IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.Nos.2241, 2247 & 2973 of 2023

1.Lakshmamma

2.Subramani

3.Pillachari

4.Venkatarajulu

5.Narayanachari .. Appellants
(in C.M.A.No.2241 of 2023)

Pillachari .. Appellant
(in C.M.A.No.2247 of 2023)

Jayalakshmi .. Appellant
(in C.M.A.No.2973 of 2023)

Vs.

1.C.Krishnappa

2.The Branch Manager,
Cholamandalam MS General Insurance Company Limited,
2nd Floor, K.K.Tower, Survey No.407/1A2A,
NH-7 Road, Vaishnavi Nagar,
Bangalore – Hosur Main Road,
Hosur – 635 109. .. Respondents
(in all cases)

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow these appeals and enhance the award in all three decrees and judgments dated 16.10.2019 made in M.C.O.P.Nos.905, 906 & 907 of 2015 on the file of the Motor Accident Claims Tribunal, Special District Court for Motor Accident Claims Cases, Krishnagiri.

(In all cases):

For Appellant(s)	:	Mr.M.Sivakumar
For R2	:	Ms.R.Sreevidhya

COMMON JUDGMENT

The issue involved in all these appeals are common and hence, they are taken up together, heard and disposed of through this common judgment.

2.The claimants in C.M.A.No.2247 of 2023 and C.M.A.No.2973 of 2023 traveled along with the deceased Venkataramanachari on 17.04.2015 carrying 10 bags of flowers to be sold in the market at Kelamangalam - Denkanikottai road. When the vehicle reached the place of occurrence, the offending vehicle belonging to the 1st respondent and insured with the 2nd respondent was driven in a rash and negligent manner and the driver lost control and he dashed on a tree. Due to its impact, Venkataramanachari died and other three persons apart from the driver also sustained injuries. The claimant in C.M.A.No.2247 of 2023 is the son of the deceased and the claimant in C.M.A.No.2973 of 2023 is the daughter-in-law of the deceased. It is under these circumstances, the claim petitions came to be filed before the Tribunal in M.C.O.P.Nos.905, 906 & 907 of 2015.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle in which the deceased and the injured persons traveled.

4.The Tribunal having rendered the above finding, took into consideration the defense that was taken by the Insurance Company to the effect that totally five persons including the driver had traveled in a goods vehicle and the vehicle did not have a valid Permit or a valid Registration Certificate and Fitness Certificate. In view of the same, the Insurance Company denied their liability. The Tribunal found that there is violation of policy condition and therefore, the Insurance Company cannot be saddled with the liability. Accordingly, the compensation was fixed in all the cases and the owner of the offending vehicle was directed to pay the compensation amount.

5.The claimants not being satisfied with the quantum of compensation and also the finding of the Tribunal exonerating the Insurance Company from paying the compensation have filed these appeals before this Court.

6.Heard the learned counsel for the claimants and the learned counsel for the Insurance Company. The owner of the vehicle, namely the 1st respondent has been served with notice and the name has also been printed in the cause list. There is no representation either in person or through counsel.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.This Court has also carefully gone through the award passed by the Tribunal.

9.In the instant case, there is no dispute with regard to the fact that the policy only covered a driver and one more person. That apart, there is also no dispute to the fact that totally five persons traveled in the vehicle. The Tribunal on considering the evidence of P.W.2, found that all of them traveled with 10 bags of flowers to sell it in the market. Hence, all these persons were traveling in the goods vehicle along with the goods viz., flowers.

10.It is true that the vehicle did not have a valid Permit and there was no Fitness Certificate and in spite of the same, it was plying on the road. This factor cannot be completely brushed aside. The Tribunal has completely exonerated the Insurance Company from payment of compensation and the entire liability has been put on the owner of the offending vehicle. Admittedly, the evidence of R.W.2 shows that there is coverage for two persons including the driver. This Court has already found that the passengers were traveling along with the goods viz., Flowers. Hence, considering the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd., Vs. Anjana Shyam & Ors*** reported in ***2007 (7) SCC 445***, the claim made on the part of the deceased alone can be considered and the Insurance Company can be directed to pay the compensation and recover the same from the owner of the offending vehicle.

