IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 16.04.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.Nos.3785 of 2019 and 252 of 2021

1.Sivakamai
2.Perumal
3.Saguthaladevi .. Appellant in CMA.No.3785/19
& Respondents 1 to 3 in CMA.No.252/21

Vs

1.Pushpanathan .. R1 in CMA.No.3785/19
& R4 in CMA.No.252/21

2.National Insurance Co. Ltd.,
Bus stand opposite,
Tiruchengode Taluk,
Namakkal District. .. R2 in CMA.No.3785/19
& Appellant in CMA.No.252/21

Common Prayer: These Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 16.08.2019, made in M.C.O.P.No.453 of 2014, on the file of the Motor Accident Claims Tribunal, Sub-Court, Tiruchengode.

In CMA.No.3785/19

For Appellant : Mr.T.S.Arthanaresswaran

For R2 : Mr.S.Arunkumar

For R1 : No Appearance

In CMA.No.252/21

For Appellant : Mr.S.Arunkumar

For R1 to R3 : Mr.T.S.Arthanaresswaran

For R4 : No Appearance\

COMMON JUDGMENT

The Insurance Company and the claimants have preferred separate appeals challenging the very same impugned award. The appeal filed by the Insurance Company is C.M.A.No.252 of 2021 and the appeal filed by the claimants is C.M.A.No.3785 of 2019.

2. The Insurance Company has preferred C.M.A.No.252 of 2021 on the following grounds:-

(a) The quantum of compensation awarded by the Tribunal is excessive.

(b) The vehicle insured with the appellant, which had caused accident, was not having a valid fitness certificate as on the date of the accident and hence, the Insurance Company is not liable to pay compensation.

3. The claimants have filed C.M.A.No.3785 of 2019 questioning

the quantum of compensation awarded by the Tribunal. According to them, the compensation awarded by the Tribunal is not a just compensation and it has to be enhanced.

4. The Tribunal, under the impugned award, has directed the Insurance Company to pay the compensation of Rs.9,37,200/- together with interest at 7.5% per annum to the claimants as detailed hereunder:-

Loss of earning capacity	-- Rs.9,07,200/-
Loss of estate	-- Rs.15,000/-
Funeral expenses	-- Rs.15,000/-
Total	-- Rs.9,37,200/-

5. The accident victim died on 26.04.2014 as a result of the accident caused by the vehicle insured with the Insurance Company. At the time of the accident, the deceased, aged about 22 years, was a bachelor. The Tribunal has rightly deducted 50% towards his personal expenses while assessing compensation towards loss of earning capacity at Rs.9,07,200/-. However, the Tribunal has erroneously failed to award any compensation towards loss of love and affection. The claimants are parents and sister of the deceased. As per the decision of the Hon'ble

Supreme Court in ***National Insurance Co. Ltd., Vs. Pranay Sethi and others [2017 (16) SCC 680],*** the parents are entitled to Rs.40,000/- each towards love and affection. Since the Tribunal has erroneously failed to award compensation towards loss of love and affection, this Court awards compensation of Rs.80,000/- towards loss of love and affection to the parents at Rs.40,000/- each. Further, as per the said decision, the Tribunal has rightly awarded 40% towards future prospects, as the deceased was aged about 22 years.

6. The accident happened in the year 2014. The Tribunal has fixed notional monthly income of the deceased at Rs.6,000/-. The claimants had pleaded in their claim petition that the deceased was a painter at the time of the accident. This Court is of the view that since the accident happened in the year 2014, the notional monthly income of the deceased fixed by the Tribunal at Rs.6,000/- is low and it has to be enhanced to Rs.7,500/-. The Tribunal has rightly adopted multiplier '18' while assessing compensation towards loss of earning capacity. Since the notional income of the deceased is enhanced from Rs.6,000/- to Rs.7,500/-, loss of earning capacity is reassessed in the following manner:-

Monthly income	-- Rs.7,500/-
40% of future prospects	-- Rs.3,000/-
Total	-- Rs.10,500/-
(-) 50% towards personal expenses	-- Rs.5,250/-
Loss of earning capacity	
- 5250 x 12 x 18	-- Rs.11,34,000/-

7. Since the compensation towards loss of love and affection at Rs.80,000/- is also added, total compensation payable to the claimants is enhanced as detailed hereunder:-

Loss of earning capacity	-- Rs.11,34,000/-
Loss of estate	-- Rs.15,000/-
Funeral expenses	-- Rs.15,000/-
Loss of love and affection	-- Rs.80,000/-
Total	**-- Rs.12,44,000/-**

8. Insofar as the appeal filed by the Insurance Company with regard to non-availability of fitness certificate at the time of the accident for the insured vehicle is concerned, after giving due consideration to the fitness certificate, which was placed on record as Ex.R2, it is clear that

the fitness certificate for the insured vehicle got expired on 13.02.2014 and the accident happened on 26.04.2014. Therefore, as on the date of the accident, the subject vehicle was not possessing a valid fitness certificate.

