IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1665 of 2014
and
M.P.No.1 of 2014

United India Insurance Co. Ltd.
104-A, Peramanur main road
Peramanur, Salem-7. ...Appellant/2nd Respondent

Vs.

1.Vijay @ Vijayendran
2.Subathradevi
3.Kiruthika Devi
4.Ramya Devi
5.Alamelu

6.San Engineering and LOC Co. Ltd.
P.B.No.4802, White Field Road
Bangalore, Karnataka State.
...Respondents/Petitioners 1 to 5/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.08.2013 made in M.C.O.P.No.1984 of 2011 on the file of Motor Accident Claims Tribunal, II Additional District Court, Salem.

For Appellant : Mr.S.Arunkumar
For R1 to R5 : Mr.K.S.Karthik Raja
For R6 : No appearance

J U D G M E N T

(This matter is heard through "Video-Conferencing")

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 20.08.2013 made in M.C.O.P.No.1984 of 2011 on the file of Motor Accident Claims Tribunal, II Additional District Court, Salem.

2.The appellant is 2nd respondent/Insurance Company in M.C.O.P.No.1984 of 2011 on the file of Motor Accident Claims Tribunal, II Additional District Court, Salem. The respondents 1 to 5 filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Subramanian, who died in the accident that took place on 09.09.2010.

3.According to the respondents 1 to 5, on the date of accident i.e., on 09.09.2010 at about 21.00 hours, while the deceased Subramanian was driving his car bearing Registration No.TN-27-T-6814 along with his son near Neikkarapatty puthur over bridge, the driver of the car belonging to the 6^{th} respondent bearing Registration No.KA-53-P-726, who was coming from Salem-Sankari direction, drove the same in a rash and negligent manner, broke the road divider, ran over the other side of the road, hit against the car driven by the deceased and caused the accident. In the accident, the said Subramanian sustained fatal injuries and died in the hospital on the same day. Therefore, the respondents 1 to 5 filed the above claim petition claiming compensation against the 6^{th} respondent and the appellant/Insurance Company.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 6^{th} respondent and directed the appellant/Insurance Company being insurer of the said car, to pay a sum of Rs.17,51,164/- as compensation to the respondents 1 to 5 and dismissed the claim petition as against the 6th respondent, owner of the car.

5.Challenging the quantum of compensation awarded by the Tribunal, the appellant/Insurance Company has come out with the present appeal.

6.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in fixing the monthly income of the deceased at Rs.20,978/- without deducting the family pension received by the 5^{th} respondent, wife of the deceased. The respondents 1 to 4 are not dependants of the deceased and therefore, they are not entitled to any compensation. The Tribunal erred in deducting $1/4^{th}$ towards personal expenses of the deceased. The Tribunal ought to have applied multiplier '5' instead of '9' as the deceased was aged more than 60 years at the time of accident. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal. In support of his contentions, the learned counsel relied on the following judgment of the Hon'ble Apex Court reported in 2021 (2) TNMAC 639 SC (N.Jayasree and others vs. Cholamandalam MS General Insurance Co. Ltd.):

> "17.It is settled that percentage of deduction for personal expenses cannot be governed by a rigid rule or formula of universal application. It also does not depend upon the basis of relationship of the claimant with the deceased. In some cases, the father may have his own income and thus will not be considered as dependent. Sometimes, brothers and sisters will not be considered as dependants because they may either be independent or earning or married or be dependent on the father. The percentage of deduction for personal expenditure, thus, depends upon the facts and circumstances of each case. "

7.The learned counsel appearing for the respondents 1 to 5 made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

8.Though notice has been served on the 6th respondent and their name is printed in the cause list, there is no representation for 6th respondent either in person or through counsel.

9. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 5 and perused the entire materials on record.

10.From the materials on record, it is seen that the deceased was a retired Chief Engineer from TNEB and was getting pension of Rs.20,978/- per month at the time of accident. According to the learned counsel appearing for the appellant, the Tribunal erred in taking into account entire pension to fix monthly income of the deceased without deducting family pension, which 5th respondent, wife of the deceased, is receiving after the death of her husband. The said contention is not acceptable for simple reason that the deceased but for his death would be getting an increase in pension during his life time. Further family pension is granted as per the Service Rule and the same cannot be deducted from the pension paid to the deceased. The Tribunal has not committed any error in taking into account the entire pension for fixing monthly income of the deceased at Rs.20,978/-.

11.Further, the contention of the learned counsel appearing for the appellant is that the respondents 1 to 4 are not dependants of the deceased and the Tribunal erroneously deducted 1/4th instead of 1/3rd towards personal expenses of the deceased. He referred to paragraph-17 of the judgment of the Hon'ble Apex Court reported in 2021 (2) TNMAC 639 SC cited supra, wherein the Hon'ble Apex Court held that percentage of deduction for personal expenses cannot be governed by a rigid rule or formula of universal application. The percentage of deduction for personal expenditure depends upon the facts and circumstances of the case. The Hon'ble Apex Court further held that some of the legal heirs like father, brother and sister may have their individual income and they will not be considered as dependants as they are independent or earning or married or may be dependant on the father and may not be dependant on the deceased. In the present case, there are five claimants, who are 19 year old son, two married daughters, one un-married daughter and wife of the deceased. According to the respondents 1 to 4, they are dependants of the deceased. The appellant/Insurance Company has not let in any evidence to show that 1st respondent son, who was aged 19 years and 4th respondent, unmarried daughter have independent income and they are not dependants of the deceased father. Similarly, there is no evidence to show that married daughters have any independent income or dependants on their respective husband and not on the deceased father. In number of cases, it has been held that even married daughter is dependant on the deceased father. The Hon'ble Apex Court has held that a person may not be legal heir, but she or he may be dependant on the deceased. In the judgment relied on by the learned counsel appearing for the appellant referred to above, the Hon'ble Apex Court has held that mother-in-law of the deceased was dependant, as she was living along with the deceased and her daughter. In view of the absence of any evidence to show that the respondents 1 to 4 have any independent income and not dependants of the deceased, the contention of the learned counsel appearing for the appellant that the Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses is not acceptable. The deduction made by the Tribunal for personal expenses is in order. As per Ex.P11/driving license, the deceased was aged 60 years. The Tribunal rightly applied multiplier '9' taking into consideration the age of the deceased, deducted 1/4th towards personal expenses and granted compensation. The compensation granted by the Tribunal under different heads are not excessive warranting interference by this Court.

12.In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.17,51,164/- awarded by the Tribunal as compensation to the respondents 1 to 5, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 5 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. This appeal is dismissed as against the 6^{th} respondent, owner of the vehicle. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kj
To
1.The II Additional District Judge
Motor Accidents Claims Tribunal
Salem.

Copy to
The Section Officer
V.R.Section
High Court, Chennai.

+1 CC to Mr.S.Arunkumar, Advocate sr 2368.

C.M.A.No.1665 of 2014
and
M.P.No.1 of 2014

AJS(CO)
SP(11/03/2022)