11.In the light of the above finding, the claim made in C.M.A.No.2241 of 2023 alone is entertained. In so far as the claim made in C.M.A.Nos.2247 & 2973 of 2023 are concerned, they are not covered under the policy and the Insurance Company cannot be saddled with the liability. Hence, the award passed by the Tribunal in M.C.O.P.Nos.906 & 907 of 2015 are sustained and the compensation amount shall be paid by the owner of the offending vehicle to the respective claimant.

12.The learned counsel for the appellant has made his submissions regarding the quantum of compensation that was fixed by the Tribunal in M.C.O.P.No.905 of 2015, which is the subject matter in C.M.A.No.2241 of 2023.

13.The Tribunal has rendered a finding as if the deceased in this case is aged 60 years. This finding rendered by the Tribunal is unsustainable. This is in view of the fact that the legal heirship certificate which was marked as Ex.P5 shows that the age of the first claimant, who is the wife of the deceased is 64 years. Therefore, by no stretch the age of the deceased can be fixed at 60 years. This Court can safely fix the age of the deceased as 64 years.

14.The Tribunal has adopted '9' multiplier in this case. This Court having fixed the age of the deceased as 64 years, only '7' multiplier can be adopted.

15.In so far as the deduction towards personal expenditure, the Tribunal has deducted $1/4^{th}$ towards the personal expenditure of the deceased. All the claimants are major and therefore, $1/3^{rd}$ deduction towards personal expenditure will be more appropriate on the facts of this case.

16.In the light of the above discussion, the compensation under the head of loss of income can be fixed at Rs.5,04,000/- (Rs.9,000/- X 12 X 7 – 1/3).

17.The Tribunal has granted a sum of Rs.10,000/- as compensation under head of loss of estate and the same can be enhanced to Rs.15,000/-.

The compensation that has been fixed under the other heads are reasonable and it does not require the interference of this Court.

18.In the light of the above discussion, the compensation fixed by the Tribunal in M.C.O.P.No.905 of 2015 is modified as follows:

1.Loss of Income	-	Rs.5,04,000/-
2.Loss of consortium	-	Rs.30,000/-
3.Loss of Estate	-	Rs.15,000/-
4.Funeral Expenses	-	Rs.15,000/-
5.Loss of love and affection	-	Rs.40,000/-
Total		Rs.6,04,000/-

19.Thus,

(i)The compensation awarded by the Tribunal in M.C.O.P.No.905 of 2015 at Rs.8,96,900/- is reduced to Rs.6,04,000/-. The 2nd respondent-Insurance Company is directed to deposit the above compensation, together with interest at 7.5% per annum from the date of claim petition till the date of deposit within a period of four (4) weeks from the date of receipt of this judgment, if not already deposited. It is made clear that the compensation that is paid by the 2nd respondent-Insurance Company shall be recovered from the owner of the offending vehicle. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

(ii)The compensation awarded by the Tribunal in M.C.O.P.No.906 of 2015 at Rs.2,14,500/- stands confirmed. The 1st respondent-owner of the offending vehicle is directed to deposit the compensation amount, together with interest at 7.5% per annum from the date of claim petition till the date of deposit within a period of four (4) weeks from the date of receipt of this judgment, if not already deposited. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

(iii)The compensation awarded by the Tribunal in M.C.O.P.No.907 of 2015 at Rs.42,000/- stands confirmed. The 1st respondent-owner of the offending vehicle is directed to deposit the compensation amount, together with interest at 7.5% per annum from the date of claim petition till the date of deposit within a period of four (4) weeks from the date of receipt of this judgment, if not already deposited. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

20.In the result, C.M.A.No.2241 of 2023 is partly allowed to the extent indicated herein above. C.M.A.Nos.2973 & 2247 of 2023 are dismissed. No costs.

22.07.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Special District Court for
Motor Accident Claims Cases,
Krishnagiri.

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

N.ANAND VENKATESH, J.

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