IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **23.11.2022**

Coram:

The Hon'ble Ms. Justice **V.M.VELUMANI**

and

The Hon'ble Mr. Justice **SUNDER MOHAN**

C.M.A.No.2482 of 2022
and C.M.P.No.19299 of 2022

Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
No.46, White's Road,
Royapettah, Chennai-14.

... Appellant

Vs.

1.Palaniammal

2.Prakash

3.P.Masiyamoorthy

4.Abdul Harris ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Special District Judge, (MACT), Dharmapuri in M.C.O.P. No.1934 of 2014 dated 04.01.2017.

For Appellant	:	Mr.G.Vasudevan
For Respondent Nos.1 to 3	:	Mr.M.Selvam

J U D G M E N T

[Judgment of the Court was made by
SUNDER MOHAN, J.]

The appellant/Insurance Company has preferred the above appeal, challenging the judgment and decree passed in M.C.O.P.No. 1934 of 2014, on the file of the learned Special District Judge, MACT, Dharmapuri dated 04.01.2017, awarding a compensation of Rs.32,10,000/- to the respondents 1 to 3 herein/claimants.

2. The brief facts of the case is as follows:

a) The respondents 1 to 3, being the parents and brother of the deceased Illayaraja, filed claim petition stating that, on 22.05.2012 at about 6.30 a.m., the deceased Illayaraja was travelling in the car bearing Registration No. KL-10-AD-3247 belonging to the fourth respondent herein. When he was proceeding from Manargudi to Neelambur near Aravakodu Wood Complex, the driver of the car in which he was travelling drove it in a rash and negligent manner and dashed against the tree. Due to the said accident, the deceased suffered multiple injuries and succumbed to the said injuries. At the time of accident, he was working as

Assistant Professor in Sri Nandanam Engineering College at Thirupathur and earning a monthly income of Rs.35,000/-, besides earning a sum of Rs.20,000/- per month by taking tuitions. The respondents 1 to 3/claimants filed the claim petition, praying for a compensation of Rs.1 Crore.

b) The fourth respondent herein/owner of the car remained ex-parte before the Tribunal.

c) The appellant/Insurance Company filed a counter stating that the accident did not take place on account of the rash and negligent driving of the driver of the car and that in any event, the driver of the car did not possess any valid license. It was also stated in the counter that the respondents 1 to 3/claimants have not shown or justified their claim for the compensation of Rs.1 Crore and prayed for dismissal of the claim petition.

d) Before the Tribunal, the first respondent herein and two other witnesses were examined as P.W.1 to P.W.3 and exhibits P1 to P22 were marked. Ex.W1, authorization letter was marked. The appellant/Insurance Company did not let in any oral and documentary evidence.

e) The Tribunal, on analysing the oral and documentary evidences held that, the deceased Illayaraja had travelled in the car driven by the fourth respondent herein. It came to the conclusion that the accident had occurred only due to the rash and negligent driving of the fourth respondent on the basis of the evidence of P.W.2, who also travelled in the same car along with the deceased. That apart, the Tribunal also took into consideration Ex.P1/FIR registered by the Kerala Police to conclude that the driver of the car was liable for negligence. On consideration of the above facts, the Tribunal fixed the monthly income of the deceased at Rs.25,000/- and fixed the future prospects at 50% and by adopting the multiplier method of 17, assessed the loss of income at Rs.30,60,000/-. By adding compensation under three other heads, the Tribunal awarded a total compensation of Rs.32,10,000/- payable by the appellant/insurer of the offending vehicle to the respondents 1 to 3/claimants.

f) Aggrieved over the same, the appellant/Insurance Company has preferred the instant appeal, questioning their liability and quantum awarded by the Tribunal.

3. The learned counsel for the appellant/Insurance Company submitted that the Tribunal had erroneously held that the driver of the car was guilty of negligence and also contended that the Tribunal had ignored the discrepancies in the evidence of the eye witness. He further contended that as regards quantum, the Tribunal had erringly taken 50% as future prospects instead of 40% considering the age and also taking into consideration of the fact that the deceased was not in permanent employment. The learned counsel further submitted that the multiplier method adopted by the Tribunal is also incorrect. Without taking into account that the claimants/respondents 1 & 2 are aged parents and the age of the parents have to be taken into consideration for applying multiplier the Tribunal had erroneously adopted 17 multiplier and prayed for setting aside the award of the Tribunal.

