BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.01.2023

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

C.M.A(MD)No.874 of 2022
and
CMP(MD)No.8318 of 2022

The Branch Manager,
National Insurance Company Limited,
Rasipuram Main Road,
Sendamangalam,
Namakkal District.
... Appellant/2nd Respondent.

Vs

1.P.Chandrika

2.P.Monisha

3.P.Santhosh ... Respondents 1 to 3/Petitioners

4.S.Sutha ... 4th Respondent/1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, to set aside the judgment and decree in M.C.O.P.No.53 of 2019, dated 25.03.2022 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Karur, and allow the appeal with costs.

For Appellant : Mr.J.S.Murali

For Respondents : No Appearance

JUDGMENT

The insurance company which has suffered the judgment and decree of the Motor Accidents Claims Tribunal has filed the above appeal. The appeal is filed challenging both liability as well as quantum of compensation.

2.The summary of facts necessary for disposal of the above appeal are as follows:

On 26.11.2018, when the deceased was riding his two wheeler on Karur - Erode road from east to west on the extreme left side of the road, the Driver of the insured lorry came in a rash and negligent manner and hit the rider of the two wheeler. As a result, the rider Pandi died instantaneously. The claimants therefore filed the claim petition on the ground that the negligence of the lorry driver resulted in the accident and claimed a compensation of Rs. 25,00,000/- along with 9% interest.

3.The first respondent, owner of the lorry filed a detailed counter generally denying the averments raised in the claim petition but focused its reply on the contentious issue of existence of a valid policy during the relevant period.

4.The second respondent, insurance company also filed a counter raising several issues, including the absence of a valid policy for the vehicle at the time of the accident. The further contention was that the negligence was only that of the deceased and not the driver of the lorry. According to the second respondent, the policy was for the period 18.10.2018 to 17.10.2019. Owing to the dishonour of the cheque issued towards premium, the policy was cancelled and hence, the liability was only that of the insured. On these and other grounds, the second respondent prayed for the dismissal of the claim petition.

5.The Tribunal on an assessment of the entire pleadings and the entire evidence on record allowed the claim petition. On its finding against the insurance company on the cancellation of policy, the Tribunal mulcted the liability on the appellant and awarded a sum of Rs.17,98,000/- @ 7.5% interest as compensation.

6.Aggrieved by the award of the Tribunal, the insurance company has filed the above appeal. On a conspectus of the pleadings and evidence on record the short point that rises for consideration in this appeal is ***whether the insurance company is liable to pay the compensation amount***. If this Court finds that the policy was validly cancelled, then the insurance company is entitled to be exonerated of the claim, but, if the point is answered against the insurance company, then the further question that would arise is ***whether the quantum awarded is reasonable and sustainable.***

7.The accident is not disputed as also the death of the deceased in the accident. According to the first respondent, who is the owner of the lorry there was a valid policy covering the accident for the period from 18.10.2018 to 17.10.2019. On the other hand it is the appellant's case that as the cheque issued towards premium was dishonoured, the policy was cancelled on 05.12.2018 vide Ex.R4 letter. I would straight away refer to the judgment of the Hon'ble Supreme Court reported in 2012 1 TNMAC 81. The Hon'ble Supreme Court in the said judgment has laid down the law that if the cancellation of policy was well before the accident then the insurance company would not be liable. But if the cancellation of policy was after the accident then the insurance company will have to pay. In this case the policy was issued for the period 18.10.2018 to 17.10.2019 and the same was cancelled on 05.12.2018 because of the dishonour of cheque paid towards premium. The accident occurred on 26.11.2018 at 09.20 am which was well before the cancellation of the policy. Therefore, following the above dicta of the Hon'ble Supreme Court it is held that as the policy was cancelled only on 05.12.2018 (ie) long after the accident on 26.11.2018, the appellant is liable to pay the compensation amount to the claimants.

8. On the issue of quantum, it is seen that the Tribunal has fixed the income at Rs.15,000/- on the basis of Ex.P.8, salary certificate. The learned counsel for the appellant questioned the salary certificate on the ground that though Ex.P.8 was marked by the claimants, the author of the document was not examined.

9.I have perused Ex.P.8 and I find that Ex.P.8 is a authentic document where the salary and deductions towards EPF & ESI are also made. It also refers to the Provident Fund Number of the deceased employee. Therefore the genuineness of the certificate is undoubted.

10.As far as the future prospects is concerned, I agree with the learned counsel for the appellant that the addition towards future prospects should be 10% and not 15%. The Hon'ble Supreme Court in **Pranay Sethi's case** has categorically held that when the deceased is aged above 50 years only 10% can be added towards future prospects.

11.I am also in agreement with the learned counsel for the appellant as regards, the conventional damages awarded by the Tribunal. The learned counsel has rightly contended that the conventional damages of Rs.2,80,000/-

is against the dictum of the Hon'ble Supreme Court in **Pranay Sethi's case.** Therefore, I am of the view that the award of the Tribunal under these two heads needs to be modified. The award towards loss of income would be as follows:-

15,000 x 10/100 = Rs.1500/-

15,000 + 1,500 = Rs.16,500/-

16,500 x 12 x 11 = Rs.21,78,000/-

- After deducting 1/3 towards the personal expenses of the deceased, the loss of income is arrived at Rs.14,52,000/- (21,78,000 – 7,26,000) per annum.

12.Under the conventional heads for loss of love and affection, Rs.2 lakhs was awarded and further a sum of Rs.40,000/- was awarded for Loss of Consortium. I am of the view that the amount towards loss of Consortium can be only Rs.1,20,000/- because, the deceased had left only three dependents.

13.The compensation towards other heads like Loss of Estate Rs.15,000/-, Funeral Expenses Rs.15,000/- and Transport Expenses of Rs.10,000/- seem to be reasonable and as per law and hence, the same are not interfered with.

14. Accordingly, the award of the Tribunal in M.C.O.P.No.53 of 2019 is modified as follows:-

Sl. No.	*Particulars*	*Amount granted by the Tribunal*	*Amount granted by this Court*
1	Loss of Income	Rs.15,18,000/-	**Rs.14,52,000/-**
2.	Loss of love and affection to the second appellant	Rs. 2,00,000/-	------
3.	Transport Expenses	Rs.10,000 /-	Rs.10,000 /-
4.	Loss of Consortium (40,000 x 3 = Rs.1,20,000/-)	Rs.40,000/-	**Rs.1,20,000/-**
5.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
6.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.17,98,000/-	**Rs.16,12,000/-**

15.In the result, this Civil Miscellaneous Appeal is partly allowed. The quantum of compensation awarded by the Tribunal is reduced from Rs.17,98,000/- to **Rs.16,12,000/- (Rupees Sixteen Lakhs and Twelve Thousand Only)** which shall carry interest at the rate of 7.5% per annum.

16.The appellant/The National Insurance Company Limited, is directed to deposit the entire compensation of **Rs.16,12,000/- (Rupees Sixteen Lakhs and Twelve Thousand 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.53 of 2019 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Karur, within a period of eight weeks from the date of receipt of a copy of this order.

17.On such deposit being made by the Insurance Company, the Respondents 1 to 3/Claimants 1 to 3 herein are at liberty to withdraw the award amount as apportioned by the Tribunal, with proportionate interest and costs, after following due process of law. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

05.01.2023

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

1.The Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court,
Karur.

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

N.MALA, J

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and
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