BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.847 of 2022

1.R.Booma
2.Minor R.Pavithrasri
(Minor 2nd petitioner represented by her natural guardian / mother 1st petitioner) ... Appellants / Petitioners

Vs.

Rengasamy (Died)

1.The Branch Manager,
New India Life Insurance Company Ltd.,
D.No.2, First Floor,
Dindigul – 1.

2.Vellaisamy

3.Palaniammal ... Respondents / Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 as against the award dated 08.06.2022 made in M.A.C.O.P.No.542 of 2015 on the file of the Motor Accident Tribunal, Addl. District Judge, Dindigul.

For Appellants : Mr.S.Pugalendhi

For Respondents : Mr.M.S.Suresh Kumr for R1
No Appearance for R2 & R3

JUDGMENT

Challenging the award passed by Motor Accident Tribunal, Addl. District Judge, Dindigul, in M.A.C.O.P.No.542 of 2015, dated 08.06.2022, the appellants have filed this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are referred to as per their own ranking before the Tribunal.

3. The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

The first petitioner is the mother and second petitioner is the minor sister of the deceased. The first petitioner was travelling along with her minor child aged about 5 years, in a Car bearing Registration No.TN-57-S-9393, belonged to the first respondent. The driver of the Car, while overtaking the proceeding car, drove the Car in a rash and negligent manner and when he tried to take a turn towards right, the car was capsized into a pit. The passengers in the car also got injured. The minor daughter of the claimant was died in the hospital. Therefore, the petitioners have filed a claim petition seeking a sum of Rs.15 lakhs as compensation.

4. It is the contention of the second respondent-Insurance Company before the Tribunal that the legal heirs of the first respondent has not been impleaded. Hence, opposed the claim petition.

5. On the side of the petitioners, two witnesses were examined as P.W.1 and P.W.2 and six documents were marked as Exs.P1 to P6. On the side of the second respondent-Insurance Company one witness was examined as R.W.1 and one document was marked as Ex.R1.

6. Considering the evidence adduced, the trial Court found that the driver of the first respondent's Car drove the car in a rash and negligent manner and awarded a compensation of Rs.1 lakhs with interest at the rate of 7.5% p.a. Challenging the same, the petitioners have filed the present appeal.

7. It is the main contention of the learned counsel appearing for the petitioners / appellants that the compensation arrived by the trial Court is not legally correct and having found that the driver of the first respondent's Car was negligent in driving the car and when the deceased was a 3rd party in a Car and the Car was insured with the package policy covering all the 3rd party travelling in a Car, the Tribunal ought to have granted compensation by applying the proper multiplier.

8. The only contention of the learned counsel appearing for the 2nd respondent -Insurance Company / first respondent that since the first respondent-owner of the vehicle is a tort-feasor, the person travelled in the car was not entitled to claim compensation as 3rd party.

9. In the light of the above submission, now the only point arise for consideration in this appeal is whether the passenger travelled in the car is a third party and not to claim any compensation based on the package policy?

10. The 2nd respondent-Insurance Company has not disputed the accident. The first respondent's car driver drove the Car in a rash and negligent manner. The Tribunal considering the evidence of P.W.2, found that the Car was driven in a rash and negligent manner and as a result, the accident was occurred. There is no contra evidence adduced in this regard. However, the Tribunal found that as there is no additional premium has been paid claiming compensation for third parties, the petitioners are not entitled to claim compensation. However, awarded nominal compensation of Rs.1 lakh.

11. Ex.B1- Copy of the policy is available on record, which is not disputed by the 2nd respondent-Insurance Company and when this Court has carefully perused the same, it is seen that the above said policy is a package policy and it covers compulsory PA cover for owner, driver, PA cover for for unnamed persons and LL cover paid for driver and a sum of Rs.13,613/- has been paid for total premium. The policy itself shows that premium has been collected in respect of the PA cover for owner, driver, PA cover for for unnamed persons and LL cover paid for driver, now it cannot be said that there is a separate premium to be paid.

12. In this regard, it is useful to refer the judgment of the Division Bench of this Court in ***Royal Sundaram Alliance Insurance Co. Ltd., Vs. A.Meenakshi & others*** reported in ***2009 (1) TN MAC 249(DB)***, wherein this Court has held that the passenger travelling in a private car, which is covered in the comprehensive policy / package policy, the insurer shall liable and when the insurance is covering the risk of occupants, the insurer cannot evade its liability.

