



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.1233 of 2011

and

M.P. (MD) No.1 of 2011

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The Branch Manager
Iffco Tokyo General Insurance Company Ltd.,
New No.25, 2nd Floor
Usman Road, T.Nagar North
Chennai-600 017

...Appellant/2 Respondent

-vs-

1.Ramalakshmi

2.Valliammal

...1 &2 Respondent/Claimants

3.Ramesh

... 2 Respondent/1 Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 12.04.2011 in M.C.O.P.No.226 of 2009, on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Srivilliputhur.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : Mr.M.Saravana Kumar for R1
R2 - Dismissed
vide Court Order dated 04.11.2019
No appearance for R3

J U D G M E N T

This civil miscellaneous appeal has been preferred by the Insurance Company questioning the Award, dated 12.04.2011, passed in M.C.O.P.No.226 of 2009, by the Motor Accident Claims Tribunal / Sub Court, Srivilliputhur.

2. The wife and mother of the deceased, namely, Murugesan filed the claim petition for a compensation of Rs.18,72,661/-. According to the claimants, on 06.04.2009, at about 11.50 a.m., when the deceased was proceeding in his Motor Bike on Pondy Main Road, an Ambassador Car bearing registration No.TN45 P3333, owned by the third respondent and insured with the appellant - Insurance Company came in a high speed and hit against the Motor Bike. In the impact, the deceased fell down and he was ran over and died on the spot. The claimants would further state that the deceased was 40 years old and he was working as Office Assistant in Cuddalore Collectorate and he was paid Rs.11,618/- per month. Since he died due to the negligence of the driver of the Ambassador Car, the claimants are



entitled to claim compensation from the owner and the insurer of the offending vehicle.

3. The appellant - Insurance Company resisted the claim petition disputing the manner of accident and the liability to pay compensation.

4. The parties have adduced oral and documentary evidence.

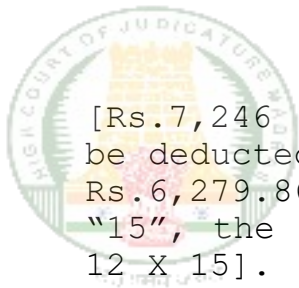
5. On appreciation of the evidence, the Tribunal came to the conclusion that the accident occurred due to the negligence of the driver of the Ambassador Car and awarded a sum of Rs.14,95,960 as compensation. Challenging the same, the present civil miscellaneous appeal has been filed.

6. Mr.S.Srinivasa Raghavan, learned counsel appearing for the appellant - Insurance Company, would argue that the Tribunal ought to have fixed the monthly income at Rs.12,258/- when the actual salary as per Ex.P12 was only Rs.7,246/-. According to the learned counsel, the actual income of the deceased on the date of the accident has to be taken into account for calculating the loss of income and further, deduction has to be made for the payment of income tax.

7. Per contra, the learned counsel appearing for the first respondent justified the award passed by the Tribunal and prayed for dismissal of the appeal.

8. P.W.2, who witnessed the accident, gave evidence in support of the case of the claimant. Furthermore, Ex.P1 - First Information Report, Ex.P3 - Motor Vehicle Inspector's Report and Ex.P4 - Charge Sheet were marked to show that criminal proceedings were initiated against the driver of the Car. Since no contra evidence was produced on behalf of the appellant - Insurance Company, the Tribunal came to the conclusion that the accident happened due to the negligence of the driver of the Car. I find no illegality in the findings of the Tribunal in this regard.

9. It is not in dispute that the claimants are the legal heirs of the deceased. Ex.P16 shows that the deceased was 40 years old on the date of the accident and his monthly salary was Rs.7,246/-. Ex.P12 is the Salary Certificate. The Tribunal taking note of the fact that as per Sixth Pay Commission, the deceased would be paid Rs.12,258/- and on this basis, calculated the loss of income. It is settled law that actual salary of the deceased has to be taken into account to arrive at the quantum of compensation. It is not seriously disputed that the deceased is a permanent employee in a Government Service and he is entitled to addition of 30% for future prospectus. Hence, the salary is fixed at Rs.9,419.80



[Rs.7,246 + Rs.2,173.80 (25% of Rs.7,246/-), from which 1/3rd is to be deducted towards personal expenses, so, the contribution would be Rs.6,279.86 rounded off to Rs.6,280/- and by adopting multiplier "15", the loss of income would come to Rs.11,30,400/- [Rs.6,280/- X 12 X 15].

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10. As per the decision of the Honourable Apex Court in **National Insurance Company Limited vs. Pranay Sethi [(2017) 13 Scale 12]**, the claimants would be entitled to Rs.70,000/- under conventional heads. By adding Rs.70,000/-, the total amount comes to Rs.12,00,400/-. Accordingly, the amount awarded by the Tribunal is reduced from Rs.14,95,960/- to Rs.12,00,400/-. The interest awarded by the Tribunal is maintained. Since the annual income of the deceased is admittedly within the tax exemption, no deduction is required to be made for income tax.

11. The appellant - Insurance Company is directed to deposit the above modified award amount with accrued interest and costs, less the amount already deposited, before the Tribunal within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants are permitted to withdraw their respective shares in the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs, as per the ratio of apportionment made by the Tribunal.

12. For the foregoing reasons, the civil miscellaneous appeal is partly allowed and the Judgment and Award, dated 12.04.2011, passed in M.C.O.P.No.226 of 2009, by the Motor Accident Claims Tribunal / Sub Court, Srivilliputhur, are modified to the extent as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

1.The Motor Accident Claims Tribunal/ Subordinate Judge court
Srivilliputhur.

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

+1 CC to M/s.M.SARAVANA KUMAR, Advocate (SR-6251[F] dated
19/02/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-6398[F] dated
22/02/2021)

C.M.A. (MD) No.1233 of 2011
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M.P. (MD) No.1 of 2011
19.02.2021

KM(CO)
KB(11.03.2021) 4P 6C