IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. Nos. 1692 & 233 of 2021
and
C.M.P. No. 8960 of 2021

C.M.A. No. 1692 of 2021

M/s. United India Insurance Co. Ltd.,
Silingi Building, 4th Floor,
No.134, Greams Road, Chennai - 06. ... Appellant/ 2nd Respondent

Vs.

1. Shanthi
2. K. Varadharajan ... Respondents 1&2/ Petitioners
3. K. Perumal ... 3rd Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 26.11.2019 passed in M.C.O.P. No. 2625 of 2017 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr. S. Arunkumar

For RR 1 & 2 : K. Varadhakamaraj

For R3 : No Appearance

C.M.A. No. 233 of 2021

1. Shanthi

2. K. Varadharajan ... Appellants/ Petitioners

Vs.

1. K. Perumal

2. M/s. United India Insurance Co. Ltd.,
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai - 06. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 26.11.2019 passed in M.C.O.P. No. 2625 of 2017 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr. K. Varadhakamaraj

For R1 : No Appearance

For R2 : Mr. S. Arunkumar

JUDGMENT

These Civil Miscellaneous appeals have been filed by the insurance company and claimants challenging the Judgment and Decree passed in M.C.O.P. No. 2625 of 2017 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai. The insurance company has filed this appeal seeking reduction of compensation awarded by the Tribunal, whereas the claimants have filed this appeal seeking enhancement of the same.

2. For the sake of convenience, the parties are referred to herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. On 01.03.2017 at about 14:30 hours, the deceased Raghuraman was travelling as pillion rider in a motor cycle bearing Registration no. TN-07-CB-7351 proceeding from West to East at Thiru.Vi.Ka Estate Main road, near Sidco office, Guindy, Chennai, at that time a water tanker lorry bearing Registration No. TN-22-BU-1818, driven by its driver in a rash and

negligent manner, hit behind the motor cycle of the deceased and caused the accident. Due to the occurrence, the deceased Raghuraman sustained fatal injuries and died on the spot and F.I.R. was registered against the driver of the water tanker lorry bearing Registration No. TN-22-BU-1818 under section 279 & 304(A) of I.P.C. Due to loss of Raghuraman, the claimants, who are the parents of the deceased has filed a claim petition seeking compensation for a sum of Rs.80,00,000/-.

4. The first respondent is the owner of the water tank lorry bearing Registration No. TN-22-BU-1818 has not contested the claim and remained ex-parte.

5. The second respondent - insurance company has filed a counter and contended that the accident was happened only due to rash and negligent driving of the motorcyclist and the deceased. Further, contended that the offending vehicle was not insured with this respondent and the driver of the offending vehicle had no valid driving licence at the time of accident. The insurance company also disputed the age, occupation, monthly income of the deceased and contended that the amount claimed is

highly exorbitant, hence prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.10 were marked and on the side of the respondent no witness was examined and no exhibits were marked.

7. Based on the evidence placed on record, the Tribunal in point no.1, has held that the deceased Raghuraman was died due to the rash and negligent driving on the part of the driver of the water tanker lorry bearing Registration No. TN-22-BU-1818, which belongs to the first respondent. In point no.2, the Tribunal has held that the claimants, who are the mother and father of the deceased is entitled for compensation and the second respondent - insurance company is liable to pay the same. In point no.3, the Tribunal has quantified and granted compensation for a sum of Rs.23,88,000/- (Rupees Twenty Three Lakhs and Eighty Eight Thousand only) to the claimants.

8. Aggrieved over the award, the claimants have come forward with this appeal seeking enhancement of compensation and similarly, the second respondent - insurance company has also filed an appeal seeking

reduction of the compensation awarded by the Tribunal.

9. The learned counsel appearing for the claimants has submitted that the Tribunal has not properly appreciated the evidence placed on record and more particularly the Ex.P.5, the Income Tax Returns of the assessment year 2015-16 and 2016-17 filed by the deceased, whereas the Tribunal has held that the sources of income was not properly proved by the claimants and followed the method of fixing notional income to the deceased and awarded compensation. Further prays to award compensation based on the income stated in the Ex.P.5, the Income Tax Returns for the assessment year 2016-16 and 2016-17.

10. Mr. S. Arunkumar, learned counsel appearing for the insurance company, has submitted that in this case, the claimants have not properly proved the income of the deceased as stated in the Ex.P.5 and also based on the admission that the deceased has only involved in assisting his father, who is a grocery shop keeper. There is no proper documents to show the avocation of the deceased and his income, hence the Tribunal has rightly rejected the Ex.P.5, the Income Tax Returns and adopted notional income for the deceased in awarding compensation. He also further contended that

the compensation awarded by the Tribunal under various heads is on the higher side, hence prays to modify the same.

11. Heard the submissions made on both sides and perused the materials available on record:

12. The major contention put forth by the claimants is that the Tribunal has not properly appreciated the Ex.P.5, Income Tax Returns in fixing monthly income of the deceased. The Ex.P.5, the Income Tax Returns shows that the total income of the deceased for the assessment year 2015-16 is Rs.2,81,263/- and for the year 2016-17 is Rs.2,87,980/- and these returns were also filed along with the balance sheet and the calculation sheet on the total income of the deceased. It also shows that the deceased earned income through interest and commission and had no other sources of income. The claimants have not produced any evidence to show on what basis, the deceased has earned commission and interests. Before the Tribunal, the P.W.1 - father of the deceased has deposed that the deceased was earning a income of Rs.70,000/- per month, by running a super market in the name of 'Poomagal', this oral evidence has not been corroborated with any evidence and it contradicts with the statement in the Income Tax

Returns. In the cross examination, it is also elicited that the licence to run the Super market named 'Poomagal' stands in the name of the second claimant, who is the father of the deceased and he is running the said provisional store. It is also submitted that the deceased was a M.B.A. graduate and assisting his father in the said provisional store. It is also admitted by him that his deceased son was earning income by way of interest and commission, but this evidence is not sufficient to corroborate the income details stated in the Income Tax Returns.

