IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1761 of 2020
and
C.M.P.No.12915 of 2020

The Oriental Insurance Company Ltd.,
running office at No.75, Krishna Street,
Behind Anna Statue,
Thiruvannamalai District. ... Appellant/2nd Respondent

vs

1. R.Priya
W/o.Late M.Ramesh
D/o.K.Kollapuri

2. Minor R.Dharshini
D/o.Late M.Ramesh

3. Minor R.Vishnu
S/o.Late M.Ramesh
(minor claimants 2 & 3 are represented by their mother 1st claimant) ... 1 to 3 Respondents/Petitioners

4. G.Seenuvasan
S/o.Govindha Gounder ... 5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.03.2020 passed in M.C.O.P.No.136 of 2017 on the file of Motor Accident Claims Tribunal (II Additional District Judge), Vellore @ Ranipet.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.C.Premkumar [R1 to R3]

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

This matter is heard through Video Conference.

2. Challenging the award passed by the Tribunal in and by its judgment dated 03.03.2020 in M.C.O.P.No.136 of 2017 on the file of Motor Accident Claims Tribunal (II Additional District Judge), Vellore @ Ranipet, appellant insurance company has filed the present appeal.

3. The brief facts of the case are as follows:

Respondents 1 to 3/claimants are wife and minor children of the deceased M.Ramesh. On 15.02.2017 at about 07.30 p.m., while the deceased was riding his Splendur Plus Two Wheeler bearing Registration No.DL 12 SD 0927 having respondents 1 to 3/claimants as pillion, on the Arcot to Arani Road, a Tractor bearing Registration No.TN 25 B 2653 and a Trailer connected to the Tractor bearing Registration No.TN 25 B 2655 were proceeding in front of the two-wheeler. All of a sudden, the driver of the Tractor and Trailer, without giving any signal to the vehicle coming behind, suddenly applied the brake owing to which the deceased hit the rear side of the Trailer and sustained grievous injuries. Immediately, the deceased was taken to Government Hospital, Arcot, where he succumbed to the injuries. Respondents 1 to 3/claimants have filed a claim petition seeking compensation of Rs.1,10,00,000/-.

4. Resisting the claim of respondents 1 to 3/claimants, appellant insurance company had filed a counter denying the case of the claimants that the accident had occurred due to the sudden application of brake by the driver of the Tractor and Trailer. On the other hand, the Tractor and Trailer was parked on the side of road. At the time of accident, the deceased carried 3 persons other than him. The capacity of the two-wheeler is to carry only two persons. However, at the time of accident, four persons have travelled in the two-wheeler and hence, the deceased himself was a tortfeaser and he invited the accident on his own negligence by carrying more persons with additive weight and lost his balance and having made the children to sit on the tank, he has lost his overview vision to see the vehicle parked in the front and hit the stationary vehicle. Therefore, the appellant insurance company is not liable to compensate respondents 1 to 3/claimants.

5. Before the Tribunal, on the side of respondents 1 to 3/claimants, wife of the deceased examined herself as PW-1

besides examining one Mr.Siranjeevi, Indian Army Record Officer, as PW-2, to speak about the income earned by the deceased and 17 documents were marked. Exs.X1 to X3 were marked through PW-2. On behalf of appellant insurance company, one witness was examined as RW-1 and no documents were marked. On appreciation of materials, the Tribunal arrived at a finding that the accident had occurred due to the negligent act of the driver of the Tractor and Trailer and the appellant insurance company, being the insurer of the Tractor and Trailer, was held liable to pay compensation. The compensation awarded by the Tribunal is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency [49964 + 50% - 1/3] * 12 * 15	89,93,520/-
2.	Loss of love & affection [Rs.1,00,000/- each to minor claimants]	2,00,000/-
3.	Loss of consortium	40,000/-
4.	Loss of estate	15,000/-
5.	Funeral expenses	15,000/-
6.	Transportation	5,000/-
	Total	92,68,520/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of filing of the claim petition till the date of realization.

6. Learned counsel appearing for appellant insurance company submits that the deceased hit the rear side of the insured vehicle, which was parked on the road. In such circumstances, the Tribunal ought to have come to the conclusion that the deceased himself was a tortfeasor and hence, respondents 1 to 3/claimants are not entitled for compensation. However, the Tribunal arrived at a finding that the accident had occurred due to the negligent act of the driver of the Tractor and Trailer. Submitting as above, learned counsel prays this Court to set aside the finding of the Tribunal and consequently, exonerate the appellant insurance company from the liability.

7. The alternate submission of learned counsel appearing for appellant insurance company is that in the event of this Court coming to the conclusion that there is negligence on the part of the vehicle insured with the appellant insurance company, then this Court may fix contributory negligence on the part of the

deceased. Insofar as the quantum of compensation is concerned, learned counsel submits that the Tribunal had fixed the monthly income of the deceased at Rs.49,964/-, which includes Field Area allowance as at the relevant point of time, the deceased was employed at Jammu & Kashmir. While fixing the monthly income of the deceased, the Tribunal ought to have deducted such allowance. Further, the tribunal has not deducted income-tax and hence, re-calculation has to be made accordingly.

