



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)Nos.294 & 844 of 2021

and

C.M.P. (MD) Nos.2433, 7839 of 2021, 323 & 198 of 2022

C.M.A(MD)No.294 of 2021

Sree Ram General Insurance Company Ltd.,
Rep. by its Claim Manager (legal),
Plot No.5, Ramachandran Street,
Saravana Nagar,
Seevaram, Perungudi,
Chennai - 96.

...Appellant / 2nd Respondent

Vs.

1.Ravikumar
2.Vasumathy
3.Ratheesh
4.Johnraj
5.Krishna Dhas

... Respondents 1 to 3 / Petitioners

... Respondents 4 & 5/ Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act praying this Court to set aside the fair and decreetal order made in M.C.O.P.No.76 of 2017, dated 16.07.2020, on the file of the Subordinate Court, Motor Accidents Claims Tribunal, Kuzhithurai.

For Appellant : Mr.V.Sakthivel
For Respondents : Mrs.J.Ananthavalli - RR1 to 3
: No Appearance - RR4 & 5

C.M.A(MD)No.844 of 2021

Sree Ram General Insurance Company Ltd.,
Rep. by its Claim Manager (Legal),
Plot No.5, Ramachandran Street,
Saravana Nagar,
Seevaram, Perungudi,
Chennai - 96.

...Appellant / 2nd Respondent

Vs.

1.Dhas
2.Chellathai
3.Suresh
4.Rajesh



5.Subitha
6.D.Johnraj
7.Krishnadas

... Respondents 1 to 5 / Petitioners

... Respondents 6 & 7/ Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act praying this Court to set aside the fair and decreetal order made in M.C.O.P.No.75 of 2017, dated 07.02.2020, on the file of the Subordinate Court, Motor Accidents Claims Tribunal, Kuzhithurai.

For Appellant : Mr.D.Sivaraman
For Respondents : Mrs.J.Ananthavalli - RR1 to 5
: Mr.M.R.Sreenivasan - R6
: No Appearance - R7

COMMON JUDGMENT

R.SUBRAMANIAN, J.

and

N.SATHISH KUMAR, J.

The insurance company is on Appeal challenging the awards made in M.C.O.P.Nos.75 and 76 of 2017, on the file of the Subordinate Court, Motor Accidents Claims Tribunal, Kuzhithurai.

2. The claimants in M.C.O.P.No.75 of 2017 are the parents and siblings of the deceased. They sought for compensation for the death of one Ramesh, aged about 28 years, in a road accident that occurred on 31.07.2016. According to the claimants, the deceased Ramesh was working as a Mason at Dubai and he was earning Rs.1,00,000/- (Rupees One Lakh only) per month. Contending that the family had lost its sole bread-winner, the claimants sought for a compensation of Rs.95,00,000/- (Rupees Ninety Five Lakhs only). They would also contend that the accident had occurred due to the rash and negligent driving of the Maxi Cab Van bearing Registration No.TN-21-AB-4413 owned by the sixth respondent and insured with the appellant-insurance company. They sought to make insurance company liable.

3. The insurance company resisted the claim contending that the accident did not occur in the manner as suggested by the claimants. A specific plea was raised by the insurance company that the deceased was not wearing helmet and he died of head injuries and injuries to vital organs. Therefore, the insurance company is not liable to pay the compensation.

4. In M.C.O.P.No.76 of 2017, the deceased was a pillion rider in the vehicle that was ridden by D.Ramesh. The father, mother and brother of the deceased were the claimants. The deceased was aged about 19 years, at the time of the accident. Claiming that the deceased was doing vegetable vending and earning a sum of Rs.25,000/- per month, the claimants sought for a compensation of Rs.95,00,000/- (Rupees Ninety Five Lakhs only).



5. The insurance company resisted the said claim also on the same grounds as in M.C.O.P.No.76 of 2017.

6. In order to establish their case, the claimants examined the first petitioner as P.W.1 and one Sujin was examined as P.W.2 and Exs.P.1 to P.29 were marked in M.C.O.P.No.75 of 2017 and the first petitioner was examined as P.W.1 and one Sujin was examined as P.W.2 and Exs.P.1 to P.39 were marked in M.C.O.P.No.76 of 2017. Neither the owner of the Maxi Cab Van, nor the appellant-insurance company let in any evidence in support of their claim.

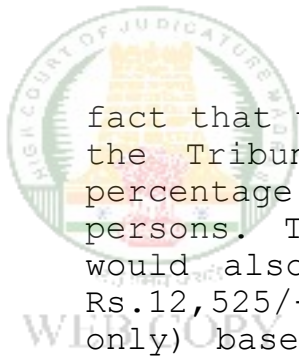
7. The Tribunal upon consideration of the evidence, particularly, the copy of the FIR, the observation mahazar, the rough sketch and the evidence of P.W.2, concluded that the accident had occurred due to the rash and negligent driving of the driver of the Maxi Cab Van, consequently, the Tribunal held that the appellant-insurance company is liable to compensate the claimants.

8. Since there was no evidence for the income as claimed by the claimants, the Tribunal applying the inflation index, fixed the monthly notional income at Rs.12,525/- (Rupees Twelve Thousand Five Hundred and Twenty Five only), adding 40% towards future prospects and after deducting 50% towards personal expenses, applying the multiplier of '14', since the deceased was aged about 28 years, the Tribunal arrived at the total loss of dependency at Rs.18,93,888/- (Rupees Eighteen Lakhs Ninety Three Thousand Eight Hundred and Eighty Eight only) in M.C.O.P.No.75 of 2017 (C.M.A.(MD) No.844 of 2021).

