THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.K.GOVINDARAJAN THILAKAVADI

C.M.A.No.1760 of 2022
and
C.M.P.No.12766 of 2022

The Branch Manager,
Reliance General Insurance Company Ltd.,
141/71, 1st Floor, Geejay Arcade, T.V.Samy Road (West),
R.S.Puram, Coimbatore – 641 002. ...Appellant

Vs.

1.Gomathi
2.T.Prashanth rep. By mother & n.f.Gomathi
3.T.Sudhakar
Valliammal (died)

4.A.Anthony Vinibert (driver)
5.G.Selvamani (owner) ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 02.09.2021 passed in M.C.O.P.No.2251 of 2016 by the Motor Accident Claims Tribunal, District Court, Tiruppur.

For Appellant : Mr.C.Bhuvanasundari
For Respondents : Mr.N.Vignesh for R1 to R3
R4 & R5 – served- No appearance

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Insurance Company is on appeal, challenging the quantum of compensation awarded at Rs.21,62,560/- for the death of one Thangavelu in a road accident that occurred on 14.02.2016.

2.The claimants, who are the wife, children and mother of the deceased claimed that the deceased Thangavelu was riding his motor cycle bearing registration No.TN-42-9424 on Trichy to Coimbatore road and when he was proceeding from West to East, the Car, Mahindra Scorpio SUV bearing Registration No.TN-72-AX-0248 driven by its driver in a rash and negligement manner came from behind and dashed against him. As a result of the impact, the said Thangavelu suffered grevious injuries, which resulted in his death. Contending that it is the negligence of the car driver, which caused the death, the claimants sought for a compensation of Rs.30,00,000/-

on the premise that the deceased was earning about Rs.25,000/- per month by doing agriculture and powerloom business.

3.The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimants. There was some negligence on the part of the deceased also, which contributed to the accident. The quantum of compensation is also termed as highly excessive. Before the Tribunal, the 1st claimant was examined as P.W.1 and one Ravikumar / eye-witness was examined as P.W.2. Exs.P1 to P14 were marked. One Saravanabhavan was examined as R.W.1 and Exs.R1 to R4 were marked.

4.The Tribunal, on consideration of the evidence of P.W.2 and the contents of the First Information Report concluded that the accident occurred due to the rash and negligent driving of the Car. On the quantum, the Tribunal took the income of the deceased at Rs.3,00,000/- based on the Ex.P5, income tax return for the accounting year 2014-2015, which was filed on 15.11.2014. The Tribunal adopted 15% towards future prospects and applied a deduction of 1/3rd towards personal expenses and arrived at the total loss of dependency at Rs.20,41,506/-. The Tribunal awarded a sum of Rs.51,054/- towards medical expenses, Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses. In all, the Tribunal awarded a sum of Rs.21,62,560/- as compensation.

5.Mrs.C.Bhuvanasundari, learned counsel appearing for the appellant Insurance Company would vehemently contend that the Tribunal ought not to have accepted the income tax return alone on the basis of the income, in the absence of any other supporting evidence. She would also point out that though it was claimed that the deceased was doing agriculture, he did not have any land in his name and the land stood in the name of his mother. The learned counsel for the Insurance Company would also point out that not even a shred of paper has been filed to show that the deceased was doing business.

6.Contending contra, Mr.N.Vignesh, learned counsel appearing for the claimants would submit that the income tax return could be the best evidence of income as it has been filed more than a year before the accident. He would also point out that the income tax return itself shows the break up of the income and therefore, the same cannot be disbelieved. The question of negligence is not canvassed very seriously. We have heard the submission of the learned counsel for the parties on the quantum.

7.No doubt, except the income tax return, Ex.P5, no other document has been filed to show the income of the deceased. We have no reason to disbelieve the Ex.P5. Normally, income tax return is taken as a reliable proof of the income of the deceased person, since no one would declare a high income and pay high tax in anticipation of death. Therefore, we are unable to fault the Tribunal for having accepted the income tax return on the face of it and fix the income at Rs.3,00,000/-.

8.The Tribunal, has however adopted a future prospects at 15% as against 10% suggested by the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **(2017) 16 SCC 680.** Therefore, it is necessary to re-work the compensation, adopting future prospects at 10%. If the yearly income is at Rs.3,00,000/-, the future prospects would be Rs.30,000/-. If we deduct income tax of 5% on Rs.80,000/- i.e.,Rs.4000/- from Rs.3,30,000/-, the total loss of income would be Rs.3,26,000/-. If we deduct 1/3rd towards the personal expenses of the deceased, the loss of dependency would be Rs.2,17,333/-. The deceased having been aged 59 years, the multiplier would be 9, so the total loss of dependency would be (Rs.2,17,333 X 9) = Rs.19,55,997/-. The compensation granted under the other heads are confirmed.

9.The Tribunal has not granted any amount towards loss of love and affection for the two children, if we grant Rs.40,000/- each towards loss of love and affection for the two children, the total compensation would be as follows:-

Heads	*Amounts*
Loss of dependency	Rs.19,56,000/-
Medical expenses	Rs.51,054/-
Loss of Estate	Rs.15,000/-
Loss of Consortium	Rs.40,000/-
Funeral Expenses	Rs.15,000/-
Loss of Love and affection	Rs.80,000/-
Total	**Rs.21,57,054/-**
Rounded off to	**Rs.21,57,000/-.**

10.In fine, this Civil Miscellaneous Appeal is partly allowed. The total compensation is fixed at Rs.21,57,000/-. The compensation is apportioned between the claimants as follows:-

i)The 1st claimant would be entitled to Rs.13,57,000/- with proportionate interest.

ii)The 2nd claimant would be entitled to Rs.7,00,000/- with proportionate interest.

iii)The 3rd claimant would be entitled to Rs1,00,000/- with proportionate interest.

11.The compensation awarded towards the share of the 2nd claimant, who is a special child will be deposited in a Nationalized Bank for a period of five years intially with a clause for auto renewal and the mother / 1st claimant is permitted to withdraw quarterly interest for the maintenance.

12.This Civil Miscellaneous Appeal is therefore, partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) (K.G.T.,J.)
10.02.2023

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Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

To:-

The Motor Accident Claims Tribunal,
Principal District Court,
Tiruppur.

R.SUBRAMANIAN, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

KKN

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