BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE **N.MALA**

C.M.A(MD)No.1050 of 2021

1.Nagarajan
2.Vignesh
3.Narmatha ... Appellants/Claimants

Vs

1.Sathishkanth
2.**(*)The Manager(Law),**
ICICI Lombard General Insurance Company Ltd.,
No.5, United Arcate, 3rd Floor,
Karur Bye Pass Road,
Thillai Nagar,
Trichy - 20. ... Respondents/Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, to allow the appeal by enhancing the compensation in M.C.O.P.No.525 of 2018 dated 23.10.2019 on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Thanjavur.

For Appellants : Mr.G.Karnan
For R2 : Mr.P.Pethu Rajesh

JUDGMENT

This appeal is filed by the claimant challenging the quantum of compensation determined by the Tribunal as well as the liability.

2.The facts of the case are not in dispute. On 29.08.2017, when the deceased was trying to cross the road along with his friends, a Maruthi Desire Car bearing Reg.No.,TN-02-BD-8553 belonging to the first respondent was driven in a rash and negligent manner and hit against the deceased and ran over him. The deceased sustained injuries and died instantaneously. The legal heirs of the deceased pedestrian Minnalraj filed the claim petition claiming a compensation of Rs.25 lakhs as compensation.

3.The first respondent, owner of the Maruthi Desire remained *ex-parte* before the Court below and the counter was filed by the second respondent/Insurance Company denying all the allegations and contentions raised in the claim petition.

4.The second respondent/Insurance Company in its counter stated that at the time of the accident, the vehicle was not properly insured and that the policy issued in favour of the first respondent was cancelled as the cheque towards premium issued by the insured was returned for 'want of funds'. The second respondent therefore contended that the liability was only that of the owner of the vehicle and not of the insurer.

5.The Tribunal on an assessment of the evidence on record exonerated the second respondent/Insurance Company on its finding that there was no valid insurance policy covering the accident. The Tribunal therefore awarded a sum of Rs.8,86,800/- as compensation along with 7.5% interest per annum and mulcted the entire liability on the first respondent, owner of the vehicle.

6.Aggrieved by the judgment of the Trial Court, the claimants have filed the present appeal challenging the award of the Tribunal both on quantum as well as liability.

7.On the question of liability it was contended that there was valid subsisting policy covering the accident and as such the Tribunal erred in exonerating the insurance Company. According to the counsel, the policy was marked as Ex.R.1, which was issued for the period 10.03.2017 to 09.03.2018. According to the counsel, the premium was paid on 09.03.2017 under Ex.R.3 and the same was returned vide return memo dated 23.03.2017, which was marked as Ex.R.4. The accident took place on 29.08.2017 and the intimation of cancellation of policy was sent by the Insurance Company to the insured/first respondent only on 31.07.2019, which was marked as Ex.R.2. The counsel therefore, submitted that as the policy was cancelled long after the accident the Insurance Company cannot escape liability. The judgment of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Balkar Ram & others** reported in **2014 (2) TN MAC 733 (SC)** was pressed into for supporting the said contention. In the cited case, the Hon'ble Supreme Court has held as follows:-

> " *However, we compliment Ms.Kiran Suri, learned Counsel for the Appellant for cutting short the controversy by fairly pointing out the ratio of the judgment titled* ***United India Insurance Co.Ltd., V. Laxmamma & ors., 2012 (1) TN MAC 481 (SC) : 2012 (S)***

***SCC 234**, wherein it has been held that the Insurance Company is liable to satisfy the award if the intimation regarding the dishonour o fthe Cheque and Cancellation of Policy is communicated to the Policy-holder after the date of the accident. Thus, the defence of the Insurance Company that the Policy of Insurance was not valid since the Cheque had been dishonoured prior to the accident would not exonerate them from making the payment of Compensation. In this matter, admittedly the accident had taken place on 19.04.2000 and the Cheque although had been dishonoured prior to the accident on 17.04.2000, the intimation to the Policy-Holder had been given by the Insurance Company on 26.04.2000, in view of which the Insurance Company cannot be allowed to contend that the Policy-holder was not holding a valid policy of Insurance in regard to the vehicle which met with an accident. Admittedly, the Policy-holder had already issued another Cheque substituting the Cheque, which had earlier been dishonoured."*

8.In the light of the above said judgment of the Hon'ble Supreme Court, it is clear that the Insurance Company, the second respondent in the appeal is liable to pay the compensation as the intimation of cancellation of policy was sent to the first respondent long after the accident.

