BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 22.08.2023

PRONOUNCED ON:11.10.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.149 of 2020

1.Rathnam
2.Deepa
3.Mahesh Kumar : Appellants/Claimants

Vs.

1.Rajan
2.United India Insurance Company Ltd.,
represented by its Divisional Manager,
2nd Floor, Xavier Building,
ASSISI Campus, PWD Office Road,
Post Box No.50,
Nagercoil.
: Respondents 1 & 2/
Respondents 1 & 2

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the Judgment and Decree dated 20.12.2019 made in M.C.O.P.No.1240 of 2018, on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Tirunelveli.

For Appellants : Mr.V.Sasi Kumar

For Respondents :Mr.A.S.Mathiyalagan
for R.2

: No Appearance for R.1

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1240 of 2018, dated 20.12.2019, on the file of the Motor Accident Claims Tribunal / IV Additional District Court, Tirunelveli.

2. The appellants/claimants, who were awarded with the compensation of Rs.5,84,836/- with interest at 7.5% pa., payable by the first respondent/first respondent for the death of Padmaraj, consequent to an accident occurred on 10.04.2018, challenged the entire liability mulcted on the owner of the vehicle by not invoking the doctrine of pay and recovery and also challenged the quantum of compensation and claimed enhancement of the same.

3. The case of the claimants is that on 10.04.2018 at about 09.00p.m., when the deceased was walking on the mud portion of Vetturani Madam – Parvathipuram main road, in front of Saravana Cars at Kattaiyanvilai, a motorcycle bearing Registration NO.TN-74-H-0697, which came in the same direction in a rash and negligent manner and without sounding horn had entered into the mud portion and knocked down the deceased and as a result of which, the deceased Padmaraj fell down and sustained injuries and he was immediately taken to Benzam Hospital, Nagercoil and subsequently he succumbed to the injuries on the same day and that the accident was occurred only due to the rash and negligent driving of the two wheeler rider. It is the further case of the claimants that the deceased was aged about 60 years at the time of accident and that he was working as a night watchman at Saravana Cars and was getting monthly salary of Rs.12,000/-.

4. The defence of the second respondent is that the accident had taken place due to the negligence on the part of the deceased Padmaraj, who suddenly crossed the road without observing the traffic rules, that the owner of the two wheeler – first respondnet, had permitted his minor

son Welvin, who did not hold any licence to drive the motorcycle to drive the vehicle and as such, the owner is guilty of wilful and deliberate breach of policy conditions, that the two wheeler was not possessing valid registration certificate at the time of accident and that therefore, the second respondnet is not liable for the claim.

5. During trial, the claimants examined the third claimant as P.W.1 and one Saravanan as P.W.2 and exhibited five documents as Exs.P.1 to P. 5. The first respondent remained exparte. The second respondent – Insurer examined three witnesses as R.W.1 to R.3 and exhibited the Insurance policy of the two wheeler as Ex.R.1 and four witness documents as Exs.X.1 to X.4. The Tribunal, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned award dated 20.12.2019, by holding that the accident was occurred only due to the rash and neglignet riding of the rider of the two wheeler, which was owned by the first respondnet, mulcted the entire liability on the first respondnet / owner of the vehicle and dismissed the claim petition as against the second respondnet / Insurer. Aggrieved by the impugned award, the claimants have come forward with the present appeal.

6. The learned Counsel for the appellants would mainly contend that in view of the violation of policy conditions, the Tribunal should have directed the Insurance Company to satisfy the award and thereafter to recover the same from the owner of the vehicle and that the Tribunal ought not to have fixed the entire liability on the owner of the vehicle, as the deceased was a third party.

7. It is pertinent to note that the finding of the Tribunal that the accident was occurred only due to the rash and neglignet driving of the two wheeler rider is not disputed. It is not in dispute that the rider of the two wheeler – son of the first respondent was a minor at the time of accident. The Tribunal, taking note of the birth certificate of the two wheeler rider under Ex.X.3 that he was born on 21.10.2001, has rightly observed that he has not completed 18 years of age on the date of accident. The Insurer has also taken a defence that the offending vehicle was not having valid registration certificate on the date of accident, as 15 years period got expired on 30.03.2018. The Tribunal, considering the evidence available on record, has recorded a finding that the registration certificate of the offending vehicle was not renewed, as registration

certificate was valid between 31.03.2003 and 30.03.2008. Considering the above violations of the insurance policy and the provisions of the Motor Vehicle Act, the Tribunal has mulcted the entire liability on the owner of the vehicle, who admittedly has allowed his son to use the motorcycle without valid registration certificate.

8. Section 4 of the Motor Vehicle Act contemplates that no person under the age of eighteen years shall drive a moto vehicle in any public place and that a motorcycle without gear may be driven in a public place by a person after attaining the age of sixteen years. In the case on hand, the first respondent's son had driven Hero Honda motorcycle which does not come under the exempted category shown in Section 4 of the said Act. As rightly observed by the Tribunal, the first respondent has allowed his son to drive his two wheeler without driving licence and more seriously, allowed a minor boy to ride the motorcycle, which was not having valid registration certificate at that time and thereby violated the rule of law, policy conditions and the provisions of Motor Vehicle Act.

