IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.02.2021

CORAM

THE HONOURABLE Mr. JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A. No.350 of 2021
and CMP.No.2362 of 2021

The Oriental Insurance Insurance Company Ltd.,
Third Party Claims Hub,
Oriental House, II Floor,
Old No.115, New No.216, Prakasam Salai,
Broadway, Chennai 600 001. .. Appellant/2nd Respondent

Versus

1. Gowri,
W/o.R.Thangavelu
2. Thangavelu
S/o.Rathinam
3. The Managing Director,
Puducherry Road Transport Corporation,
No.4, Iyyanar Koil Street, Raja Nagar,
Puducherry 13. .. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 20.08.2020 made in MCOP. No.2171 of 2017 on the file of the Motor Accident Claims Tribunal / II Court of Small Causes, Chennai.

For appellant : Mr.D.Bhaskaran
For respondents
for R1 & 2 : Mr.K.Suryanarayanan

J U D G M E N T
(The Judgment of the Court was delivered by R.Subbiah, J)

The appeal is heard through video conferencing.

2. This appeal has been filed as against the award dated 20.08.2020 made in MCOP.No.2171 of 2017 on the file of the Motor Accidents claims Tribunal / II Court of Small Causes, Chennai on

the claim petitions filed by the respondents 1 and 2 herein.

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

(i) The respondents 1 and 2 / claimants, are the mother and father of the deceased Vijay Srivatsan. It is the specific case of the claimants that on 25.02.2017 at about 06.15 hours, their son Vijay Srivatsan was riding a two wheeler bearing Registration No.PY 01 AE 0936 from Chennai to Pondicherry on the ECR Road. While he was nearing Mamallapuram, a Bus bearing Registration No.PY 01 AE 0936, which was insured with the appellant herein, came from opposite direction in a rash and negligent manner and dashed against the two wheeler. Due to the accident, the deceased sustained head injury and died on the spot.

(ii) It is the further case of the claimants that their son was working as an Associate Engineer-CAD and earned a sum of Rs.65,925/- per month. Thus, they made a claim for a sum of Rs.2,00,00,000/- as compensation.

4. The said claim was resisted by the Insurance Company by filing a counter statement denying the age, occupation and monthly income of the deceased. They also denied the manner of the accident as stated by the claimants in the claim petition. Thus, they sought for dismissal of the claim petition.

5. In order to prove the claim on the side of the claimants, the first claimant / the mother of the deceased, examined herself as PW1, besides 2 other witnesses were examined as PW2 and PW3 and 26 documents were marked as Exs.P1 to P26. On the side of the Insurance Company, neither any oral evidence was adduced nor documents were marked.

6. The Tribunal, after analysing the entire evidence, had come to the conclusion that the accident is the result of the rash and negligent driving of the driver of the Bus bearing Registration No.PY 01 AE 0936 belonging to the third respondent herein. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.82,59,686/- as compensation and directed the appellant-Insurance Company to pay the said amount. The break-up details of the amounts awarded under various heads are as follows:

S.No.	Heads under which the amount is awarded by the Tribunal	Amount in Rs.
1	Loss of Dependency	81,79,686
2	Filial Consortium	50,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000

S.No.	Heads under which the amount is awarded by the Tribunal	Amount in Rs.
	Total	82,59,686

7. The learned counsel appearing for the appellant / Insurance Company submitted that the deceased died on account of the head injury that occurred at the accident. Hence, it is clear that if the deceased had worn helmet at the time of the accident, he would have survived. Therefore, certain percentage of negligence ought to have been fixed on the part of the deceased and consequently, compensation has to be deducted in proportionate to the percentage of negligence.

8. That apart, the learned counsel for the appellant / Insurance Company submitted that while calculating the amount under the head "Loss of Income", the Tribunal had taken the entire gross salary of the deceased without deducting the variables, namely, the supplementary allowances and other special allowances. Further, the annual salary of the deceased was above Rs.2,50,000/-, but the Tribunal has not deducted any amount towards income tax, and hence, the amount awarded under the head "Loss of Dependency" is to be re-calculated.

9. Per contra, the learned counsel appearing for the claimants made his submissions supporting the awarded passed by the Tribunal.

10. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

11. It is the main submission of the learned counsel for the Insurance Company that the deceased died on account of head injury that occurred at the accident. Had he worn helmet, he would not have sustained head injury. Therefore, certain percentage of contributory negligence has to be fixed on the part of the deceased and consequently, compensation has to be deducted in proportion to the percentage of negligence on the part of the deceased. But we are not inclined to accept the said submission of the learned counsel for the appellant for the reason that in the counter statement filed before the Tribunal, nothing was stated about the negligence on the part of the deceased in not wearing the helmet. Further, no one was examined on the part of the Insurance Company to speak about the non wearing of helmet. Even in the cross-examination, the Insurance Company had not posed any question with regard to the same. In the absence of any pleadings or evidence, we are not inclined to fix contributory negligence on the part of the deceased. Therefore, this submission of the learned counsel for the

appellant is rejected.

12. Yet another submission of the learned counsel for the Insurance Company is that there were variables which are to be deducted from gross salary, but the Tribunal failed to condier the same properly and fixed the monthly income of the deceased at Rs.53,462/-.

13. It is the reply of the learned counsel for the claimants that supplementary allowances and special allowances were not shown in the salary certificate of the deceased, which is marked as Ex.P25. Therefore, the Tribunal had rightly taken the entire amount indicated in Ex.P25 for consideration. The said submission of the learned counsel for the claimants, appears to be reasonable. Therefore, we do not find any infirmity in fixing the sum of Rs.53,462/- as monthly income.

14. Thus, if a sum of Rs.53,462/- is taken as monthly income and 50% of the same is added towards future prospects, the amount works out to Rs.80,193/- [53,462 + 26,731]. Resultantly, the annual loss of income comes to Rs.9,62,316/-.

15. Since the annual income of the deceased crossed above Rs.2,50,000/-, the Tribunal ought to have deducted income tax. Therefore, the amount awarded by the Tribunal under the head "Loss of Income" has to be recalculated by deducting the amount towards income tax. It is to be noted that the accident occurred in the year 2017 and the income tax slab rate at the relevant point of time, are as follows:

Income		Percentage of tax
Upto 2,50,000	-	No tax
2,50,000 - 5,00,000	-	10%
5,00,000 - 10,00,000	-	20%
Above 10,00,000	-	30%

16. The income tax deduction in the case of the deceased is as follows:

Income		Percentage of tax		Amount of Tax
Upto 2,50,000	-	No tax	-	0
2,50,000 - 5,00,000	-	10%	-	25,000
5,00,000 - 9,62,316	-	20%	-	92,463
		Total		1,17,463

Therefore, the total tax payable is Rs.1,17,463/-. Thus, the actual annual income is Rs.8,44,853/- [9,62,316 - 1,17,463]. If 1/2 of the amount is deducted towards personal expenses of the deceased, the amount works out to Rs.4,22,427/- (8,44,853 - 4,22,426). Considering the age of the deceased being 27 at the time of the accident, if multiplier "17" is adopted, the amount comes to Rs.71,81,259/-. Therefore, the sum of Rs.81,79,686/- awarded by the Tribunal under the head "Loss of Dependency" is hereby reduced to Rs.71,81,259/-.

17. Further, the sum of Rs.50,000/- awarded by the Tribunal under the head “Filial Consortium” appears to be on the lower side and hence, the same is enhanced to Rs.80,000/- by awarding Rs.40,000/- to each of the claimant.

18. The amounts awarded by the Tribunal under the other heads are just, fair and reasonable, and hence, they are confirmed.

19. The total compensation is re-determined as mentioned below:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
1	Loss of Dependency	81,79,686	71,81,259
2	Filial Consortium	50,000	80,000
3	Loss of Estate	15,000	15,000
3	Funeral Expenses	15,000	15,000
	Total	82,59,686	72,91,259 (rounded of to Rs.73,00,000/-)

20. Thus, the total compensation of Rs.82,59,686/- awarded by the Tribunal is hereby reduced to Rs.73,00,000/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective shares. The apportionment of shares as fixed by the Tribunal to the claimants is hereby confirmed.

21. With the above observations and directions, the Civil Miscellaneous Petition is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

pvs

To

1.The II Court of Small Causes,
Chennai.

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.7986

C.M.A. No.350 of 2021
and CMP.No.2362 of 2021

SPD(CO)
CB(06/09/2021)