13. In view of the above judgment, the insurance company now cannot contend that the petitioners / appellants are not entitled to claim compensation in respect of the death of a minor child while travelling in a Car. Accordingly, the point is answered.

14. In respect of compensation is concerned, on a perusal of the records, it is seen that the Tribunal has awarded a sum of Rs.1 lakh as compensation. It is relevant to note that the deceased was aged about 5 years, a minor girl. In ***Kishan Gopal and another Vs. Lala and others*** reported in ***2013(2) TN MAC 358***, the Hon'ble Supreme Court has fixed the notional income of the minor at Rs.30,000/- per annum and granted a sum of Rs.50,000/- under conventional heads. The Division Bench of this Court in ***Divisional Manager, United India Insurance CO. Ltd., Vs. Sakunthala*** reported in ***2022 (2) TN MAC 555 (DB)***, fixed the notional income of the non-earning member as Rs.60,000/- per annum. The fact remains that the Apex Court has fixed a sum of Rs.30,000/- as notional income in the year 2013. However, considering the passage of time, this Court is of the view that fixing of a sum of Rs.5,000/- as notional income per month will meet the ends of justice. In respect of deduction for personal expenses for a minor child, this Court in **Divisional Manager, Reliance General Insurance Co. Ltd. Vs.**

Govindaraji reported in **2021 (2) TN MAC 271**, in paragraph 18 has held as follows:

> *"18. So far as minors are concerned, they are non earning members and there is no occasion for them to spend money towards the personal expenses and there cannot be any deduction towards their personal expenses. In Lata Wadhwa case (cited supra) and Kishan Gopal case (cited supra). The Hon'ble Supreme Court after fixing the notional monthly income of the minor applied the multiplier and taken the entire amount as the loss of dependency and no deduction was made for their personal expenses. In the above circumstances, this Court is of the view that there cannot be any deduction towards personal expenses from the notional income of deceased minors."*

15. Following the said judgment, this Court is of the view that there cannot be any deduction towards personal expenses from the notional income of the deceased minor. Therefore, if a sum of Rs.5,000/- is fixed as notional income, the annual notional income would be at Rs.60,000/- (5,000 x12). If '15' multiplier is applied, the total loss of dependency would be at Rs.9,00,000/- (5000 x 12 x 15). The Tribunal has not awarded any amount towards loss of love and affection, funeral expenses and loss of estate. Hence, this Court is awarded a sum of Rs. 40,000/- each to the petitioners 1 and 2 towards loss of love and affection, a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.15,000/- towards loss of estate. Hence, the modified compensation is as follows:

S. No	Heads	Amount
1.	Loss of dependency	Rs. 9,00,000/-
2.	Loss of love and affection (Rs. 40,000/- each to the petitioners 1 and 2)	Rs. 80,000/-
3.	Funeral expenses	Rs. 15,000/-
4.	Loss of estate	Rs. 15,000/-
	Total	Rs.10,10,000/-

The compensation is enhanced from Rs.1,00,000/- to Rs.10,10,000/- along with interest at 7.5% p.a.

16. In the result, this Civil Miscellaneous Appeal is allowed and the 2nd respondent – Insurance Company is directed to deposit the enhanced compensation amount of Rs.10,10,000/- (Rupees Ten Lakhs and Ten Thousand only), along with interest at the rate of 7.5% p.a. from the date of accident till the date of deposit, less the amount already deposited, if any, within a period of three months from the date of receipt of a copy of this order. Out of the said compensation amount, the first petitioner, being a mother, is entitled to get a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) and the second petitioner, being a minor sister, is entitled to get a sum of Rs.3,10,000/- as compensation. The first petitioner may approach the Tribunal for withdrawal of the said amount, for filing necessary application and if such an application is filed, the Tribunal shall pass orders for withdrawal. Insofar as the share of the minor / 2nd petitioner is concerned, the Tribunal is directed to deposit the same in a Fixed Deposit under renewable scheme periodically, till she attain majority and the first petitioner, the Guardian of the minor, is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minor. The petitioners are directed to pay the additional Court fee for the enhanced amount. No costs.

17.03.2023

NCC : Yes/No

Index : Yes/No
Internet : Yes/No
vsm

N.SATHISH KUMAR, J.

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To

1.The Motor Accident Tribunal, Addl. District Judge, Dindigul.

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

C.M.A.(MD)No.847 of 2022

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