BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 17.10.2022

Delivered On : 04.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.672 of 2016

The United India Insurance Company Limited,
Rep by Tis Divisional Manager,
Having Office at No.37/2, Mattappa Street,
Tenkasi Taluk and Kaspa, Tenkasi. .. Appellant /3rd Respondent

Vs.

1.Meena
2.Minor Sri. Siva Ganesh
(Rep Through His Mother, Next
Friend and guardian R1)
3.R.Thankaraj
4.T.Selvi ... Respondents 1 to 4 / Petitioners
5.Selvamarimuthu ... 5th Respondent / 1st Respondent
6.Manimaran ... 6th Respondent / 2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 05.11.2014, made in M.C.O.P.No.222 of 2013, on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi.

For Appellant : Mr.A.S.Mathialagan

For Respondents : Mr.S.A.Ganapathy Raman for R1 to R4

: No appearance for R6

: R5-Dismissed, vide Court order, dated 04.10.2022

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 05.11.2014, made in M.C.O.P.No.222 of 2013, on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi. The appellant herein is the third respondent, the respondents 1 to 4 herein are the claimants, the fifth respondent herein is the first respondent and the sixth respondent herein is the second respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition, in M.C.O.P.No.222 of 2013, is as follows:

On 07.02.2013, when the deceased-Vijayakumar was travelling in a two wheeler as a pillion rider that belonged to his friend-Dhakshnamurthy, bearing Registration No.TN-02-AA-1616 on the Tenkasi-Tirunelveli main Road, in a slow and cautious manner, a mini bus, bearing Registration No.TN-24-X-1147 came from the behind in a rash and negligent manner, hit against the two wheeler. The deceased sustained injuries and then he died at Madurai Rajaji Medical College Hospital. The deceased was working as a mechanic and was earning Rs.15,000/- per month. The petitioners are his dependants and they claimed a sum of Rs.20,00,000/- as compensation.

3. The first and second respondents were set as exparte.

4. Brief substance of the counter filed by the third respondent, in M.C.O.P.No.222 of 2013, is as follows:

The rider of the two wheeler, without minding the vehicles coming behind, suddenly turned the vehicle on the right side and he invited the accident and that the rider of the two wheeler was not having valid driving licence at the time of accident. The third respondent is not liable to pay compensation. The petitioners have to prove the age and income of the deceased.

5. On the side of the claimants, 1 witness was examined and 7 documents were marked. On the side of the respondents, no witness was examined and no document was marked. After considering both sides, the Tribunal awarded a sum of Rs.18,21,000/- as compensation to the claimants.

6. Against the award, the third respondent / appellant has filed this appeal on the following grounds:-

The Tribunal failed to fix contributory negligence, considering that the deceased fell into the rear side of the mini bus and the back tyre ran over him. The Tribunal failed to consider the manner of accident mentioned in the F.I.R and charge sheet, which is contrary. Infact the deceased was responsible for the accident. The evidence of P.W.1 is contrary to the FIR and charge sheet. The Tribunal is wrong in fixing the monthly income as Rs.9,000/-. The Tribunal is wrong in awarding Rs.4,00,000/- towards loss of love and affection and in awarding Rs.12,96,000/- towards loss of income.

7. On the side of the appellant, it is stated that in the F.I.R, it is clearly stated that only the rear wheel of the mini lorry ran over the deceased. On the side of the respondents / claimants, it is stated that the mini lorry hit the two wheeler from behind and the negligence is only on the side of the driver of mini lorry.

8. Ex.P1-F.I.R was registered against the driver of the mini lorry. Ex.P4 was the copy of observation mahazer, Ex.P5 was the sketch, Ex.P6 was the charge sheet, Ex.P7 was the copy of insurance policy. The respondent has not chosen to examine any witness or mark any document. Merely because, the rear tyre ran over the deceased and the appellant cannot claim that the negligence was not on the part of the driver of the mini lorry. From the evidence of P.W.1 and Ex.P1, it is decided that the negligence is only on the part of the driver of the mini lorry.

9. From Ex.P3-copy of M.V.I report, the Tribunal has held that the vehicle was having fitness certificate and that the driver was having valid driving licence. It is seen that there is no violation of policy condition and the policy was in force at the time of accident.

10. On the side of the appellant, it is stated that the Tribunal fixed the notional income as Rs.6,000/- per month and added 50% towards future prospects and deducted 25% for the own expenses, which are wrong. Only 40% to be added as future prospects.

11. On the side of the respondents / claimants, it is stated that the deceased was a mechanic and fixing Rs.6,000/- per month is very low and Rs.6,500/- to be

fixed as notional income. It is further stated that though the Tribunal fixed the fair compensation and even if cross objection is not filed, this Court has power to enhance the award amount.

12. On the side of the respondents / claimants, a judgment of this Court in CMA.(MD)No.1373 of 2013 (A.Mathumathi and others V. K.Annamalai and another), dated 22.02.2021 is cited, wherein, only 1/3rd of the income has deducted and the notional income to the year 2014-2015 was Rs.6,500/-.

13. As per the dictum of the Hon'ble Supreme Court reported in ***2014-1-TNMAC-459 (Syed Sadiq V. United India Insurance Company Ltd.,),*** the notional income of the deceased as Rs.6,500/-. After deducting 1/4th for his own expenses, the monthly income is Rs.4,875/- and including 40% towards future prospects, the monthly income is calculated as Rs.6,825/-. The age of the deceased at the time of accident was 31 years, hence, multiplier '16' is applicable. By applying multiplier '16', the loss of income is calculated as Rs.13,10,400/- (Rs.6,825/- X 12 X 16 = Rs.13,10,400/-).

14. The Tribunal has awarded Rs.4,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses. As per the dictum of the Hon'ble Supreme Court in Pranay Sethi's case, the claimants are entitled to Rs.70,000/- towards conventional charges. Including the conventional charges, the claimants are entitled to **Rs.13,80,400/-** as compensation.

15. The total compensation is calculated as follows:-

Loss of income	:	Rs.13,10,400/-
Conventional charges	:	Rs. 70,000/-
		....
Total compensation	:	**Rs.13,80,400/-**
		....

16. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.18,21,000/- to **Rs.13,80,400/-.**

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of **Rs.13,80,400/-** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Excess amount, if any, shall be refunded to the appellant / Insurance Company.**

(iii) On such deposit being made by the appellant / Insurance Company, the respondents 1, 3 & 4 / major claimants are permitted to withdraw their share amount as apportioned by the Tribunal with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants are not entitled for interest for the default period, if there is any.

(iv) The Tribunal is directed to deposit the share of the minor claimant / second respondent herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till he attains majority. The first respondent herein, who is the mother and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The claimants are not entitled for interest for the default period, if there is any.

04.11.2022

Index : Yes/No
Internet : Yes/No
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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 Principal Sub Judge,
Motor Accident Claims Tribunal,
Tenkasi.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.672 of 2016

04.11.2022