BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.09.2022

Pronounced on : 14.11.2022

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.155 of 2022
and
C.M.P.(MD)Nos.1381 & 6822 of 2022

The Divisional Manager,
M/s.The Oriental Insurance Company Ltd.,
Motor Third Party HUB,
No.16A, North Veli Street,
(KJR Complex),
Madurai – 625 001.

...Appellant/3rd Respondent

Vs.

1. Ramar
2. Lakshmi
3. Kaleeswaran ...Respondents 1 to 3/Petitioners 1 to 3
4. Pandi
5. Sengol Anbarasu ...Respondents 4 & 5/Respondents 1&2
   (Respondents 4 and 5
   given up)

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the order of the Motor Accident

Claims Tribunal cum Principal District Judge, Ramanathapuram made in M.C.O.P.No.17 of 2020 dated 16.03.2021 and allow the appeal with costs.

For Appellant	: Mr.C.Jawahar Ravindran
For Respondents	: Mr.K.Kumaravel for R1 to R3
	R4 & R5 – Given up

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.17 of 2020 dated 16.03.2021 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Ramanathapuram.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.27,92,000/- with interest at 7.5% per annum and costs to the second respondent/second claimant for the death of one Vallarasu, who died consequent to an accident occurred on 07.11.2019, challenged the quantum of compensation awarded at by the Tribunal.

3. It is pertinent to note that the appellant/Insurer has not challenged the finding of the Tribunal with respect to the negligence

aspect and the challenge is only with respect to the quantum of award granted by the Tribunal.

4. During enquiry, the respondents 1 to 3/claimants have examined the first respondent/first claimant Ramar as P.W.1 and two other witnesses Thiru.Maheswaran and Thiru.Ilangovan as P.W.2 and P.W.3 respectively and exhibited 20 documents as Ex.P.1 to Ex.P.20. The respondents 4 & 5/respondents 1 & 2 had remained ex-parte before the Tribunal and that they were given up in the appeal. The appellant/Insurer has adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award dated 16.03.2021 directing the appellant/ Insurer and the respondents 4 & 5/respondents 1 & 2 are jointly and severely liable to pay compensation of Rs.27,92,000/- with interest at 7.5% per annum and costs to the second respondent/second claimant and dismissed the claim petition as against the respondents 1 and 3/claimants 1 and 3. Aggrieved by the said award, the appellant/Insurer has now come forward with the present appeal.

6. The points that arise for consideration are :

(i) Whether the Tribunal erred in fixing the monthly income of the deceased at Rs.18,000/-, despite showing that the deceased has not even completed Bachelor of Engineering (BE) course and the respondents 1 to 3/claimants have not produced the mark statement or Bachelor of Engineering (BE) degree certificate or any other documents to prove the avocation and income of the deceased?

(ii) Whether the quantum of compensation arrived at by the Tribunal is just and proper and is in accordance with law?

Point Nos.(i) and (ii) :

7. The case of the respondents 1 to 3/claimants is that the deceased had studied B.E. Mechanical Engineering at Pandian Saraswathi Yadav Engineering College, Thirumansolai, Sivagangai District and that after completion of Engineering course, he has been working as a Supervisor in Vishwa Engineering Works at C.K.Mangalam, Thiruvadanai and was getting monthly salary at Rs.20,000/-.

8. The learned counsel appearing for the appellant/Insurer would contend that the Tribunal has failed to note that the deceased has not

even completed Bachelor of Engineering (BE) degree course, that the respondents 1 to 3/claimants have not even produced the mark statement or Bachelor of Engineering (BE) degree certificate to show that the deceased had completed Bachelor of Engineering (BE) course, that the Tribunal has excessively fixed the monthly income at Rs.18,000/-, that the Tribunal has also failed to notice that the respondents 1 to 3/claimants have not produced any documents to show the avocation and income of the deceased, that the Tribunal has excessively awarded Rs.27,22,000/- on the head of loss of income and total compensation at Rs.27,92,000/- and that therefore, the compensation awarded is liable to be interfered with.

9. The respondents 1 to 3/claimants have produced the transfer certificate issued by Pandian Saraswathi Yadav Engineering College to the deceased dated 16.04.2019 under Ex.P.13 and the course completion certificate issued by the Principal of the said college dated 16.04.2019 under Ex.P.14 and it is evident from the said documents that the deceased had joined in the said college on 24.07.2015 and completed Mechanical Engineering course in 2019.

10. As rightly pointed out by the learned counsel appearing for the respondents 1 to 3/claimants, it is pertinent to notice that the college

authorities have certified the conduct and character of the deceased as Good, in both, the transfer certificate as well as in the course completion certificate.

11. The Tribunal, after considering the evidence adduced, has specifically observed that the respondents 1 to 3/claimants have not produced any certificate to show that the deceased had passed Bachelor of Engineering (BE) course.

12. As already pointed out, the respondents 1 to 3/claimants have alleged in the petition that the deceased, after completion of Bachelor of Engineering (BE) course, has been working as a Supervisor in Vishwa Engineering Works for the period of two years and was getting monthly salary at Rs.20,000/-. But the respondents 1 to 3/claimants have examined one Ilangovan as P.W.3 and he would say that subsequently the deceased was engaged in his Snehavalli Building Works and that the deceased was paid Rs.700/- per day along with batta at Rs.50/- per day.

