BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 09.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.870 of 2012
and
MP(MD) No.1 of 2012

The Oriental Insurance Company Ltd.,
Rep. thro its Branch Manager,
Door No.555/1, G.H,Road,
Theni, Theni District ... Appellant/ 2nd Respondent

Vs.

1.K.Surambayee
2. Minor. Murugapandi
3. Minro. Seethalakshmi
4. K. Kaliammal ..Respondents 1 to 4/1to 4th petitioners.
(Minor 2 and 3 are represented by their mother, next friend 1st respondent Surambayee)
5. R.Selvaran
(5th respondent remained exparte before the lower court)

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award of Rs.3,70,000/- passed in MCOP No.160/2008 dated 04.11.2011 on the file of the Motor Accident Claims Tribunal cum Tribunal Special .Judge, Periyakulam

For Appellant	: Mr.C. Karthik
For R1 to R3	: Mr.V.Thirumal
R4	: Died
For R5	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in MCOP No.160 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Judge,Periyakulam wherein the respondents 1 to 4 herein have filed petition for compensation due to the death of one Karuthapandi and the Tribunal has awarded a sum of Rs.3,70,000/-with interest @ 7.5% per annum from the date of petition till the realization.

2.As against the order passed by the Tribunal, the second respondent/insurance company has preferred this appeal by challenging the liability.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

4**. The brief averments of the petition filed before the Tribunal are as follows:**

On 15.04.2007 at about 8.00 pm., when the deceased along with his brother were proceeding in a two wheeler bearing Reg.No

TN 60 C 1580, at that time the first respondent tractor bearing Reg. No, TN 60 Z 6990 driven by its driver in a rash and negligent manner and dashed against the two wheeler and the said Karuthapandi died in the spot itself. The accident took place due to the negligence on the part of the driver of the first respondent. The first respondent vehicle was insured with the second respondent. The petitioners are the legal heirs of the deceased. The petitioner was aged about 40 years on the date of accident. He was earning a sum of Rs.20,000/- per month. Hence filed petition claiming compensation of Rs.10,00,000/-

5**. The brief averments of the counter filed by the second respondent are as follows:**

The petition is not maintainable either in law or facts and the same is liable to be dismissed in limine. The petitioner has to put to strict proof to the injuries sustained by him and the manner of accident. The respondent denied the age, income and occupation of the deceased. The accident did not take place due to the negligence on the part of the driver of the first respondent on the other hand the accident took place due to negligence on the part of the driver of the two wheeler. The driver of the first respondent has not valid license to drive the vehicle on the date of accident and he had only license for driving Light Motor Vehicle and no separate badge to drive the vehicle. Therefore the first respondent has violated the condition of policy, hence this respondent is not liable to pay any compensation to the petitioner.

6. Before the Tribunal in order to prove the case of the petitioner, they have examined P.W.1 and P.W.2 and marked documents Exps.P.1 to P.8. On the side of the respondents no one was examined and no document was marked.

7. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a sum of Rs.3,70,000/-with interest @ 7.5% per annum from the date of petition till the realization. As against the order of the Tribunal, the present appeal has been filed by the second respondent/Insurance company on various grounds.

8. The learned counsel appearing for the appellant would contend that the accident was not took place due to the negligence on the part of the driver of the fifth respondent/first respondent and the same was occurred due to the negligence on the part of rider of motor cycle. The driver of the fifth respondent/ first respondent has

no valid license and badge to drive the commercial vehicle on the date of accident, thereby the appellant/second respondent is no way liable to pay the compensation to the respondents 1 to 4 / petitioner but the Tribunal without considering the same awarded compensation to the respondents 1 to 4/petitioner by directing the appellant/second respondent and the fifth respondent/first respondent to pay the compensation jointly are severally. Therefore the order passed by the Tribunal is liable to be set aside.

9. The learned counsel appearing for the respondents 1 to 4/petitioners would contend that the accident took place due to the negligence on the part of the driver of the fifth respondent /first respondent and the Tribunal also after analyzing the evidences fixed liability as against the driver of the fifth respondent /first respondent and there is no contra evidence adduced on the side of the appellant /second respondent. Further the Tribunal has awarded meagre amount by taking a sum of Rs.3000/- per month as monthly income of the deceased. When the petitioner has categorically pleaded and evidenced that the deceased was earning a sum of Rs.20,000/- per month but the Tribunal has not considered the same and awarded meagre amount. Though the respondents 1 to 4/petitioners have not preferred any appeal or cross objection, since

it is benevolent legislation, this Court can enhance the amount to arrive at just and fair compensation. To support his contention he relied on the judgment of this Court in the case of ***Reliance General Insurance Co Ltd., Chennai. vs. B.Chithra and others*** reported in ***2018(2) TNMAC 302***. Further the petitioners are entitled to consortium as per the judgment of the Hon'ble Supreme Court in the case of ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhur Ram and others*** *reported in* ***2018(2)TN MAC 452*** . Therefore this Court can enhance award amount without filing any cross objection or appeal by the respondents 1 and 4/petitioners. The fifth respondent/first respondent vehicle was insured with the appellant/second respondent/insurance company and the driver of the fifth respondent/ first respondent vehicle had license to drive Light Motor Vehicle, thereby the appellant /second respondent is liable to pay compensation to the respondents 1 to 4 /petitioners, thereby the appeal may be dismissed in respect of liability and award amount has to be enhanced.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, frames the following point for determination in this appeal:

i) Whether the appeal is liable to be allowed or not?

