THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2023

CORAM:

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

**C.M.A.No.2467 of 2022**

1.Rani

2.Mahalakshmi

3.Dharani

4.Minor Sabarinathan ...Appellants

Vs.

1.Vinoth Kumar

2.The Regional Manager,
United India Insurance Company Limited,
35, AR Plaza, Balaji Nagar,
Saram, Puducherry. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 27.07.2022 in MCOP.No.77 of 2017 on the file of the Motor Accidents Claims Tribunal, (II-Additional District Judge), Tindivanam.

For Appellants : Mr.D.Ravichander

For Respondents : Mr.S.Arunkumar for R2
R1-served-No appearance

**JUDGMENT**

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

Aggrieved by the award of a sum of Rs.13,70,000/- as compensation for the death of one Ramesh in a motor accident that occurred on 07.08.2017 at 3.40 p.m., the dependents / claimants are on appeal.

2.According to the claimants, on 07.08.2017 around 3.40 p.m. when the deceased, Ramesh was riding a motor cycle bearing Registration No.TN-16-C-8021 from South to North of Gingee road near Sandhaimedu bus stop, Tindivanam town, the 1st respondent / Vinoth Kumar, who was also riding a two wheeler bearing Registration No.TN-16-C-5722 came in the opposite direction on the wrong side of the road in a rash and negligent manner and hit against the two wheeler in which, the deceased was riding. As a result of the impact, the deceased was thrown of the vehicle and he suffered grevious injuries. He was treated in the Mundiyambakkam Medical College Hospital and then, at the Rajiv Gandhi General Hospital, Chennai. The deceased succumbbed to the injuries on 13.08.2017. Contending that the accident occurred due to the rash and negligent driving of the two wheeler driven by the 1st respondent / Vinoth Kumar, the claimants sought for a compensation of Rs.1,00,00,000/-. The quantum was sought to be supported by contending that the deceased was the owner of a fleet of lorries and he was also a licensed driver and therefore, the family would suffer severe loss of income in his absence. The 1st respondent / owner of the vehicle that caused the accident remained exparte.

3.The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimants. It was pleaded that the deceased himself has contributed to the accident by his negligent driving. The income and the age of the deceased were denied and the claimants were put to strict proof of the same. It was also contended that the rider of the offending vehicle, Vinoth Kumar did not have valid license and therefore, the Insurance Company cannot be made liable.

4.At trial, the wife of the deceased was examined as P.W.1 and one Anandan, an eye-witness was examined as P.W.2. Exs.P1 to P16 were marked. Copy of the First Information Report and the final report were marked as Exs.P1 and P2 respectively, while the bank statement of the deceased Ramesh was marked as Ex.P12. One Venkatesan was examined on the side of the respondents as R.W.1 and Exs.R1 and R2 were marked. The driving license extract of the 1st respondent was summoned from the Office of the Regional Transport Authority and the same was marked as Ex.C1. On the available evidence, the Tribunal concluded that the accident had occurred due to the rash and negligent driving of the 1st respondent, who was the rider of the two wheeler bearing Registration No.TN-16-C-5722.

5.On the above said conclusion, the Tribunal held that the 1st respondent as the tort-feasor and the Insurer are liable to pay compensation. On the quantum, the Tribunal took the assumed income of Rs.8,000/- per month, added 25% towards future prospects and took the total income at Rs.10,000/-. It deducted 1/4 towards personal expenses of the deceased and applied a multiplier of 13. On the above calculation, the Tribunal arrived at the total loss of dependency at Rs.11,70,000/-. It also granted a sum of Rs.1,60,000/- towards loss of consortium and loss of love and affection to the petitioners, Rs.15,000/- each towards loss of estate and funeral expenses and Rs.10,000 /- towards transport expenditure. Thus, the total compensation arrived at Rs.13,70,000/-. Since there was a discrepancy in the name of the 1st respondent and the license that was produced, the Tribunal gave liberty to the Insurance Company to pay and thereafter, recover the money paid from the 1st respondent. Aggrieved, the claimants are on appeal.

6.Heard Mr.D.Ravichander, learned counsel appearing for the appellants and Mr.S.Arunkumar, learned counsel appearing for the respondent / Insurance Company.

