BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A(MD)No.549 of 2021

M/s. Sriram General Insurance Company Limited,
Rep. By its General Manager having office
At E-8, RIICO Industrial Area,
Sitapura, Jaipur,
Rajasthan-302022. ... Appellant/ 2nd Respondent

-vs-

1.Palaniyammal
2.P.Manoharan
3.Valarmathi ... Respondents 1 to 3 / Petitioners

4.R.Boopathy ... 4th Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 04.09.2019 made in M.C.O.P.No.938 of 2013 on the file of the Motor Accident Claims Tribunal Judge/Special District Judge to deal with the MCOP Cases at Tiruchirappalli.

For Appellant : Mr.V.Sakthivel

For R1 to R3 : Mr.N.Sudhagar Nagaraj

JUDGMENT

[Order of the Court was made by RMT.TEEKAA RAMAN, J.]

This Civil Miscellaneous Appeal is directed againt the judgment and decree dated 04.09.2019 in M.C.O.P.No.938 of 2013 on the file of the Motor Accident Claims Tribunal Judge/Special District Judge to deal with the MCOP Cases at Tiruchirappalli.

2. For the sake of convenience, the parties are referred to herein as per their ranking before the Tribunal.

3. The Insurance Company is the appellant herein. The respondents 1 to 3 have filed M.C.O.P.No.938 of 2013 of 2015 seeking compensation for the death of one Palaniyappan in the road accident on 21.07.2012.

4. The batch of MCOP petitions have been filed. On filing a memo, common trial was conducted. The wife of the deceased, namely, Palaniyammal was examined as P.W.2 and marked Ex.P.1 to Ex.P.5. To show the income of the deceased Palaniyappan, Ex.X.7 was marked which is related to the year 2011-12.

The Tribunal, on consideration of oral and documentary evidence, has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle viz., the first respondent which was insured with the second respondent and accordingly, held that both the respondents are jointly and severally liable to pay the compensation. On the quantum of compensation based upon Ex.X.7, the Tribunal has awarded a sum of Rs.19,10,423/- (Rupees Nineteen Lakhs Ten Thousand and Four Hundred and Twenty Three only) with interest and hence, the appeal by the Insurance Company.

5. The learned counsel for the appellant/Insurance Company would rely upon the finding of the Tribunal that the son and daughter are aged about 40 and 38 years respectively, they are the legal representatives, but they are not the legal dependents and hence, the amount cannot be awarded. Consequently, the said Palaniyammal being the wife, is the only legal dependent based upon the income of the deceased and hence, the deduction should be ½ rather than 1/3rd and he would further contend that except Ex.X.7, there is no document to indicate and demonstrate the alleged income of the deceased Palaniyappan.

6. We have given our anxious consideration to the said contentions.

7. Mr.N.Sudhagar Nagaraj, learned counsel appearing for the respondents 1 to 3 drew our attention to Section 211 of C.P.C., that the legal representatives are the legal dependents. We are in agreement with the said contention of the learned counsel for the respondents 1 to 3 as the law is clear on the point.

8. On coming to the point of quantum of deduction to be made, we find that the judgment of the Hon'ble Supreme Court of India in ***Sarala Verma's case***, the deduction of ½ was prescribed only for person when he died as a bachelor and not as a married person leaving behind one son and daughter and accordingly, the deduction made by the Tribunal for 1/3rd, also cannot be found fault with, since the income tax return to be deducted for the period from 01.04.2010 to 31.03.2011 for the following financial year when the person died and hence, we find that the adoption of income tax returns-Ex.X.7 is also justified and hence, we do not find any merits to interfere with either on the quantum of adoption or total quantum that was to be awarded.

9. In this view of the matter, this Civil Miscellaneous Appeal is dismissed and the award dated 04.09.2019 passed in M.C.O.P.No.938 of 2013 on the file of the Motor Accident Claims Tribunal Judge/Special District Judge to deal with MCOP Cases at Tiruchirappalli, is confirmed. The appellant/Insurance company is directed to deposit the entire award amount with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit being made, the respondents 1 to 3/ claimants are permitted to withdraw their shares together with interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

[T.K.R., J.] [P.B.B., J.]
17.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Motor Accident Claims Tribunal Judge/
Special District Judge to deal with the MCOP Cases at Tiruchirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

RMT.TEEKAA RAMAN, J.
and
P.B.BALAJI, J.

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