IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.2931 of 2022

1. Bhashyam Prasana Kumari
2. Bhashyam Harsha (minor)
3. Bhashyam Hari (minor) ... Appellants
   (2nd and 3rd minor appellants are represented by their mother natural guardian 1st appellant)

vs.

1. Jaladi Subba Rao

2. The United India Insurance Company Limited,
   Motor 3rd party Office, No.73-MTH Road,
   Ambattur, Chennai,
   Branch office No.153, J.N.Road,
   Tiruvallur - 602 001. ...
Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 07.10.2021 in M.C.O.P.163/2019 on the file of the Motor Accident Claims Tribunal No.1, Special District Court, Tiruvallur.

For Appellants : Mr.Ma.P.Thangavel for
Mr.K.Naveen Kumar

For R2 : Mr.S.Arunkumar

JUDGMENT

The appellants are the claimants in M.C.O.P.163/2019 on the file of the Motor Accident Claims Tribunal, Tiruvallur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T. Rules seeking compensation of Rs.30,00,000/- for the death of one Bhashyam Prasad (husband of the first claimant and father of the claimants 2 and 3) in a road accident that occurred on 19.10.2018.

2. The brief case of the appellants / claimants is as follows :

On 19.10.2018, Bhashyam Prasad (deceased) was travelling in a Lorry bearing Registration number AP-07-TA-4977 as a cleaner. When the lorry was nearing Chembedu cross road, the driver of the lorry instructed Bhashyam Prasad (deceased) to tie the ropes of the buffalos that were loaded in the lorry properly. While he was doing so, the driver of the lorry suddenly moved the lorry, as a result of which, Bhashyam Prasad fell down and died on the spot.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration number AP-07-TA-4977 was the cause of the accident and that since the said vehicle was insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record, fastened negligence on the part of the driver of the lorry bearing Registration number TN-28-AS-9889. However, the Tribunal held that since the claimants did not prove the relationship of employer and employee between the owner of the lorry and the driver, the Insurance Company cannot be held liable to pay compensation to the claimants. Therefore the Tribunal directed the first respondent, the owner of the lorry to pay the entire compensation of Rs.22,30,400/- together with interest at the rate of

7.5% per annum from the date of petition till the date of realisation.

6. Aggrieved over the orders passed by the Tribunal, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.Ma.P.Thangavel, learned counsel appearing for the appellants and Mr.S.Arunkumar, learned counsel for the second respondent.

8. Mr.Ma.P.Thangavel, learned counsel appearing for the appellants/claimants drew the attention of this Court to the Insurance policy (Ex.R3) and contended that as per the Indian Motor Tariff 28 (IMT 28) additional premium of Rs.100/- has been paid for the cleaner of the lorry and therefore the order of the Tribunal exonerating the Insurance Company from paying compensation amount, is erroneous. He also contended that the Tribunal has not awarded just compensation. Therefore, he prayed for enhancement of the same.

9. Per contra, Mr.S.Arunkumar, learned counsel appearing for the second respondent, contended that the relationship of employer and employee has not been established by the claimants and therefore the claimants cannot seek compensation from the Insurance Company. He therefore prayed for dismissal of the present appeal.

10. A perusal of the Insurance Policy (Ex.R3) shows that the additional premium of Rs.100/- was paid for covering driver / cleaner. In the instant case, the specific contention of the claimants was that Bhashyam Prasad was a cleaner in the lorry bearing Registration number AP-07-TA-4977. The FIR (Ex.P1) also shows that he was tying the ropes of the buffalos in the lorry as per the instructions of the driver of the lorry and the driver in a rash and negligent manner moved the vehicle when the victim was carrying out the instructions of the driver. In the circumstances, the negligence is fixed on the part of the driver of the vehicle. Moreover, additional premium of Rs.100/- is also paid by the owner of the vehicle which covers legal liability to driver and / or conductor and / or cleaner employed in connection with the operation of Insured vehicles. Therefore the Insurance company is liable to pay compensation to the claimants.

11. Quantum of compensation:

According to the claimants, Bhashyam Prasad (deceased) aged 34 years, was earning a sum of Rs.20,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.12,000/-. It is pertinent to point out that the accident took place in the year 2018 and in the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased as Rs.15,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601,*** 40% is added towards future prospects of the deceased. Since there are three dependants, 1/3rd is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 16 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.***

Calculation :

Notional Income = Rs.15,000/-

after adding 40% Future Prospects = Rs.21,000/-

After 1/3 deduction = Rs.14,000/-

Loss of dependency:

= Rs.14,000/- x 12 x 16

= Rs.26,88,000/-

In addition to that the claimants are entitled to Rs.1,20,000/- (40,000X3), Rs.15,000/- and Rs.15,000/- towards loss of consortium, loss of estate and funeral expenses respectively as per the decision in ***National Insurance Co. vs Pranay sethi and others*** (cited supra). Thus, the claimants are entitled to a total compensation of Rs.28,38,000/- (26,88,000 + 1,20,000 + 15,000 + 15,000= 28,38,000) as shown in the following tabular column:

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs. 26,88,000 /-
2.	Loss of consortium (Rs.40,000/- x 3)	Rs.1,20,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
	Total	Rs.28,38,000/-

12. Thus, the compensation awarded by the Tribunal is enhanced to Rs.28,38,000/- that would carry interest at the rate of 7.5% per annum.

13. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.

ii. The compensation awarded by the Tribunal is enhanced to Rs.28,38,000/-.

iii. The appellants / claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

iv. The liability of the first respondent (owner) and the second respondent (the United India Insurance Company Limited) is joint and several and the second respondent / the United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.28,38,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.163/2019 on the file of the Motor Accident Claims Tribunal, , Special District Court, Tiruvallur.

v. **Apportionment :**

1st claimant / wife	Rs.8,38,000/- (with interest and costs)
2nd claimant / minor daughter	Rs.10,00,000/-
3rd claimant / minor son	Rs.10,00,000/-

vi. The share of the minor appellants 2 and 3 is directed to be deposited in any one of the Nationalised Bank till they attain majority. The first claimant is at liberty to withdraw her share after following due process of law.

vii. The appellants/claimants are not entitled to claim any interest for the period of delay of 77 days in filing this appeal.

01.10.2024

Index : Yes/No
Speaking order / Non speaking order
Neutral Citation : Yes / No
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To

1.The Motor Accidents Claims Tribunal No.1,
Special District Court,
Tiruvallur.

2.The Section Officer, VR Section,
Madras High Court, Chennai.

R.HEMALATHA, J.

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