9. Section 56 of the Motor Vehicles Act 1988 also makes it clear that in case if a transport vehicle did not possess a valid fitness certificate, such a transport vehicle shall not be deemed to be a validly registered vehicle. Section 56 of the Motor Vehicles Act is extracted hereunder:-

> ***56. Certificate of fitness of transport vehicles.---***
> *(1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorised testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:*
> *Provided that where the prescribed authority or the authorised testing station refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.*

Provided further that no certificate of fitness shall be granted to a vehicle, after such date as may be notified by the Central Government, unless such vehicle has been tested at an automated testing station.

(2) The "authorised testing station" referred to in sub-section (1) means any facility, including automated testing facilities, authorised by the State Government, where fitness testing may be conducted in accordance with the rules made by the Central Government for recognition, regulation and control of such stations.

(3) Subject to the provisions of sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

(4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained:

Provided that no such cancellation shall be made by the prescribed authority unless, --

(a) such prescribed authority holds such technical qualification as may be prescribed by the Central Government and where the prescribed authority does not hold the technical qualification, such cancellation is made on the basis of the report of an officer having such qualification; and

(b) the reasons recorded in writing cancelling a certificate of fitness are confirmed by an authorised testing station chosen by the owner of the vehicle whose certificate of fitness is sought to be cancelled:

Provided further that if the cancellation is confirmed by the authorised testing station, the cost of undertaking the test shall be borne by the owner of the vehicle being tested and in the alternative by the prescribed authority.

(5) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India.

(6) All transport vehicles with a valid certificate of fitness issued under this section shall carry, on their bodies, in a clear and visible manner such distinguishing mark as may be prescribed by the Central Government.

(7) Subject to such conditions as the Central Government may prescribe, the provisions of this section may be extended to non-transport vehicles.

10. Eventhough the Insurance Company had taken a plea that the vehicle was not possessing a valid fitness certificate, the Tribunal has erroneously ignored the same and has directed the Insurance Company to pay the determined compensation without granting pay and recovery rights. However, only on the basis that the fitness certificate (Ex.R2) did not speak about unfitness of the vehicle, the Tribunal has erroneously come to the conclusion that the Insurance Company is not entitled for pay and recovery rights, despite the fact that the fitness certificate was produced for the said vehicle, which clearly reveals that, on the date of the accident, the fitness certificate was not valid as it got expired as early as on 13.02.2014 itself. Therefore, the Tribunal ought to have granted pay and recovery rights to the Insurance Company.

11. Being a policy violation committed by the insured, namely, the owner of the vehicle/Pushpanathan (first respondent in CMA.No.3785/19), both before the Tribunal as well as before this Court, the owner of the vehicle had not entered appearance. Before the Tribunal, he was set exparte. When there is clinching evidence in the form of fitness certificate, marked as Ex.R2, which reveals that the fitness certificate for the vehicle got expired on 13.02.2014 itself, much prior to

the date of the accident, i.e., on 26.04.2014, the Tribunal ought to have granted pay and recovery rights to the Insurance Company.

12. For the forgoing reasons, both the appeals are disposed of in the following manner:-

(a) The Insurance company is directed to deposit the entire award amount of Rs.12,44,000/- to the credit of M.C.O.P.No.453 of 2014 on the file of Motor Accident Claims Tribunal, Sub-Court, Tiruchengode, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment.

(b) The claimants are also entitled for interest at 7.5% per annum from the date of claim petition till the date of realization.

(c) On such deposit, the Tribunal is directed to transfer the entire award amount along with accrued interest therein through RTGS/NEFT transfer to the bank account of the claimants.

(d) The claimants are directed to pay additional court fees for the differential amount within a period of two weeks from the date of receipt of a copy of this judgment.

(e) The Insurance Company, after paying the compensation as set out in (a) and (b) above, is permitted to recover the same from the owner of the vehicle/Pushpanathan (first respondent in CMA.No.3785/19).

(f) Consequently, CMP.No.1627 of 2021 is closed. No Costs.

16.04.2024

Index: yes/no
Speaking/non-speaking
Neutral citation: yes/no
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To

1. The Sub-Court,
   (Motor Accident Claims Tribunal)
   Tiruchengode.

ABDUL QUDDHOSE,J.

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C.M.A.Nos.3785 of 2019
and 252 of 2021

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