11. In this case, the respondents 1 to 4/claimants have not preferred any appeal or cross objection as against the order passed by the Tribunal. Percontra, the insurance company/second respondent has preferred this appeal on the ground of liability. According to the appellant/second respondent the driver of the fifth respondent /first respondent vehicle had no valid license on the date of accident and he has only license to drive the Light Motor Vehicle and no separate badge. According to the respondents 1 to 4/petitioners the driver of the fifth respondent/first respondent has license to drive the Light Motor Vehicle and the same is valid to drive all type of Light Motor Vehicle and no separate badge and endorsement is required. The learned counsel appearing for the respondent produced judgement in the case of ***Mukund Dewangan .vs. Oriental Insurance Company Ltd*** reported in ***(2017)14 SCC 663***, wherein the Hon'ble Supreme Court held that no separate endorsement on the license is required to drive a transport vehicle of light motor vehicle class; a license issued under Section 10(2)(d) continues to be valid after amendment vide Act 54 of 1994 in M.V.Act and in Form 4 under rule 14(1) of Central Motor Vehicles Rules 1989, w.e.f. 28.03.2001. The above said case was referred to

larger Bench and till the verdict is passed by the Hon'ble Supreme Court this case has to be followed. In view of the above said judgment of ***Mukund Dewangan .vs. Oriental Insurance Company Ltd,*** there is no requirement of badge and license to drive Light Motor Vehicle is sufficient and thereby the contention of the appellant that the fifth respondent /first respondent has violated the condition of policy is not acceptable and therefore this appeal is liable to be dismissed in respect of liability.

12. The learned counsel appearing for the respondents 1 to 4 would contend that the award passed by the Tribunal is very meagre. Though they have not preferred any cross objection or appeal this Court can award just and fair compensation by enhancing the award amount. To support his contention he relied on the judgment of this Court in the case of ***Reliance General Insurance Co Ltd., Chennai. vs. B.Chithra and others*** reported in ***2018(2) TNMAC 302***, the Hon'ble Division Bench of this Court has held as follows:

> *"Though the appeals has been preferred by the Insurance company against the negligence aspect by considering the facts and circumstances of the case and appreciating the same in toto, this Court while confirming the negligence aspect as reached by the Tribunal, re-appreciating the evidence invoking Order 41, Rule 33 of CPC*

and Section 151 of CPC and Article 227 of the Constitution of India, has enhanced the compensation amount to Rs. 17,60,400/-. The provisions of Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by Claimants, this Court has got power and jurisdiction to enhance the Compensation, which has been recognised by the Honourable Supreme Court in Nagappa V. Gurdayal Singh, 2004(2) TNMAC 398(SC). Therefore , in an endeavour to do complete justice, this Court has enhanced the Compensation.

13. In view of the above said judgment it is clear that this Court can enhance the amount to arrive fair and just compensation. In the case on hand, the Tribunal has taken a sum of Rs.3000/- as monthly income of the deceased and failed to include future prospectus and thereby it is appropriate to include future prospectus as per the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 ACJ 2700***. Considering the age of the deceased that he was 40 years 25% of future prospectus has to be taken into account for calculating the income of the deceased. This Court also has taken the income of the deceased as Rs.3000/- and after adding 25% future prospectus , the monthly income of the deceased would come to Rs.3750/-

14. Considering the dependency of the deceased, the trial Court ought to have deducted personal expenses of the deceased as

¼ th income but the Tribunal had deducted 1/3rd of the income of the deceased. However during pending appeal one of the claimant/fourth respondent died. Therefore this Court also considering the dependency of the deceased taken deduction of personal expenses of 1/3rd of the income of the deceased, thereby the annual income of the deceased would come to Rs.30,000/-/ Considering the age of the deceased multiplier of 15 is adopted, thereby award amount would come to Rs.4,50,000/-. Further the respondents 1 to 3 /petitioners are entitled for a sum of Rs.40,000/- each towards consortium as per the case of ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhur Ram and others*** *reported in* ***2018(2)TN MAC 452.*** The respondents 1 to 3 / petitioners are entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate, thereby the petitioners in total are entitled to Rs.6,00,000/- towards compensation. Since the fourth petitioner died, each petitioners are equally entitled for the above said amount. Since the petitioners have not filed any appeal this Court is not inclined to award interest for enhanced amount. It is reported that already the award amount with interest was deposited in the Tribunal.

15. In the result, this Civil Miscellaneous Appeal is partly allowed in respect of quantum of amount and dismissed in respect of liability. The award passed by the Tribunal is modified to the effect that the petitioners are entitled to a sum of Rs.6,00,000/- towards compensation with interest as awarded by the Tribunal from the date of petition till the deposit of amount for Rs.3,70,000/- if not already deposited and the second respondent/insurance company is directed to pay the enhanced award amount within a period of two months from the date of this order. The petitioners are at liberty to withdraw the above said amount as and when deposited by the second respondent/Insurance Company. Consequently connected miscellaneous petition is closed. No costs.

09.02.2024

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

1. The Motor Accident Claims Tribunal
   Special .Judge, Periyakulam

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

P. DHANABAL,J.

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C.M.A.(MD)No.870 of 2012

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