7.Mr.D.Ravichander, learned counsel appearing for the appellants would vehemently contend that the Tribunal has overlooked the vital evidence filed in the form of Ex.P12, the statement of account and Exs.P8 to P11, xerox copies of the RC Book of the lorries owned by the deceased. He would submit that the running of lorries/commercial vehicles requires such expertise and the business cannot be carried on by the family as effectively as was done by the deceased and there is also an element of supervision that is required and that would be a loss to the family. Therefore, according to the learned counsel for the appellants, the Tribunal was not right in taking a sum of Rs.8,000/- as assumed income.

8.Contending contra, Mr.S.Arunkumar, learned counsel for the Insurance Company would submit that no doubt RC Books have been produced but, the driving license of the deceased have not been placed before the Court. He would also point out that the business can be carried on by the dependents and therefore, there is no actual loss of income to the family. We have considered the rival submissions.

9.The deceased was a businessman. He was having a fleet of four lorries and was running them on a hire. No doubt, the dependents / claimants would have succeeded to the estate and also the lorries of the deceased but, running a business of that nature requires certain expertise and supervision as rightly pointed out by the learned counsel appearing for the appellants. In the absence of proper supervision and expertise in running a business, there is also a likelihood of loss of occurring in the business. Therefore, it cannot be said that merely because the business can continue, there is no loss to the family.

10.The Hon'ble Supreme Court in ***K.Ramya & Others Vs. National Insurance Co. Ltd. and another*** reported in ***2022 SCC Online SC 1338*** has pointed out that even in case of businesses run by families, there is an element of loss, if the person, who has running it passes away and therefore, that should be taken into account in deciding the compensation payable to the dependents of such persons. In fact, the Hon'ble Supreme Court in ***New India Assurance Co. Ltd., Vs. Yogesh Devi & Others*** reported in ***2012 (1) TN MAC 371 (SC)*** had dealt with the case of identical transport business and held that the loss that would occur to the family should be calculated and given as compensation.

11.As regards the contention of the learned counsel for the Insurance Company that there is no direct evidence to show such loss or the income from the lorries, we find that there is some evidence in the form of the bank statement, Ex.P12, which shows steady flow of income and we also find from the entires that the monies have been received from various companies like pharmaceuticals and cold storages, which would show that these were paid as rents or hire charges for services rendered by the deceased in the name of Selvavinayagar Transport. We must concede that there is no direct evidence but, it has been repeatedly pointed out by this Court and the Hon'ble Supreme Court that certain element of guesswork is inevitable in determination of compensation.

12.On the overall analysis of the bank statement, we find that the deceased was carrying on flourishing business and there would be definitely some loss to the family. We quantify the loss at Rs.15,000/- per month. If there is a loss, there should also be a future prospects involved. The deceased was aged about 46 years therefore, the future prospects would be about 25% as per the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited., Vs. Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***. If we add 25% to Rs.15,000/-, the monthly loss of income would be Rs.18,750/-. The deceased has left behind his mother, wife and two daughters therefore, the Tribunal has deducted 1/4 towards his personal expenses and we sustain the same. If we deduct 1/4 from

Rs.18,750/-, the monthly loss that would be occurred to the family would be Rs.14,062.50/-. The multiplier is 13. Therefore, the total loss of dependency would be Rs.14,062.50/- x 12 x 13 = Rs.21,93,750/-. The awards on the other heads made by the Tribunal are fairly reasonable and they do not require any interference at our hands. Thus, the total compensation is arrived at Rs.23,93,750/-. We rounded off the same to Rs.23,94,000/-. The direction to pay and recovery is sustained.

13.This Civil Miscellaneous Appeal is **partly allowed** as indicated above. No costs. Consequently, connected miscellaneous petitions, if any, are closed. There will be an award Rs.23,94,000/- for with interest at 7.5%, as awarded by the Tribunal, from the date of claim petition till date of payment. The Insurance Company will have twelve weeks time to deposit the award amount, less any amount, already deposited. The compensation is apportioned as follows:-

i) The mother of the deceased will get Rs.3,94,000/-

ii) The wife of the deceased will get Rs.8,00,000/-

iii) The children of the deceased will get Rs.6,00,000/- each.

14.The major claimants are permitted to withdraw their share of the compensation along with proportionate interest. The Tribunal is directed to deposit the share of the minor son with interest in a cumulative interest earning fixed deposit in a Nationalized Bank till he attains majority. On attaining majority, he will be entitled to withdraw the amount.

**(R.S.M., J.) (N.S., J.)**
08.12.2023

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Speaking
Nuetral Citation :No

To:-

The Motor Accident Claims Tribunal,
II-Additional District Court,
Tindivanam.

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

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