9.In view of the above the finding of the Trial Court on liability is set aside. The Insurance Company is liable to pay the compensation.

10.The learned counsel for the appellant further submitted that the deceased was working as a Parotta Master and was earning a sum of Rs.28,000/- per month as income. The Tribunal took the notional income at Rs.6,000/- considering the fact that no evidence was filed in support of the income. The learned counsel submitted that the accident took place in the year 2017 and therefore, the notional income fixed at Rs.6,000/- was very meagre and pleaded to enhance the income. I find justification in the submission of the learned counsel and following the Hon'ble Division Bench judgment in the case of **Andal Vs Avinav Kanan** reported in **2019 (1) TN MAC 54 (DB)**, the income is assessed as follows:-

6500 x 272 / 129 = 13,705/-.

- 40% is added towards future prospects and the income is assessed at Rs.19,187/- (5,482/- + 13,705/-). After deducting 50% towards the appellant's personal expenses, the monthly income of the deceased works out to Rs.9594/-. The total loss of i[illegible]s therefore assessed at Rs.19,57,176/-(9594x12x17).

11.The deceased left 3 dependants and therefore, each claimant is entitled for a sum of Rs.40,000/- towards loss of consortium as per the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Vs Pranay Sethi and Others reported in 2017 (2) TNMAC 601.***

12.The Tribunal awarded a sum of Rs.15,000/- towards Funeral Expenses and awarded a sum of Rs.15,000/- towards Loss of Estate, which are all reasonable and the same are confirmed.

13.Accordingly, the award of the Tribunal in M.C.O.P.No.525 of 2018 is modified as follows:-

Sl. No.	***Particulars***	***Amount granted by the Tribunal***	***Amount granted by this Court***
1	Loss of Income	Rs.8,56,800/-	**Rs. 19,57,176/-**
2.	Loss of Consortium 40,000 x 3)	....	**Rs. 1,20,000/-**
3.	Funeral Expenses	Rs. 15,000 /-	Rs. 15,000/-
4.	Loss of Estate	Rs 15,000/-	Rs. 15,000/-
	Total	Rs. 8,86,800/-	**Rs.21,07,176/-**

14.In the result, this Civil Miscellaneous Appeal is allowed. The quantum of compensation awarded by the Tribunal is enhanced from **Rs.8,86,800/-** to **Rs.21,07,176/- (Rupees Twenty One Lakh Seven Thousand One Hundred and Seventy Six only)** which shall carry interest at the rate of 7.5% per annum.

15.The second respondent/**(*)The Manager(Law), ICICI Lombard General Insurance Company Ltd.**, is directed to deposit the entire compensation of **Rs.21,07,176/- (Rupees Twenty One Lakh Seven Thousand One Hundred and Seventy Six only)**(if not already deposited) together with accrued interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.525 of 2018 on the file of the Motor Accidents Claims Tribunal/Special Sub Court, Thanjavur, within a period of twelve weeks from the date of receipt of a copy of this order.

16.On such deposit being made by **(*)The Manager(Law), ICICI Lombard General Insurance Company Ltd.**, the appellants/Claimants herein are at liberty to withdraw the award amount as apportioned by the Tribunal, with proportionate interest and cost. There shall be no order as to costs.

(*)Amended vide order dated 28.04.2023 in CMP(MD).5505/2023 in CMA(MD) No.1050/2021.

Sd/-

Assistant Registrar(CS III)

// True Copy //

/07/2023

Sub Assistant Registrar(CS)

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To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal
Thanjavur.

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

+1 CC to M/s.G.KARNAN, Advocate (SR-6782[F] dated 08/02/2023)

+1 CC to M/s.P.PETHU RAJESH, Advocate (SR-6883[F] dated 08/02/2023)

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