4. The learned counsel for the respondents 1 to 3/claimants submitted that there is no error in the award passed by the Tribunal. The multiplier adopted by the Tribunal is in accordance with the judgment of the Hon'ble Apex Court in the case of ***National Insurance Company Ltd., Vs. Pranay Sethi and Others*** reported in ***2017 (16) SCC 680***. The Tribunal in fact, had erroneously deducted 20% towards income tax without adopting the tax slab rates, which was in vogue at the relevant point of time and prayed for dismissal of the appeal.

5. Heard Mr.G.Vasudevan, learned counsel appearing on behalf of the appellant/Insurance Company and Mr.M.Selvam, learned counsel for the respondents 1 to 3/claimants and perused the entire materials on record.

6. We find that the Tribunal had taken into consideration the evidence of P.W.2, who travelled along with the deceased in the offending vehicle. P.W.2's evidence is clear and cogent and would show that the driver of the offending vehicle namely, the fourth respondent herein was guilty of negligence. That apart, Ex.P1/FIR

also corroborates and confirm the evidence of P.W.2. Therefore, we are of the view that the driver of the offending vehicle namely, the fourth respondent herein is guilty of negligence and the insurer of the offending vehicle viz., the appellant/Insurance Company, is liable to pay compensation to the respondents 1 to 3/claimants.

7. As regards quantum, we find that the Tribunal had fixed a sum of Rs.25,000/- as monthly income of the deceased based on the documents filed on behalf of the respondents 1 to 3/claimants. Ex.P6 and Ex.P7 would establish the educational qualification of the deceased. It also reveals that the deceased had completed Master's Degree in Engineering, in which he had obtained First Class. Ex.P10/salary slip would show that he had received a sum of Rs.30,000/- as monthly income. The Tribunal, after considering Ex.P10 and other documents, had fixed the monthly income at Rs.25,000/- and granted 50% enhancement towards future prospects. The monthly income fixed by the Tribunal is justified considering the documents produced by the respondents 1 to 3/claimants to establish the loss of income. Nevertheless, we find that the future prospects granted at 50% may not be justified since

the deceased was working in a private concern and not in a permanent job. As per the decision of the Hon'ble Apex Court in *Pranay Sethi's case (supra)*, the future prospects has to be granted only 40%. However, we find that the Tribunal had erroneously deducted 20% of his total salary towards income tax. This approach is again not in accordance with law. The Tribunal ought to have deducted the income as per the slab rate in vogue during the relevant period of time. The accident had occurred on 22.05.2012. During the Financial Year 2012-2013, upto Rs.2,00,000/- there is nil tax. Thus, the calculation for arriving the annual income of the deceased is as follows:

Monthly salary of the deceased	Rs. 25,000.00
40% enhancement towards future prospects	Rs. 10,000.00
Total Salary arrived (25,000+10,000)	Rs. 35,000.00
Annual income (Rs.35,000x12)	Rs.4,20,000.00

Income Tax Slab for Financial Year 2012-2013

Upto Rs.2,00,000	Nil
From Rs.2,00,001/- to Rs.5,00,000/- (10%) [Rs.2,20,000/-x10%]	Rs.22,000.00
Annual income after deducting income tax (Rs.4,20,000/- - Rs.22,000/-)	Rs.3,98,000/-

8. In regard to tax deduction, it is seen that as per the tax slab for the financial year 2012-13, the maximum deduction could be only Rs.22,000/-. After deducting income tax Rs.22,000/-, applying multiplier 17 and deducting 50% towards personal expenses of the deceased, the compensation towards loss of dependency comes to Rs.33,83,000/- which is more than the amount awarded by the Tribunal.

9. Therefore, we see no reason to interfere with the award passed by the Tribunal even though future prospects was erroneously taken at 50%. In view of the above reasonings, this Court is of the considered view that the compensation awarded by the Tribunal is just and reasonable and therefore, the Civil Miscellaneous Appeal is liable to be dismissed.

10. Accordingly, the Civil Miscellaneous Appeal stands dismissed and the compensation of Rs.32,10,000/- awarded by the Tribunal along with interest (excluding the default period, if any) and costs, is hereby confirmed. The appellant/Insurance Company is directed to deposit the amount awarded by the Tribunal along with interest and cost, less the amount already deposited by them, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposits, the respondents 1 to 3/claimants are permitted to withdraw their respective share of the award amount as per the apportionment made by the Tribunal, along with proportionate interest, less the amount already withdrawn by them, if any, on filing appropriate application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

[V.M.V., J.] [S.M., J.]

23.11.2022

Index:Yes/No
Order:Speaking/Non Speaking

DP

To

1.The Special District Judge,
(The Motor Accident Claims Tribunal)
Dharmapuri.

2.The Record Keeper,
V.R. Section, High Court, Madras.

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and
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JUDGMENT MADE IN

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