13. Admittedly, P.W.3 has not produced any records or documents to show that the deceased was working in his concern and was getting salary.

14. The Tribunal, on considering the evidence adduced, has specifically observed that the contention of the respondents 1 to 3/ claimants that the deceased was working in P.W.3's concern cannot be believed, but considering the educational records and taking note of the judgment of this Court in ***Oriental Insurance Company Ltd., vs. Manimekalai and others*** reported in ***2016 (2) TN MAC 109 (DB)*** and ***R.Mallika vs. A.Babu*** reported in ***2015 (2) TN MAC 171*** and also taking note of the date of accident, place of living and economic scenario, has fixed the monthly income of the deceased at Rs.18,000/-.

15. The main contention of the appellant/Insurer is that the Tribunal, without any justification and without any proper evidence or material, has fixed the monthly income of the deceased at Rs.18,000/- and the same is liable to be reduced.

16. The learned counsel appearing for the respondents 1 to 3/ claimants would submit that taking note of the judgment of this Court and also the fact that the deceased has already completed Bachelor of Engineering (BE) course and was working in Engineering Works, the Tribunal has rightly fixed the monthly income at Rs.18,000/- and as such, there is nothing to interfere with the findings of the Tribunal.

17. The learned counsel appearing for the respondents 1 to 3/ claimants has relied on the judgment of this Court in ***Oriental Insurance Co. Ltd., vs. Sushma Jitaraja and others*** reported in ***2018 (2) TN MAC 308 (DB),*** wherein, considering the fact that the deceased was a meritorious student and taking note of the fact that a co-student and a team mate of the deceased was employed in Hyundai Company and was getting Rs.36,000/- per month, the Tribunal has fixed the monthly income of the deceased as Rs.36,000/- and the Division Bench of this Court has confirmed the said finding. In the said decision case, the deceased was aged 21 years and he was studying III year B.E. at the time of accident.

18. In ***Managing Director, Metropolitan Transport Corporation Ltd., Chennai vs. K.Murugesan and another*** reported in ***2014 (1) TN MAC 370 (DB),*** the Tribunal, considering the facts that the deceased has already completed Engineering graduate course and was offered an appointment in one of the I.T. majors Wipro Technologies, has fixed the monthly income of the deceased at Rs.20,000/-. Considering the evidence available, the Division Bench of this Court has confirmed the finding of the Tribunal fixing the monthly income at Rs.20,000/-. In that case, the accident was occurred on 15.09.2008.

19. The Hon'ble Supreme Court in ***Basanti Devi and another vs. Divisional Manager, New India Assurance Co. Ltd. and others*** reported in ***2022 (1) TN MAC 148 (SC),*** wherein, the Tribunal, considering the facts that the deceased was aged 25 years at the time of accident and was Bachelor of Engineering in Computer Technology, has fixed the monthly income of the deceased at Rs.20,000/- and the High Court, while considering the appeal, by holding that there was no supporting evidence laid, has reduced the compensation from Rs.30,54,000/- to Rs.15,82,000/-. When the said judgment was challenged before the Hon'ble Apex Court, the Hon'ble Supreme Court, considering the potentiality to earn as the deceased was Bachelor of Engineering in Computer Technology, has held that his income can safely be assessed atleast at Rs.20,000/- per month and confirmed the award at Rs.30,54,000/- as fixed by the Tribunal.

20. Considering the above and also the facts that the deceased has completed Bachelor of Engineering (BE) course and that he was certified as a Good student and also considering the potentiality to earn and taking note of the present economic scenario, fixing the monthly income at Rs.18,000/- by the Tribunal cannot be found fault with and the same is very much reasonable and cannot said to be excessive.

21. The Tribunal has rightly added 40% towards future prospects as per the judgment of the Hon'ble Supreme Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others*** reported in ***2017 ACJ 2700*** and after deducting 50% towards the personal expenses of the deceased and by rightly applying Multiplier 18, has arrived at Rs.27,22,000/- towards compensation under the head of loss of dependency.

22. As already pointed out, the Tribunal, by dismissing the petition so far as the respondents 1 and 3/claimants 1 and 3 are concerned, has granted Rs.40,000/- towards filial consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate under the conventional heads and arrived at Rs.27,92,000/- as total compensation.

23. The appellant/Insurer has not disputed the other conclusions and the amounts granted under the conventional heads and towards consortium. The appellant/Insurer has not canvassed any other reason or ground to impugned the said award. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.

24. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 16.03.2021 passed in M.C.O.P.No.17 of 2020 on the file

of the Motor Accident Claims Tribunal / Principal District Court, Ramanathapuram is confirmed. The appellant/Insurer is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit being made, the second respondent/second claimant is permitted to withdraw the said amount, with accrued interests and costs. Consequently, connected Miscellaneous Petitions are closed. No costs.

14.11.2022

Index :yes/No
Internet:yes/No
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To

1. The Motor Accident Claims Tribunal /
   Principal District Court, Ramanathapuram.

K.MURALI SHANKAR,J.

csm

Pre-Delivery order made in

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