BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 13.12.2022

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THE HONOURABLE MRS.JUSTICE **N.MALA**

C.M.A(MD)No.755 of 2022

1.Vellaiyammal
2.Muniaselvi
3.Gurupriya ... Appellants/ Petitioner.

Vs

1.K.Senthilvel

2.M/s.United India Insurance Company Limited,
Through its Divisional Manager,
No.7-A, West Veli Street,
Madurai-1. ...Respondents/Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act for enhancement of compensation and also the finding on negligence by the Motor Accidents Claims Tribunal/Special District Judge (MACT) of Madurai, dated 06.06.2022 passed in MCOP No.885 of 2019.

For Appellant : Mr.V.Sakthivel

For R1 : No Appearance

For R2 : Mr.G.Prabhu Rajadurai

JUDGMENT

The main grounds of challenge are the finding of the Tribunal on the issue of negligence, quantum of compensation fixed by the Tribunal and the deduction of income tax on the income of the appellant.

2. The brief facts of the case are that A.Ganapathy, who was working in the Selvanayagapuram Co-operative Society while crossing the road on 20.04.2019 at 13.00 hours was hit by a motor bike bearing Registration No.TN-65-V7287, sustained injuries and died on the spot. The deceased was earning a salary of Rs.34,056/- at the time of accident and therefore, the claimant filed claim petition seeking a sum of Rs.40,00,000/- as compensation against the respondents.

3. The insurance company contested the claim petition by filing a counter, wherein, it was stated that the deceased A.Ganapathy was negligent in crossing the road and therefore, the accident occurred only due to the negligence of the deceased. The insurance company further stated that the insurance company was not liable to pay compensation because the rider of the motor bike did not have a valid and effective driving licence and therefore, the liability should be fastened only on the owner of the vehicle. The insurance

company further disputed the quantum of compensation claimed by the respondents.

4. The Tribunal on an assessment of the entire evidence on record found that the deceased was also negligent and hence deducted 30% of the compensation amount determined by it towards contributory negligence of the deceased and fixed the compensation amount at Rs.25,82,480/-with interest 7.5% per annum from the date of petition till the date of deposit. The claimants aggrieved by the judgment and decree of the Tribunal have filed the above appeal.

5. The learned counsel for the appellant submits that the Tribunal erred in deducting 30% towards contributory negligence and the finding of the Tribunal in that aspect is un-sustainable. The learned counsel further submitted that for fixing quantum of compensation, the Tribunal has taken the net salary instead of gross salary and further towards future prospect, only 10% was added instead of 15%.

6. In contra, the learned counsel for the respondents submits that the Tribunal had considered the entire materials on record and returned the finding of the negligence against the deceased and as such finding of the Tribunal is

un-assailable. On the issue of quantum, the learned counsel for the respondents submitted that the compensation fixed by the Tribunal is just fair and no interference is called for. The learned counsel for the respondents therefore submitted that there are no merits in the appeal and the same deserved to be rejected.

7. The Tribunal on the issue of negligence has given a cryptic finding. The Tribunal observed that If the driver of the motor bike had seen the deceased at short distance, he should have applied the brake for avoiding the accident, but be he did not do so, in spite of such observations, the Tribunal held that the deceased contributed to the accident as he was not responsible or cautious while crossing the road. It is true that the evidence of P.W.1 and P.W.2 does not support the claimant's case but on the facts of the case, I am of the view that the principles of res ipsa loquitor will apply. Admittedly, the deceased pedestrian was crossing the road at the time of accident which occurred at 01.00 p.m., in the afternoon. If the bike was driven at reasonable speed, the driver could have avoided the accident by applying the brakes. The very fact that the deceased died on the spot would establish that the motor bike rider was driving the vehicle in a rash and negligent manner and at great speed. Therefore, I am of the view that the finding of the Tribunal that the deceased contributed to the accident cannot be sustained. I have gone through the rough

sketch Exhibit P.3, I find that the point of accident is on the extreme left side of the thar road. It would be pertinent to note that the insurance company has not chosen to examine the driver of the motor bike, which in my view is fatal to the case of the insurance company. If the driver of the motor bike was examined, the claimant would have had an opportunity to cross-examine him and elicit the true facts from him. The insurance company has not put forward the best evidence and therefore, adverse inference can be drawn against the insurance company. For all the above reasons, the finding of the tribunal that the deceased contributed to the accident cannot be sustained and the same is set aside.