13. The judgment of this Court in ***National Insurance Company Ltd., vs K. Ramya and Others [2017 (2) TN MAC 522 (DB)]*** has considered the quantum of compensation to be awarded to the deceased, who was a partner in a family business firm. Apex Court by considering the previous judgments in ***National Insurance Company Ltd., vs Sujatha Rajalakshmi [2011 (1) TN MAC 34 (DB)]*** has held in paragraph Nos.17 and 18 as follows:

> *"In our considered opinion, the said piece of evidence of PW1 undoubtedly goes to prove that the PW1 was earning more income by continuing the business of his father. Under such circumstances we do not hesitate to hold that there is no Loss of Income to the family of the*

Respondents 1 to 3/ Claimants on account of the death of the victim, since the source of income would continue to exist even after the death of the victim. In this regard, reference could be placed in the Judgements relied upon by the learned Counsel appearing for the Appellant. In M.G. Service, Madras and another v. V.S. Andalammal and others, 1982 ACJ (Supp.) 408, its had held as follows:

"..... The income from agriculture, house property and from the investments cannot be taken into account for determining the Loss of Income, for those are sources which still continued to exist even after the death of Sanjeevi Mudaliar. Therefore, there cannot be said to be any loss from those three sources".

18. However, its is to be reiterated that the income should be determined with reference to facts of each case for example there may be cases where a family man is well established and reputed and having a large income, with a small capital and death of one of the Family Members (a Partner) may not make any difference in the income. In such case, the entire income may not be the income and appropriate further deductions will have to be made to ascertain the real contribution of the deceased and value thereof."

14. In this case, the real contribution of the deceased would be the deciding factor in fixing his income for awarding compensation. Admittedly, the deceased has not filed the Income Tax returns in the name of the family or in the name of the provisional store. He has filed the Income Tax Returns in his individual capacity stating that he was earning

income from interest and commission. On perusal of balance sheet, it shows that the deceased is having huge amount as capital and cash loans to sundry-debtors. This shows even in the absence of deceased, the family would receive the interest from the debtors, however, there is no clarity in the Income Tax Returns filed by the deceased, in the commission earned by him and his sources of earning.

15. In view of the above, the Tribunal has taken a view that without any proper evidence to prove the avocation and the sources of income of the deceased, the Ex.P.5, the Income Tax Returns is liable to be rejected and the Tribunal has adopted notional income method for fixing compensation. The balance sheet and calculation sheet shows that the deceased has lent money and received interest from the sundry-debtors. But there is no evidence to show that what type of commission and from what source, the deceased was earning the same. Hence, this Court is of the view that it is the burden on the part of the claimants to prove the income of the deceased, and the Ex.P.5, Income Tax Returns produced by the claimants requires additional corroborative materials to substantiate their claim. Since the interest received by the deceased is from the sundry-debtors and on

account of death, this interest would continue to exist, there is no loss of income to the family of deceased. Since the source of income for commission is not clear and also it is the specific case of the claimants that the deceased was doing a business and earning income but the marked Ex.P.5 shows the income earned from other sources that is interest and commission, hence, this Court is not able to accept the Ex.P.5, the Income Tax Returns and finds no infirmity in the view taken by the Tribunal. Hence the rejection of Ex.P.5 is proper and adoption of notional income is applicable to the case of the deceased herein.

16. The other contention raised by the learned counsel appearing for the insurance company that the notional income of the deceased fixed by the Tribunal is on the higher side. This Court is unable to accept this contention for the reason that, in this case, the occurrence of the accident was in the year 2018 and the deceased was a M.B.A. Graduate and fixing of Rs.15,000/- by the Tribunal is just and reasonable. The Divisional Bench of this Court in ***Managing Director, Tamil Nadu State Transport Corporation (VPM) Ltd., vs R. Natarajan in C.M.A. No.1793 of 2022, dated 20.01.2023, [2023 (1) TN MAC 191 (DB)]*** has held that fixing

Rs.15,000/- as notional income for the accident took place in the year 2018 is appropriate.

17. As discussed supra, fixing the notional income of Rs.15,000/- per month for the deceased, by the Tribunal is reasonable and this Court finds no infirmity in it and the same is hereby confirmed. The Tribunal has awarded Rs.80,000/- under the head loss of love and affection and Rs.10,000/- towards transport expenses and Rs.30,000/- towards loss of estate and funeral expenses. This Court finds no infirmity in the compensation awarded under other heads by the Tribunal and the same is hereby confirmed. Hence, both the appeals filed by the Insurance company and the claimants are liable to be dismissed.

18. In the result, both the Civil Miscellaneous Appeals are dismissed. Consequently, connected civil miscellaneous petition stands closed. No costs.

07.11.2023

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Index:Yes/No

Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

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

2. The Section Officer,
   V.R.Section,
   High Court, Chennai.

K. RAJASEKAR, J.

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C.M.A. Nos. 1692 and 233 of 2021

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