awarded another Rs.10,000/- towards Funeral Expenses and Rs.5,000/- towards Transport Expenses. Thus, the total award of Rs.1,35,000/- was passed. Challenging the said award, the present appeal has been filed by the claimants.

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6.According to the learned counsel for the claimants, the Tribunal was in error in exonerating the Insurance Company and fixing the liability on the owner. Even assuming that the driver of the offending vehicle did not have any driving license at the relevant point of time, the Tribunal ought to have awarded pay and recover. He further contended that the Tribunal was not right in awarding just Rs.10,000/- for each one of the claimant towards loss of consortium. Hence, he prays for enhancement of compensation.

7.Per contra, the learned counsel for the second respondent/Insurance Company had contended that since the driver of the offending vehicle did not have any driving license at the relevant point of time, the Tribunal was right in exonerating the Insurance Company and the quantum is on the higher side. It is further found that no document has been filed on behalf of the claimants to show that the deceased was working as a Watchman.

8.I have carefully considered the submissions made by the learned counsel on either side.

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9.The Tribunal has arrived at a finding that the accident was happened only due to the rash and negligent driving of the driver of the two wheeler belonging to the first respondent. It is also an admitted fact that the said two wheeler is insured with the second respondent. However, the second respondent namely, the Insurance Company has been exonerated on the only ground that the driver of the two wheeler was not having any driving license at the relevant point of time. It is settled position of law that even in cases where there is no driving license at the time of the accident and if the Insurance Policy is alive, the Insurance Company should be held liable to satisfy the award amount and thereafter, recover the same from the owner of the vehicle. Therefore, the award of the Tribunal in exonerating the Insurance Company is not legally sustainable.

10.It is seen from the petition that the deceased has left his wife and two children who are arrayed as the claimants. However, the Tribunal has awarded just Rs.10,000/- to each one of the claimant as loss of consortium. Therefore, this Court is of the view that each one of the claimants would be entitled to Rs.40,000/- towards loss of love and

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affection. Therefore, the award amount under the head of loss of love and affection should be enhanced from Rs.30,000/- to Rs.1,20,000/-.

11.In view of the above said facts, the award of the Tribunal in exonerating the Insurance Company is liable to set aside and the Insurance Company is directed to satisfy the award and thereafter recover the same from the owner of the vehicle.

12.The learned counsel for the second respondent/Insurance Company has referred a judgment of the Hon'ble Supreme Court in the case of **Oriental Insurance Company Limited Vs. Shri Nanjappan and Others** reported in **2004 (1) TN MAC (SC) 211.** Paragraph 8 of the said order reads as under:-

> *"8.Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination*

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before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

13. In view of the above said facts, the compensation amount under various heads are modified as follows:

Loss of Dependency	: Rs. 90,000/-
Loss of love & affection	: Rs. 1,20,000/-
Funeral Expenses	: Rs. 10,000/-
Transport Charges	: Rs. 5,000/-
Total	: **Rs.2,25,000/-**

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14. Therefore, the compensation is enhanced from Rs.1,35,000/- to Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand only) and the said amount will carry interest at the rate of 7.5% per annum from the date of 10.08.2007 onwards till the date of realisation. The claimants are entitled to withdraw their shares as apportioned by the Tribunal. The Insurance Company is directed to deposit the balance amount within a period of eight weeks from the date of receipt of a copy of this order and thereafter, recover the same from the owner of the vehicle.

15. This Civil Miscellaneous Appeal is allowed to the extent as stated above. There shall be no order as to costs.

21.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The Motor Accident Claims Tribunal,
Subordinate Court, Ambasamudram

2.Bajaj Allianz General Insurance Company Limited,
through its General Manager,
GE Plaza, Airport Road,
Yerawada, Pune – 411 006.

3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR,J.

dss

Judgement made in
C.M.A(MD)No.784 of 2013

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