9. As far as the M.C.O.P.No.76 of 2017 (C.M.A.(MD) No.294 of 2021) is concerned, the Tribunal took the same income, but applying the multiplier of '17', as the deceased was aged 19 years, arrived at the total loss of dependency at Rs.17,88,672/- (Rupees Seventeen Lakhs Eighty Eight Thousand Six Hundred and Seventy Two only). Adding the conventional damages for loss of love and affection, loss of estate and loss of funeral expenses, the Tribunal awarded a total sum of Rs.24,91,487/- (Rupees Twenty Four Lakhs Ninety One Thousand Four Hundred and Eighty Seven only) in M.C.O.P.No.76 of 2017 and Rs.18,63,672/- (Rupees Eighteen Lakhs Sixty Three Thousand Six Hundred and Seventy Two only) in M.C.O.P No.75 of 2017.

10. We have heard Mr.V.Sakthivel, learned counsel appearing for the appellant in C.M.A.(MD) No.294 of 2021, Mr.D.Sivaraman, learned counsel appearing for the appellant in C.M.A.(MD) No.844 of 2021, Mrs.J.Anandavalli, learned counsel appearing for the claimants in both the appeals and Mr.M.R.Sreenivasan, learned counsel appearing for the owner of the Maxi Cab in both the appeals.

11. Mr.V.Sakthivel and Mr.D.Sivaraman, learned counsel appearing for the appellant in both appeals would contend that the



fact that the deceased were not wearing the helmet was overlooked by the Tribunal. The Tribunal ought to have adopted a reasonable percentage of deduction for non-wearing of helmet by the deceased persons. The learned counsel appearing for the insurance company would also fault the Tribunal for fixing the monthly income at Rs.12,525/- (Rupees Twelve Thousand Five Hundred and Twenty Five only) based on the inflation index. Though an attempt was made by the learned counsel for the insurance company to canvas the question of negligence, in the absence of any evidence on the part of the insurance company or the owner of the vehicle, we do not think, we should go into the contentions regarding negligence.

12. Mrs.J.Anandavalli, learned counsel appearing for the claimants would submit that since the head injury alone was not the cause of the death, the deduction for non-wearing of a helmet cannot be at 15% and it has to be at a lower percentage. She would also submit that she intends to prefer an appeal against the award, challenging the quantum in M.C.O.P No.75 of 2017.

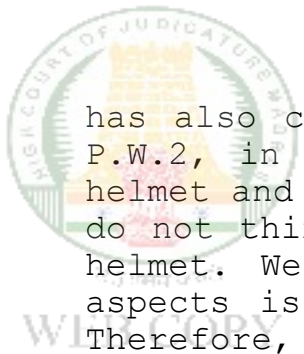
13. We have considered the contentions of the learned counsel on either side.

14. We are not now on the question of enhancement, since the appeals are by the appellant-insurance company, challenging the quantum of compensation awarded, we will dispose of these appeals without prejudice to the contentions of the claimants, if they choose to file an appeal seeking enhancement.

15. We do not think that the challenge to the income adopted by the Tribunal fixing the inflation index is justified. The Tribunal has only relied upon the judgment of this Court in **The Managing Director, Tamil Nadu Transport Corporation Ltd., (Coimbatore Division II) Erode Vs. P.Jagannathan and another** reported in **CDJ 2018 MHC 6400**, to fix the income on the basis of the inflation index, wherein, this Court had followed the judgment of Hon'ble Supreme Court in **Syed Sadiq Vs. United India Insurance Company** reported in **2014 (1) TNMAC 459**, wherein, the income of a vegetable vendor was taken as Rs.6,500/- (Rupees Six Thousand and Five Hundred only). We, therefore, do not see any reason to interfere with the quantum of income fixed by the Tribunal.

16.The deceased in M.C.O.P.No.76 of 2017 was only a pillion rider. Non-wearing of a helmet for a pillion rider is not a ground to make a deduction for negligence. Therefore, the award in M.C.O.P No.76 of 2017 is confirmed and the appeal in C.M.A.(MD) No.294 of 2021 will stand dismissed.

17. However, insofar as the M.C.O.P No.75 of 2017 is concerned, though Mr.D.Sivaraman, learned counsel for the appellant insurance company would very strenuously contend that the deceased was not wearing a helmet at the time of accident and the Tribunal



has also concluded that he was not wearing a helmet. We find that P.W.2, in his evidence, has said that the deceased was wearing a helmet and the helmet broke as a result of the impact. Therefore, we do not think that we should adopt any deduction for non-wearing of helmet. We have already concluded that the award amount in other aspects is reasonable and hence, we see no merit in this appeal. Therefore, the award in M.C.O.P.No.75 of 2017 is confirmed and the appeal in C.M.A.(MD) No.844 of 2021 will stand dismissed.

18. In fine, both the Civil Miscellaneous Appeals are dismissed. There shall be no order as to costs in these appeals. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

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/ /2022

Sub Assistant Registrar(CS)

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

To

- 1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Kuzhithurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.J.ANANDHAVALLI,Advocate (SR-14621[F] &SR-14622[F]
dated 25/03/2022)

+1 CC to Mr.D.Sivaraman, Advocate (SR-14711)

C.M.A(MD)Nos.294 & 844 of 2021
25.03.2022

MGJ(11.04.2022) 5P 7C