8. Per contra, learned counsel appearing for respondents 1 to 3/claimants submits that it is incorrect to state that the deceased hit the Tractor and Trailer negligently. It is the specific case of respondents 1 to 3/claimants that the Tractor and Trailer were proceeding in front of the two-wheeler and the driver thereof had suddenly applied the brake as a result of which the deceased lost his balance and hit the Trailer and sustained fatal injuries. To establish the said contention, the wife of the deceased was examined as PW-1, who had travelled as a pillion rider in the two-wheeler at the time of accident, whereas the appellant insurance company has not chosen to examine the driver of the Tractor and Trailer to establish that the vehicle was parked on the road. Moreover, a criminal case was registered only as against the driver of the Tractor and Trailer. In the said circumstances, the finding of the Tribunal cannot be found fault with. Further, on proper appreciation of evidence and materials, the Tribunal has awarded a reasonable sum as compensation and the same does not require any interference by this Court. Submitting as above, learned counsel prays for dismissal of the appeal.

9. This Court has considered the rival submissions. Perused the materials on record.

10. Though it is the submission of learned counsel appearing for appellant insurance company that the accident had occurred owing to the negligent act of the deceased, a careful perusal of the evidence on record shows that a criminal case was registered only against the driver of the Tractor and Trailer. As rightly submitted by learned counsel for respondents 1 to 3/claimants that the appellant insurance company has not chosen to examine the driver of the Tractor and Trailer. In such circumstances, the finding arrived at by the Tribunal that owing to sudden application of brake by the driver of the Tractor and Trailer, the deceased hit the rear side of the Trailer and sustained fatal injuries, cannot be found fault with. At the same time, this Court is of the view that had the deceased been careful while riding the two-wheeler, he would have averted the accident. Therefore, this Court comes to the conclusion that the deceased was also responsible for the accident. Accordingly, 80% contributory negligence is fixed on the part of the driver of

the Tractor and Trailer and 20% contributory negligence is fixed on the part of the deceased.

11. Coming to the question of quantum of compensation awarded by the Tribunal, this Court finds that it is the specific case of learned counsel for appellant insurance company that the monthly income of the deceased fixed by the Tribunal at Rs.49,964/- includes field area allowance also and the same ought to have been deducted. This Court is not in agreement with such submission. The deceased was a Nayak in Indian Army and the nature of avocation itself tells that his posting would be mostly at Indian Borders. Hence, this Court is not inclined to deduct 'Field Area Allowance'. But, at the same time, this Court finds that the Tribunal had failed to deduct income tax while calculating compensation under the head 'loss of dependency'. The accident has occurred in the year 2017. The income-tax payable for the Assessement Year 2017-18 is:

Annual Income of the deceased	:	Rs.8,99,352/-		
Upto Rs.2,50,000/-	:	Nil	:	-
Rs.2,50,001 to Rs.5,00,000/-	:	10%	:	Rs.25,000/-
Rs.5,00,001 to Rs.10,00,000/-	:	20%	:	Rs.79,870/-
Rs.10,00,001 and above	:	30%	:	-
Total Tax payable	:	Rs.1,04,870/-		

12. Accordingly, the amount awarded under the head 'loss of dependency' is re-calculated as follows:

Monthly Income	:	Rs. 49,964/-
Add : Future prospects 50% of Rs.49,964/-	:	Rs. 24,982/-
		Rs. 74,946/-
Annual Income [74946*12]	:	Rs. 8,99,352/-
Less : Income Tax	:	Rs. 1,04,870/-
		Rs. 7,94,482/-
Less : Personal expenses (1/3)	:	Rs. 2,64,827/-
		Rs. 5,29,655/-
Multiplier	:	15
Loss of dependency	:	Rs.79,44,825/-

Further, this Court finds that a sum of Rs.2,00,000/- awarded towards loss of love and affection is on the higher side and hence, the same is reduced to Rs.80,000/- (Rs.40,000/- each to the minor children). Except this modification, the amount awarded under the other heads is hereby confirmed.

13. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Loss of dependency	89,93,520/- [49964+50%-1/3] *12*15	79,44,825/- [(49964+50%*12) - 104870 - 1/3 *15]
2.	Loss of love & affection	2,00,000/- [Rs.1,00,000/- each to minor claimants]	80,000/- [Rs.40,000/- each to minor claimants]
3.	Loss of consortium	40,000/-	40,000/-
4.	Loss of estate	15,000/-	15,000/-
5.	Funeral expenses	15,000/-	15,000/-
6.	Transportation	5,000/-	5,000/-
	Total	92,68,520/-	80,99,825/-
	Less: 20% Contributory negligence		16,19,965/-
	Compensation payable		64,79,860/-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal in a sum of Rs.92,68,520/- is hereby reduced to Rs.64,79,860/- [Rupees Sixty Four Lakhs Seventy Nine Thousand Eight Hundred and Sixty only]. Appellant insurance company is directed to deposit the modified compensation of Rs.64,79,860/-, less the amount, if any, already deposited, together with interest at 7.5% p.a. from the date of petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. On such deposit, first respondent/wife of the deceased is entitled to withdraw her share, as apportioned by Tribunal, on due application. The share of minor respondents 2 and 3/minor children of the deceased shall be deposited in any nationalised Bank in fixed deposit till they attain majority and first respondent/mother of minors is entitled to withdraw interest once in three months. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

gm

To

The II Additional District Judge,
Motor Accident Claims Tribunal,
Vellore @ Ranipet.

+1cc to Mr.C.Premkumar, Advocate, SR.No.37868

C.M.A.No.1761 of 2020

SRA(CO)
RLP(22/07/2021)