



C.M.A.(MD)No.1038 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

C.M.A.(MD)No.1038 of 2018 and
C.M.P.(MD)Nos.10827 of 2018 and 9315 of 2019

The New India Assurance Company Limited,
Represented by its Branch Manager,
Office No.182/22/1, S.N.High Road,
Tirunelveli.

.. Appellant/2nd Respondent

Vs.

1.Sindhu Bairavi

2.Minor Pappu Prajesh

3.Minor Prabash.

4.Muthulakshmi

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5.Thalaivan

.. 1st to 5th Respondents/Petitioners

6.Soundarapandian

.. 6th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Claims Tribunal in M.C.O.P.No.351 of 2016 dated 28.02.2018, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Tirunelveli.

For Appellant : Mr.J.S.Murali

For Respondents 1 to 5 : Mr.P.Samuel Gunasingh

JUDGMENT

J.NISHA BANU, J.

and

N.ANAND VENKATESH, J.

The Insurance Company has filed this appeal against the award of the Motor Accident Claims Tribunal (MACT)/Special Subordinate Court, Tirunelveli, made in M.C.O.P.No.351 of 2016, dated 28.02.2018.



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2.The respondents 1 to 5 filed a claim petition before the Tribunal seeking for compensation on the ground that one Manikandan, who is the husband of the first respondent, father of the second and third respondents and the son of the fourth and fifth respondents, died in a motor accident which took place on 11.01.2016 near Thathanoothu service road on the Tirunelveli-Madurai four lane Highway.

3. The above said Manikandan, who was driving the motorcycle in the service road was hit by the two wheeler belonging to the sixth respondent and which was insured with the appellant insurance company. A criminal case was also registered in Crime No.12 of 2016 before the concerned police station, for offences under Section 279 and 338 IPC.

4. The Tribunal, on considering the facts and circumstances of the case and after appreciating the evidence available on record, found that the offending vehicle was driven by the son of the sixth respondent in a rash and negligent manner and the entire negligence was attributed to the



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offending vehicle. While fixing the compensation, the Tribunal took into consideration the fact that the deceased was working as an Assistant Professor in an Engineering College at Tirunelveli. The Tribunal took into consideration the salary certificate marked as Ex.P7 and fixed the total compensation at Rs.53,95,000/- payable with 7.5% from the date of petition till the actual payment. The Tribunal found that the son of the sixth respondent did not possess any driving license and hence applied the doctrine of pay and recovery and directed the insurance company to pay the compensation and recover the same from the sixth respondent. Aggrieved by the same, the present appeal has been filed before this Court by the insurance company.

5. Heard Mr.J.S.Murali, learned counsel appearing for the appellant insurance company and Mr.P.Samuel Gunasingh, learned counsel appearing for the respondents 1 to 5.



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6. The learned counsel for the insurance company attacked the award passed by the Tribunal both on the ground of liability and quantum. Insofar as the liability is concerned, the learned counsel submitted that the son of the sixth respondent, who drove the offending vehicle, admittedly did not possess a driving licence. The same is clear from the evidence of R.W-2. Hence, the learned counsel submitted that the liability cannot be fastened against the insurance company.

7. Insofar as the quantum is concerned, the learned counsel submitted that the Tribunal did not deduct the income tax both from the loss of income as well as the future prospects and hence contended that the quantum fixed by the Tribunal requires the interference of this Court.

8. Insofar as the issue of liability is concerned, it is clear from the evidence of R.W-2 that he did not possess a driving licence when he drove the two wheeler and caused the accident. The law on this issue is no longer *res integra*. The Apex Court in ***Shamanna and another v. The***



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Divisional Manager, Oriental Insurance Co. Ltd. and Ors., reported in **2018 (9) SCC 650** and in **Parminder Singh vs. New India Assurance Co. Ltd. & Ors.** reported in **2019 (7) SCC 217** has categorically held that insofar as the payment of compensation to third party is concerned, even if the driver of the offending vehicle does not possess a valid licence, the principle of pay and recovery can be ordered to direct the insurance company to pay the victim, and then recover the amount from the owner of the offending vehicle. In view of the same, it cannot be held that the insurance company can be relieved from their liability to pay the compensation to the claimants eventhough the driver of the offending vehicle did not possess the driving licence. But, it goes without saying that the insurance company can thereafter recover the compensation amount from the owner of the offending vehicle.

9. Insofar as the negligence is concerned, the Tribunal, after considering the entire materials available on record, came to a categorical conclusion that the accident had taken place only due to the rash and



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negligent driving on the part of the son of the sixth respondent and hence the negligence was fixed as against the offending vehicle. This Court does not find any ground to interfere with the finding of the Tribunal in this regard.

10. Insofar as the quantum of compensation is concerned, the Tribunal was perfectly right in acting upon Ex.P7 and Ex.P8 and the correct multiplier has also been adopted. Insofar as the future prospects is concerned, the Tribunal has increased the income by 40% and accordingly determined the compensation. Neither from the loss of income nor from the future prospects, the income tax has not been deducted. What was deducted from the loss of income is the professional tax alone.

11. The age of the deceased at the time of accident was 30 years. Hence, as per the judgment of the Apex Court in ***Sarla Verma & Ors. v. Delhi Transport Corp. & Another*** reported in 2009 (6) SCC 121, it was held



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in para 24 as follows:

“24. In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words ‘actual salary’ should be read as ‘actual salary less tax’]. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.”



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12. It is clear from the above that insofar as the deceased, who has a permanent job and is below 40 years, as a rule on thumb, 50% of the actual salary must be added towards future prospects. However, the Tribunal has only added 40%. To that extent there is a considerable reduction of 10% while fixing the income towards future prospects. In view of the same, the income tax deduction, which was not done by the Tribunal, can be set off with the 10% reduction made by the Tribunal while calculating the future prospects. Thereby, whatever award amount has been determined by the Tribunal can be maintained without interfering with the same.

13. In view of the above discussion, this Court holds that the award passed by the Tribunal cannot be interfered either on the ground of liability or on the ground of quantum. It goes without saying that by virtue of the judgment of the Apex Court in *Oriental Insurance Co. Ltd., v. Shri Nanjappan and others* reported in *2004 (1) TNMAC (SC) 211*, it is not necessary for the appellant insurance company to file a separate suit



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and they can straight away initiate proceedings before the executing Court to recover the compensation paid by them from the owner of the offending vehicle.

14. In the result, this Civil Miscellaneous Appeal stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed. By virtue of an interim order passed by this Court on 01.11.2018, the appellant insurance company was directed to deposit 50% of the award amount with accrued interest within six (6) weeks and it is reported that the said order has been complied with. Since the appeal is dismissed, the appellant insurance company is directed to deposit the balance amount along with the accrued interest within a period of six (6) weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the same in the manner as directed by the Tribunal.

[J.N.B., J.] [N.A.V., J.]
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**Judgment made in
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