IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2091 of 2022
and
C.M.P.No.16220 of 2022

1.S.Yasmin
2.Mohammed Iqbal
3.S.Nasrin Banu
4.Umma Salima Syed Mohammed ... Appellants

Vs

1.Balasubramanian

2.The New India Assurance Co.Ltd.,
Divisional Office, Jerome Building,
Fort Station Road, Trichy. ... Respondents
[R1 remained ex parte before the Tribual]

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.03.2022 in M.C.O.P.No.829 of 2018 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellants	:	Mr.S.P.Yuaraj
For Respondents	:	Mr.R.Neethi Perumal, for R2 R1 – Ex parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 11.03.2022, made in M.C.O.P. No.829 of 2018 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

2. The appellants filed M.C.O.P. No.829 of 2018 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur, claiming a sum of Rs.1,00,00,000/- as compensation for the death of one Sharfudeen, who died in the accident that took place on 16.08.2018.

3. According to the appellants, on 16.08.2018 at about 09.00 am, while the deceased Sharfudeen was driving in a Ford Figo Car bearing Registration No.TN-30-AQ-6832 from East to West at Trichy-Salem main road near Vellursathiram, the first respondent lorry bearing Registration No.TN-81-A-6377 which was coming in opposite direction, driven by its driver in a rash and negligent manner, dashed against a road side tree and

then dashed against the car of the said Sharfudeen and then dashed against a two wheeler which came behind the car. In the said accident, the said Sharfudeen sustained multiple grievous injuries and died on the spot. Hence, the appellants filed claim petition against the respondents.

4. The 1st respondent remained *ex-parte* before the Tribunal.

5. The 2nd respondent / Insurance Company filed a counter denying all the averments made in the claim petition and stated the deceased alone drove the car in a rash and negligent manner and gone to the right side of the road and invited the accident; and that the driver of the first respondent was under the influence of alcohol but the rash and negligence is only upon the deceased. Hence, the second respondent is not liable to pay compensation to the appellants; and that the first respondent alone is liable to pay compensation; that the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. The 1st appellant examined herself as PW.1 and one Syed Ibrahim, eye witness to the accident was examined as P.W.2 and marked Ex.P.1 to Ex.P.11. On behalf of the 2nd respondent/Insurance Company two witnesses were examined as R.W.1 and R.W.2 and marked six documents as Exs.R1 to R6.

7. The Tribunal after considering the evidence and documents filed on either side, held that the accident occurred due to rash and negligent driving by the driver of the first respondent and directed the first respondent to pay a sum of Rs.20,24,144/- as compensation to the appellants, for violation of policy conditions and dismissed the claim petitions as agains the second respondent.

8. Aggrieved by the said judgment, the appellants have preferred the present appeal challenging the liability as well for enhancement of compensation.

9. The learned counsel for the appellants submitted that the Tribunal erred in holding that there was no policy coverage for the first respondent vehicle and therefore, exonerated the second respondent / Insurance Company and directed the first respondent to pay the compensation. The learned counsel further submitted that there was a policy coverage and unfortunately, the policy document was not marked before the Tribunal. The learned counsel also had filed an application under Order 41 Rule 27 of CPC to receive the copy of the Insurance policy of the first respondent vehicle insured with the second respondent. As per the said document, there is a policy coverage for the first respondent vehicle and therefore, the Tribunal ought to have directed the second respondent to pay compensation. The learned counsel further submitted that though the appellants had filed the income tax returns of the deceased for nearly 6 years, Exs.P4 to P9 which shows the average income of the deceased as Rs.25,000/- per month, the Tribunal had erroneously without any basis came to the conclusion that those returns pertain to a partnership firm and not to an individual / deceased. Hence, the Tribunal awarded compensation by taking into consideration Rs.14,109/- as notional income based on the formula fixed by the Division Bench of this Court in ***Andal and Others Vs.***

Avinay Kannan reported in ***2019 (1) TN MAC 54 (DB)***. The learned counsel therefore, prayed for enhancement of compensation and also for a direction to the second respondent / Insurance Company to pay the compensation.

10. Though notice was served to the first respondent and his name is printed in the cause list none has entered appearance.

