THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

**C.M.A.No.4107 of 2019**
**and**
**C.M.P.No.23187 of 2019**

New India Assurance Co., Ltd.,
4, Muthulinga Street,
Chennai-45. ...Appellant

Vs.

1.T.Shenbaga Dhanam

2.T.Arun Krishna

3.B.Manikandan

4.S.Irissaimmalle @ Savithri ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.2474 of 2015 on 06.03.2019 on the file of the learned Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellant : Mr.J.Chandran

For Respondents : Mrs.G.Sasee Dhevi for R1 & R2
Mr.S.P.Yuvaraj for R3
R4 - Died

**JUDGMENT**

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

The Insurance Company is on appeal. Challenge is to the award of a sum of Rs.55,00,000/- for the death of one S.Thirumurugan in a motor accident that occurred on 30.09.2014 at about 6.30 a.m. The claimants, who are the wife and son of the deceased sought for a compensation of Rs.54,00,000/-, contending that while the said Thirumurugan was walking along with the 1st petitioner, who is his wife, on Perumbakkam main road near St.Johns School, the van belonging to the 1st respondent bearing Registration No.TN-19-K-1433 driven in a rash and negligent manner by its driver, dashed against them resulting in grievous injuries. The said Thirumurugan was treated at the Hospital and died on the same day. A sum of Rs.54,00,000/- claimed as compensation and the quantum was sought to be justified contending that the said Thirumurugan was earning about Rs.78,000/- monthly as a Chief Manager in Indian Bank.

2.The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants. The claimants were put to strict proof of age, income and dependency.

3. At trial, before the Tribunal, the 1st petitioner was examined as P.W.1 and one Nambi, Chief Manager of Indian Bank was examined as P.W.2. Exs.P1 to P9 were marked on the side of the claimants. No evidence was let in by the Insurance Company. On the strength of the First Information Report / Ex.P1, the Tribunal concluded that the accident had occurred due to the negligence on the part of the driver of the van. The fact that there was no contra evidence was also noticed by the Tribunal in coming to such conclusion.

4. On the quantum, the Tribunal found, on evidence, that the total emoluments of the deceased worked to Rs.92,534.57/- per month. It however, considered the fact that the income tax is also payable and took the monthly income at Rs.74,000/-. It applied a multiplier of 9 and deducted 1/3rd towards his personal expenses. Thus, the Tribunal arrived

at the loss of dependency at Rs.53,28,000/-. It also granted a sum of Rs.15,000/- each towards loss of estate and funeral expenses, Rs.40,000/- towards loss of consortium and Rs.1,02,000/- towards loss of love and affection. The total compensation, was fixed at Rs.55,00,000/-. While granting interest at 7.5%, the Tribunal apportioned the compensation at 50% to the wife / the 1st petitioner, 35% to the 2nd petitioner / son and 15% to the 3rd respondent in the claim petition namely, mother of the deceased. Aggrieved, the Insurance Company is on appeal.

5.We have heard Mr.J.Chandran, learned counsel appearing for the appellant / Insurance Company and Mrs.G.Sasee Dhevi, learned counsel appearing for the respondents / claimants and Mr.S.P.Yuvaraj, learned counsel appearing for the 3rd respondent / owner of the vehicle.

6.Mr.J.Chandran, learned counsel appearing for the Insurance Company would submit that the Tribunal erred in coming to the conclusion that the accident occurred due to the negligence of the driver of the Van. He would also submit that the Tribunal ought to have applied split multiplier, since the deceased was aged about 57 years.

7.Contending contra, Mrs.G.Sasee Dhevi, learned counsel appearing for the respondents / claimants would submit that in the absence of any evidence on the side of the Insurance Company, the Insurance Company is precluded from arguing on the question of negligence. She would also point out that the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680*** has held split multiplier theory need not be applied. Therefore, both the contentions of the learned counsel for the Insurance Company should not be accepted, according to the learned counsel for the claimants. We have considered the rival submissions.

8.The First Information Report has been marked as Ex.P1. As per the First Information Report, the accident had occurred due to the rash and negligent driving of the driver of the Van. The victims are pedestrians, therefore, the question of attributing any contributory negligence is ruled out unless it is bone out by evidence that they had done something extraordinary and invited the accident. Therefore, we are unable to fault the Tribunal for having held that the accident occurred due to the negligence on the part of the driver of the van.

9.On the quantum also, we do not find any ground to interfere with the award of the Tribunal in as much as the only ground, on which, the learned counsel for the Insurance Company seeks to challenge the quantum of compensation is not available to it any more in view of the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and Others*** referre to supra. Hence, we see no reason to interfere with the award of the Tribunal. This Civil Miscellaneous Appeal therefore, fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.It is pointed out that the 4th respondent in the appeal, mother of the deceased had died on 31.03.2021. The Tribunal granted 15% of the compensation to her. Now that she is no more, her share of the compensation is apportioned to the son, who is the 2nd respondent in the appeal. Therefore, the claimants 1 & 2 namely, respondents 1 and 2 will take the compensation at 50% each.

11.It is stated that pursuant to the interim orders, the Insurance Company has deposited a sum of Rs.30,00,000/-. The balance amount with proportionate interest shall be deposited within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the claimants will be entitled to withdraw the entire amount.

**(R.S.M., J.)** **(N.S., J.)**
22.12.2023

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Nuetral Citation :No

To:-

The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.

**R.SUBRAMANIAN, J.**
**and**
**N.SENTHILKUMAR, J.**

KKN

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