9. The learned Counsel for the appellants would submit that the Hon'ble Supreme Court as well as our High Court, in a catena of decisions, have specifically held that in case of policy violations, the Insurer should be directed to pay the award amount and then they should be given permission to recover the same from the owner of the offending vehicle and he relied on the judgment of the Hon'ble Supreme Court in ***Jawahar Singh Vs. Bala Jain and others*** reported in ***2011(1) TNMAC 641*** and the relevant paragraph is extracted hereunder:

> *"11. We cannot shut our eyes to the fact that it was Jatin, who came from behind on the motorcycle and hit the scooter of the deceased from behind. The responsibility in causing the accident was, therefore, found to be solely that of Jatin. However, since Jatin was a minor and it was the responsibility of the Petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the Motor Accident Claims Tribunal quite rightly saddled the liability for payment of compensation on the Petitioner and, accordingly, directed the Insurance Company to pay the awarded amount to the awardees and, thereafter, to recover the same from the Petitioner. The said question has been duly considered by the Tribunal and was*

correctly decided. The High Court rightly chose not to interfere with the same.”

10. The learned Counsel for the appellants has also relied on the decision of this Court in National Insurance Co. Ltd., Vs. N.Sagunthala reported in 2015(2) TNMAC 425, wherein the learned Judge of this Court, by relying on the judgment of the Hon'ble Supreme Court in ***Jawahar Singh's case*** referred above, allowed the appeal directing the appellant – Insurance Company to satisfy the award with the claimants and then recover the same from the owner.

11. It is brought to my notice that in an appeal filed by the owner of the vehicle in C.M.A.(MD)No.1181 of 2017 questioning the finding of the Tribunal for not invoking the doctrine of pay and recovery, this Court taking note of the fact that the appellant therein has permitted his minor son to drive his two wheeler, without driving licence, by holding that the question of invoking the doctrine of pay and recovery does not arise, dismissed the appeal.

12. Considering the legal dictum laid down by the Hon'ble Supreme Court, this Court has no hesitation to hold that in view of the policy violations above referred, the doctrine of pay and recover has to be applied.

13. Now turning to the quantum of compensation, the Tribunal, taking note of the postmortem certificate, has rightly fixed the age of the deceased at 60 years at the time of the accident. Though the claimants have alleged that the deceased was working as night watchman and got monthly income of Rs.12,000/-, they have not produced any evidence to substantiate the same. Considering the age of the deceased and the period of accident, this Court fixes the notional monthly income of the deceased at Rs.7,500/-.

14. The Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi*** reported in ***2017(2) TNMAC 609 (SC)***, has held that if the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased

was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation.

15. Considering the above, after addition of 10%, the monthly income would come to Rs.8,250/-. Considering the number of claimants, the Tribunal has rightly deducted 1/3rd of the income towards personal and living expenses of the deceased and after such deduction, it would come to Rs.5,500/-. As per the dictum laid down by the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***2009(2) TNMAC 1 (SC),*** the Tribunal has rightly applied the multiplier "9" and hence, the loss of dependency would be Rs.5,94,000/- (Rs.5,500/- x 9x12).

16. The Tribunal has awarded Rs.40,000/- for loss of consortium to the first petitioner, Rs.15,000/- for loss of estate and R.15,000/- for funeral expenses.

17. The learned Counsel for the appellants would submit that all the claimants are entitled to get Rs.40,000/- each towards loss of consortium.

18. Our Hon'ble Supreme Court in ***Pranay Sethi***'s case has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, Hon'ble Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others*** *reported in **(2018) 18 SCC 130***, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Subsequently, Hon'ble Apex Court in ***The New India Assurance Company Ltd. Vs. Smt.Somwati and others***, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in ***Pranay***

Sethi's case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

19. Considering the above, the first claimant being the wife of the deceased is entitled to get Rs.40,000/- towards loss of spousal consortium and the claimants 2 and 3 being the children of the deceased are entitled to get Rs.40,000/-each towards loss of parental consortium. Applying the judgment of the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***2009(2) TNMAC 1 (SC)***, the claimants are entitled to get Rs.15,000/- each towards loss of estate and funeral expenses respectively. Accordingly, the claimants are entitled to get the compensation as follows:

Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
	Loss of dependency	5,14,836	5,94,000	enhanced
	Loss of consortium	40,000	1,20,000 (Rs. 40,000/-x3)	enhanced
	Funeral expenses	15,000	15,000	confirmed
	Loss of estate	15,000	15,000	confirmed
	Total	**Rs. 5,84,836/-**	**Rs. 7,44,000/-**	**enhanced**

20. 18. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal to the claimants is enhanced from **Rs.5,84,836/- to Rs.7,44,000/-** along with interest at 7.5%pa., from the date of petition till the date of realization and costs. The second respondnet - Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, to the credit of above said M.C.O.P.No.1240 of 2018, on the file of the Motor Accident Claims Tribunal / IV Additional District Court, Tirunelveli, within a period of four weeks from the date of receipt of a copy of this Judgment and thereafter recover the same from the first respondnet – owner of the vehicle. On such deposit, the first claimant is entitled to

withdraw Rs.4,44,000/- along with proportionate interest and costs and the second and the third claimants are entitled to withdraw Rs.1,50,000/- each along with proportionte interest and costs. The parties are directed to bear their own costs.

11.10.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1.The Motor Accident Claims Tribunal/
IV Additional District Court, Tirunelveli,

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.149 of 2020

11.10.2023