11. The learned counsel for the second respondent / Insurance Company submitted that in the claim petition, the appellants had referred to an insurance policy which is also referred to in MVI Report / Ex.R4. As per Ex.R4, the Insurance policy expired on 19.07.2018 whereas the accident took place on 16.08.2018. Since no document was produced to show that the insurance policy was renewed, the Tribunal was right in holding that there was no policy coverage. However, the learned counsel also on instructions would submit that the document filed by the appellants along with the petition under Order 41 Rule 27 shows that the policy has been renewed. The learned counsel further submits that as regards compensation awarded by the Tribunal, it is just and reasonable and there is no reason to

interfere with the same and prayed for dismissal of the appeal.

12. The questions in the instant appeal are-

a) Whether there was a policy coverage for the first respondent vehicle with the second respondent herein?

b) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

13. Admittedly, the appellants had referred to an insurance policy which expired on 16.08.2018 before the Tribunal. They have not produced the renewed insurance policy which was valid at the time of accident. In the application filed before this Court under Order 41 Rule 27 CPC, the appellants have enclosed the insurance policy for the period between 20.07.2018 to 19.07.2019. The second respondent is unable to point out any reason as to why this document should not be accepted. Being satisfied with the reasons given in the affidavit filed in support of this petition, C.M.P.No.16220 of 2022 in C.M.A.No.2091 of 2022 is allowed and the said document is marked as Ex.P12. Therefore, this Court is of the view that there was a valid insurance coverage for the first respondent vehicle with the second respondent. The finding of the Tribunal with regard to fixing of

liability on the first respondent is set aside. The second respondent insurance company is liable to pay the compensation.

14. As regards the quantum, this Court finds that the appellants have marked Exs.P4 to P9, the income tax returns for the Assessment year 2012 -13 to Assessment Year 2018 – 19 for 6 years. Ex.P6 is the income tax return for the Assessment Year 2014-15 which shows the gross income of the deceased as Rs.2,57,515/-. Likewise, Ex.P7 is the income tax return for the Assessment Year 2015-16 which shows the gross income of the deceased as Rs.2,41,333/-. Ex.P8 is the income tax return for the Assessment Year 2016-17 which shows that the gross income of the deceased as Rs.2,92,287/-. Ex.P9 is the income tax return for the Assessment year 2018-19 which shows the gross income of the deceased as Rs.3,04,799/-.

15. From a reading of the above Exhibits, this Court is of the view that the average income of the deceased is Rs.25,000/- per month. This Court is inclined to fix the said sum as the monthly income of the deceased. However, it is seen that the Tribunal had rejected Exs.P4 to P9 stating that

they pertain to a partnership firm. A reading of these Exhibits does not indicate that it refers to a partnership firm. The returns are that of the individual namely the deceased. The finding of the Tribunal is therefore without any basis. The deceased was aged 48 years at the time of accident. Hence, the appellants are entitled to 25% enhancement towards future prospects. Therefore, the loss of income has to be Rs.25,000 + 6,250 (25,000+25%) X12X 13 X 2/3 = Rs.32,50,000/-. The compensation awarded under other heads are reasonable and hence, the same are confirmed.

16. Thus, the compensation awarded by the Tribunal is enhanced from Rs.20,24,144/- to Rs.34,40,000/-, break-up as follows -

Sl. No	**Description**	**Amount awarded by Tribunal (Rs)**	**Amount awarded by this Court (Rs)**	**Award confirmed or enhanced or granted**
1.	Loss of dependency	18,34,144/-	32,50,000/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Parental consortium	80,000/-	80,000/-	Confirmed
4.	Filial consortium	40,000/-	40,000/-	Confirmed
5.	Loss of estate	15,000/-	15,000/-	Confirmed

6.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	**20,24,144/-**	**34,40,000/-**	**Enhanced by Rs.14,15,856/-**

17. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.20,24,144/- is hereby enhanced to Rs.34,40,00/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of twelve (12) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants 2 and 3/ children of the deceased are entitled to Rs.7,00,000/- each, 4th appellant/mother of the deceased is entitled to Rs.6,00,000/- and the 1st appellant/wife of the deceased is entitled to remaining amount. The appellants are permitted to withdraw their share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The first respondent is permitted to withdraw the award amount, if the same has already been

deposited by him. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. Consequently, connected miscellaneous petition is closed. No costs.

10.08.2023

Index: Yes/No
Neutral Citation: Yes/No
AT

To
1.The Motor Accident Claims Tribunal,
Principal District Judge, Perambalur.

2. The Section Officer,
VR Section,
High Court, Madras.

SUNDER MOHAN, J.

AT

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