



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A. (MD) No.999 of 2021

and

C.M.P. (MD) No.9213 of 2021

Liberty Videocon General
Insurance Company Limited.

through its Branch Manager,
2nd Floor, Raja Barely Building,
Madurai Bypass Road, Madurai.

... Appellant/ Respondent No.2

-VS-

1.Syed Ali Fathima

2.Maimoon Beevi ... Respondents No.1 and 2/ Claimants

3.Abbas ... 3rd Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Judgment and Decree dated 08.04.2021, passed in M.C.O.P.No.16 of 2017, on the file of the Additional Motor Accident Claims Tribunal-cum-Additional Subordinate Court, Tenkasi.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.P.Balasubramanian
for R1 & R2

J U D G M E N T

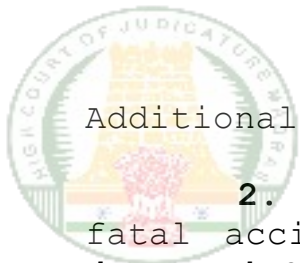
S.VAIDYANATHAN, J.

and

DR.G.JAYACHANDRAN, J.

This civil miscellaneous appeal is directed against the Award, dated 08.04.2021, passed in M.C.O.P.No.16 of 2017, on the file of the Additional Motor Accident Claims Tribunal-cum-

<https://hcservices.ecourts.gov.in/hcservices/>



Additional Subordinate Court, Tenkasi.

2. The brief facts of the case are that this is a case of fatal accident. The claimants are the wife and mother of the deceased Sheik Maideen. According to the claimants, the deceased was working as Sweeper in Dubai (Sharjah) and was 33 years old at the relevant time. On 27.11.2016, at about 11.00 a.m., the deceased along with his family members was travelling in an Auto Rickshaw bearing registration No.TN79 B8632 owned and driven by to the third respondent herein and insured with the appellant Insurance Company from Panpozhi to Courtallam and when the Auto was nearing Subramaniapuram Railway Bridge in Ilathur - Shencottah Road, from north to south direction, a dog crossed the road suddenly. At that time, when the third respondent, who drove the vehicle in a rash and negligent manner, tried not to hit against the dog, the Auto got overturned. In the accident, the deceased fell down and sustained injuries all over his body. Even though the deceased was taken to the Shencottah Government Hospital, he succumbed to the injuries. Hence, the claimants filed a claim petition claiming compensation of Rs.1,15,62,000/-, however restricted to Rs.80,00,000/-.

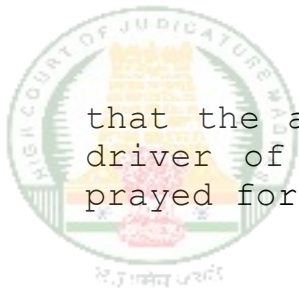
3. The appellant - Insurance Company resisted the claim petition disputing the manner of accident; liability to pay compensation and the avocation of the deceased.

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 Auto and awarded a sum of Rs.27,98,000/- as compensation. Challenging the same, the present civil miscellaneous appeal has been filed by the Insurance Company.

6. Mr.V.Sakthivel, learned counsel appearing for the appellant - Insurance Company would mainly contend that even though the deceased was claimed to have been working abroad, no valid material much less the passport of the deceased has been produced to substantiate the claim. Furthermore, no legal heirship certificate, apart from the fact that the wife of the deceased got married subsequently, has been produced. Further, the learned counsel would contend that the notional income of the deceased fixed by the Tribunal at Rs.15,000/- is on the higher side. Therefore, prayed for setting aside the Award of the Tribunal.

7. Per contra, Mr.P.Balasubramanian, learned counsel appearing for the respondents 1 and 2 / claimants submitted that the Tribunal on proper appreciation of evidence, has rightly held



that the accident happened due to the rash and negligence of the driver of the Auto and the award is also reasonable and hence, prayed for dismissal of the appeal.

8. Heard the rival submissions and perused the materials available on record.

9. The deceased was employed as Sweeper in Dubai (Sharjah), met with an accident on the way to Courtallam on 27.11.2016 and succumbed to the injuries. The Tribunal, while arriving at the compensation for the deceased who was aged 34 years, has taken note of the loss of the sole breadwinner of the family and that the accident has taken place due to the rash and negligent driving of the Auto by the third respondent herein and taking into account the principles laid down in the decisions of the Honourable Supreme Court in **Sarala Verma and others vs. Delhi Transport Corporation [2009 (6) SCC 121]** and **National Insurance Company Limited vs. Pranay Sethi [(2017) 13 Scale 12]**, awarded Rs.26,88,000/- towards loss of income, apart from Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.80,000/- towards loss of consortium. Even though it is contended by the appellant - Insurance Company that loss of consortium cannot be granted to the wife of the deceased as she has married subsequent to the death of the deceased, this Court is not inclined to accept the same. However, this Court modifies the said head as "loss of love and affection" instead of "loss of consortium". Except this modification, the award under the other heads is confirmed. 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.

10. The appellant - Insurance Company is directed to deposit the above award amount with accrued interest and costs, less the amount already deposited, before the Tribunal, within a period of four months 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.

11. With the above modification in the Award, dated 08.04.2021, passed in M.C.O.P.No.16 of 2017, on the file of the



Subordinate Court, Tenkasi, the civil miscellaneous appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

Krk

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.

To:

The Additional Subordinate Judge,
Additional Motor Accident Claims Tribunal,
Tenkasi.

+1 CC to M/s.P.BALASUBRAMANIAN, Advocate (SR-36846[F] dated 01/12/2021)

C.M.A. (MD) No.999 of 2021

and

C.M.P. (MD) No.9213 of 2021

30.11.2021

TP (CO)

SB(06.01.2022) 4P 3C