8. On the issue of quantum, it is seen that the Tribunal has fixed the income of the deceased at Rs.34,056/- on the basis of Exhibit P.8 and P.19, the Tribunal added 10% towards future prospect and arrived at Rs.37,461/- per month. As the dependents of the deceased are 3, the Tribunal deducted 1/3 towards the personal expenses of the deceased from the said amount of Rs. 37,461/- and arrived at a monthly income of Rs.34,056/-. The multiplier 9 was adopted considering that the deceased was aged about 57 years at the time of accident and on the basis of the above, the Tribunal arrived at a total compensation of Rs.24,27,480/-.

9. The learned counsel for the appellant submitted that the Tribunal adopted net income instead of gross income. The gross income of the deceased as per Exhibit P.8 and P.19 was Rs.40,062/-. Therefore, the monthly income of the deceased would be Rs.40,062/-. As per the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs Pranay Sethi and others***, 15% should be added towards future prospect, but 10% was applied by the Tribunal. Therefore, following Pranay Sethi's case, 15% is added towards future prospect and the income is fixed at Rs. 46,071/-. The annual income thus works out to Rs.5,52,852/- and the income tax deductable as per the income tax slab for the year 2019-2020 would be Rs. 23,070/-. Therefore, the total annual income is Rs.5,29,782/- and after deducting Rs.1,76,594/- being the one third towards personal expenses, the annual loss of income is Rs.3,53,188/- If the multiplier 9 is adopted commensurate with the age of the deceased, the compensation towards loss of income is Rs.31,78,692/-. The amounts under other heads awarded by the Tribunal at Rs.1,55,000/- is reasonable. Thus, the compensation payable to the claimants is enhanced to Rs.33,33,692/- and if the amount already awarded by the Tribunal is deducted, the enhanced compensation works out to Rs. 15,25,956/-.

10. In view of the above, this Court finds that the appellant is entitled to the following amounts towards compensation:

Loss of Income	=	31,78,692/-
Loss of spousal consortium	=	40,000/-
Loss of parental consortium	=	80,000/-
Funeral Expenses	=	15,000/-
Loss of Estate	=	15,000/-
Transport Expenses	=	5,000/-
Total	=	33,33,692/-

11. The counsel submits that the Tribunal had erroneously adopted 10% towards future prospect instead of 15%. Therefore, the Court fee was paid for the appeal valued at 14,10,000/-. The counsel therefore seeks permission of this Court to pay the balance Court fee for the difference of sum of Rs. 1,19,956/-.

12. The appellant is directed to pay the Court fee for the balance sum of Rs.1,19,956/-. It is further directed that apportionment of compensation would be as follows:

The first appellant is entitled to withdraw the accrued interest on the sum of Rs.23,33,692/- alone. The amount of

Rs.23,33,692/- shall be kept in fixed deposit yielding interest in any of the nationalised Bank and the first appellant is permitted to withdraw the monthly interest from the said amount. The appellants 2 and 3 would be entitled to Rs. 5,00,000/- each along with accrued interest and the appellants 2 and 3 are permitted to withdraw the said Rs. 5,00,000/- along with accrued interest.

13. The Civil Miscellaneous Appeal is allowed. No costs.

13.12.2022

Index : Yes / No
Internet : Yes / No

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To

1.The Motor Accidents Claims Tribunal/
Special District Judge (MACT),
Madurai.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

N.MALA, J

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