BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.91 of 2023
and
C.M.P.(MD)No.1037 of 2023

The Divisional Manager,
HDFC ERGO Insurance Company Limited.,
Rekha Towers, Kamarajar Salai,
Madurai-625 009. ...Appellant/2nd respondent

Vs.

1.Selladurai
2.Gomathi ...Respondents 1 & 2/Petitioners
3.K.Rajendran ...3rd Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment dated 16.08.2022 passed in M.C.O.P.No.1697 of 2018 on the file of the Motor Accident Claims Tribunal/Special District Judge [MACT] of Madurai by allowing this appeal.

For Appellant : Mr.V.Sakthivel

For R1 & R2 : Mr.V.Sriram

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal/Special District Judge, Madurai in M.C.O.P.No.1697 of 2018 dated 16.08.2022, the present Civil Miscellaneous Appeal is filed.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i)on 02.10.2018, at about 10.30 a.m., the deceased along with her mother Gomathi and his brother Minor Siva were in Madurai-Trichy Fourway, Sathiyapuram Bus stop. At that time a car bearing Registration No.TN-64-P-1085 came from Madruai-Thanjavru Road came in a negligent manner dashed against the deceased, as a result the deceased succumbed to injuries. Hence, the claim petition has been filed.

(ii)The Insurance Company before the Tribunal took a stand that the driver of the car had driven the car at a moderate speed on the proper side of the road taking necessary precautions. While so, the deceased suddenly and unexpectedly came across the road without noticing the car and the accident could not be averted despite the best efforts of the driver. The accident was solely due to the negligent act of the second petitioner in allowing a child of tender years unattended on a busy highway and the driver of the car was in no way responsible for the accident.

4. Before the Tribunal, on the side of the claimant P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P9 were marked. On the side of the respondents no oral and documentary evidence had been marked.

5. Considering the evidence adduced, the trial Court found that the driver of the first respondent's Car drove the car in a rash and negligent manner and awarded a compensation of Rs.14,11,000/- with interest at the rate of 7.5% p.a. Challenging the same, the present appeal has been filed.

6.I have heard the learned counsel appearing on either side and also perused the materials available on record.

7.It is the main contention of the learned counsel appearing for the petitioners / respondents that the compensation arrived by the trial Court is not legally correct and having found that the driver of the first respondent's Car was negligent in driving the car and the deceased is a minor, the Tribunal ought to have granted compensation.

8.The learned counsel for the appellant submitted that due to the negligence of the deceased, the accident had occurred and the Insurance Company is not liable to pay the compensation to the claimants.

9.In view of the above submission, now the point arises for consideration in this appeal is:

(1) ***Whether the Tribunal is right in fixing the income of the deceased and in adopting multiplier 18?***

10.The Insurance Company has not disputed the accident. The offending car driver drove the Car in a rash and negligent manner. The Tribunal considering the evidence of P.W.2, found that the car was driven in a rash and negligent manner and as a result, the accident was occurred. There is no contra evidence adduced in this regard and FIR registered against the driver of the offending vehicle was also not challenged. Further, the driver of the car was also not examined and the policy is not disputed by the Insurance Company.

11.In respect of compensation is concerned, on a perusal of the records, it is seen that the Tribunal has awarded a sum of Rs.14,11,000/- as compensation. It is relevant to note that the deceased was aged about 6 years, a minor boy. In ***Kishan Gopal and another Vs. Lala and others*** reported in ***2013(2) TN MAC 358***, the Hon'ble Supreme Court has fixed the notional income of the minor at Rs.30,000/- per annum and granted a sum of Rs.50,000/- under conventional heads. The Division Bench of this Court in ***Divisional Manager, United India Insurance CO. Ltd., Vs. Sakunthala*** reported in ***2022 (2) TN MAC 555 (DB)***, fixed the notional income of the non-earning member as Rs.60,000/- per annum. The fact remains that the Apex Court has fixed a sum of Rs.30,000/- as notional income in the year 2013. However, considering the passage of time, this Court is of the view that fixing of a sum of Rs.5,000/- (Rupees Five Thousand only) as income per month will meet the ends of justice. In respect of deduction for personal expenses for a minor child, this Court in **Divisional Manager, Reliance General Insurance Co. Ltd. Vs. Govindaraji** reported in **2021 (2) TN MAC 271**, in paragraph 18 has held as follows:

> *"18. So far as minors are concerned, they are non earning members and there is no occasion for them to spend money towards the personal expenses and there cannot be any deduction towards their personal expenses. In Lata Wadhwa case (cited supra) and Kishan Gopal case (cited supra). The Hon'ble Supreme Court after fixing the notional monthly income of the minor applied the multiplier and taken the entire amount as the loss of dependency and no deduction was made for their personal expenses. In the above circumstances, this Court is of the view that there cannot be any deduction towards personal expenses from the notional income of deceased minors."*

12. Following the said judgment, this Court is of the view that there cannot be any deduction towards personal expenses from the income of the deceased minor. The correct multiplier to be applied for minor is 15. The Tribunal erred in applying multiplier 18 for arriving at loss of income. Therefore,

if a sum of Rs.5,000/- (Rupees Five Thousand only) is fixed as notional income, the annual notional income would be at Rs.60,000/- (5,000 x12) and if '15' multiplier is applied, the total loss of dependency would be at Rs.9,00,000/- (5000 x 12 x 15). The compensation awarded by the Tribunal under all other heads remains unaltered. Hence, the modified compensation is as follows:

S. No	Heads	Amount
1.	Loss of income (Rs.60,000/-*15)	Rs. 9,00,000/-
2.	Loss of filial consortium	Rs. 80,000/-
3.	Funeral expenses	Rs. 15,000/-
4.	Loss of estate	Rs. 15,000/-
5.	Transport expenses	Rs. 5,000/-
	Total	Rs. **10,15,000/-**

The compensation is reduced from Rs.14,11,000/- to Rs.10,15,000/- along with interest at 7.5% p.a.

13. In the result, this Civil Miscellaneous Appeal is allowed. The learned counsel for the Insurance Company had already deposited a sum of Rs.4,70,000/- with interest and costs. Hence, the appellant/ Insurance Company is directed to

deposit the reduced compensation amount of Rs.10,15,000/- (Rupees Ten Lakhs Fifteen Thousand only), along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, within a period of three months from the date of receipt of a copy of this order. Out of the said compensation amount, the first and second respondents are equally entitled to get a sum of Rs.5,07,500/- (Rupees Five Lakhs Seven Thousand Five Hundred only) as compensation. The claimants may approach the Tribunal for withdrawal of the said amount, by filing necessary application and if such an application is filed, the Tribunal shall pass orders for withdrawal. No costs. Consequently, connected miscellaneous petition is closed.

23.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To
1.The Motor Accident Claims Tribunal/
Special District Court, (MACT), Madurai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR, J.

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