BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :11.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.(MD)No.18 of 2021

1.R.Easwari
2.S.Thatchayini
3.R.Sekar
4.S.Vethanayagi ... Appellants/Petitioners

Vs.

1.Nazimudeen

2.The Branch Manager,
The Chola Mandalam MS General
Insurance Company Ltd.,
2nd Floor, Dare House 2 NSC Bose Road,
Chennai – 600 001.
... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 30.09.2019 made in M.C.O.P.No.932 of 2017 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge, Thanjavur.

For Appellants : Mr.N.Tamilmani

For Respondents : Mrs.K.R.Shiva Shankari for R2
No Appearance for R1

JUDGMENT

Challenging the quantum of award passed in M.C.O.P.No.932 of 2017, on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge, Thanjavur, dated 30.09.2019, the appellants have filed this Civil Miscellaneous Appeal.

2. The appellants are the claimants before the Tribunal. The deceased Rajesh was the husband of the first appellant, brother of the second appellant and son of appellants 3 and 4. On 08.03.2017, at about 9.00 p.m., the deceased was riding the two wheeler bearing Registration No.TN-50-V-9162 in ECR Road, Thamibikkottai, Keelakadu. When he was going near Bamini river Bridge and Bharath Petrol Bunk, in West to East Direction on the left side of the road, the driver of the first respondent had driven a Scorpio Car bearing Registration No.TN-49-AX-6567 in a rash and negligent manner and dashed against the two wheeler. As a result, Rajesh sustained injuries and later died of injuries. He was employed as a sales man in S.V.S Maligai shop and earning Rs.15,000/- per month. Due to his sudden demise, appellants found it very difficult to manage their day-to-day life. Therefore, they filed the petition seeking compensation of Rs.50 lakhs.

3. The second respondent – Insurance Company contested the claim petition on the ground that there was no valid insurance policy for the vehicle bearing Registration No.TN-49-AX-6567. The deceased was responsible for the accident. The occupation and monthly income of the deceased are denied.

4. During the course of enquiry, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P11 were marked. No oral or documentary evidence was produced on the side of the second respondent/Insurance Company.

5. On considering the oral and documentary evidence produced and the submissions made on behalf of the parties, the Tribunal awarded a sum of Rs.13,39,600/- and directed the Insurance Company to pay the said amount with interest at the rate of 7.5% per annum. Now the quantum of the award is challenged in this appeal.

6. It is the submission of the learned counsel for the appellants that the deceased was earning Rs.15,000/- per month as a salesman in a grocery shop. In support of this submission, appellants have examined

P.W.3, owner of the shop and produced Ex.P9-salary certificate. However, the Tribunal has not believed the evidence of P.W.3 and Ex.P9 and fixed the monthly salary of the deceased at Rs.6,000/- per month, without any basis. The monthly salary of the deceased ought to have been fixed at Rs.15,000/-. The next submission of the learned counsel for the appellants that the deceased was survived by his wife, unmarried sister and parents, totally four persons. Only 1/4th of the monthly income ought to have been deducted towards personal expenses of the deceased. However, the Tribunal has deducted 1/3rd of the monthly income towards personal expenses. In support of his submission that the monthly income should have been fixed as not less than Rs.15,000/-, the learned counsel for the appellants pressed into service the judgment of this Court in ***S.B.I.General Insurance Co. Ltd., Vs. Uma Devi*** reported in ***2019 (1) TN MAC 412 (DB)***.

7. In response, the learned counsel for the second respondent/Insurance Company submitted that the monthly income adopted by the Tribunal for the deceased was correct, considering the nature of his work. The deceased was not wearing helmet at the time of the accident and that was also a reason for him suffering head injury and a consequent death. The Tribunal had rightly rejected the evidence of P.W.3 and Ex.P9-salary certificate. Thus, he prayed for confirming the award passed by the Tribunal.

8. This Court considered the rival submissions and perused the records.

9. It is not in dispute that the deceased died of accident involving the two wheeler bearing Registration No.TN-50-V-9162 and the Scorpio Car bearing Registration No.TN-49-AX-6567. The deceased was riding the aforesaid two wheeler and the car driver had come in a rash and negligent manner and hit the deceased from behind. In the counter affidavit, it is stated by the second respondent/Insurance Company that there was no valid insurance policy for the Scorpio vehicle bearing Registration No.TN-49-AW-6567. It is seen from the records that the vehicle involved in the accident was the Scorpio car bearing Registration No.TN-49-AX-6567. Therefore, the claim that the vehicle had no valid policy at the time of the accident is not seriously pursued. With regard to the submission of the learned counsel for the second respondent that the deceased was not wearing the helmet at the time of the accident, it is seen that this plea was not taken in the counter affidavit and pressed before the Tribunal. Therefore, it is not open to the second respondent to take this plea now.

10. From the materials available, it appears that there is no dispute with regard to the liability of the Insurance Company to pay the compensation but the only question remains to be considered is whether quantum of compensation awarded to the appellants / claimants is just and appropriate.

11. It is the case of the appellants that the deceased was working as a sales man in grocery shop and earning a sum of Rs.15,000/- per month. In support of this claim, they examined P.W.3 and marked Ex.P9 salary certificate. However, the learned Tribunal rejected the evidence of P.W.3 and Ex.P9 certificate for the reason that the salary certificate has been issued on 17.02.2019 and P.W.3 gave evidence on 18.02.2019. The salary certificate has been prepared only during the pendency of the claim petition and therefore, cannot believe the salary certificate.

12. The deceased was working in an unorganised sector that is he was working as salesman in a grocery shop. Grocery shop is a small time business and it is not like a departmental store where we can except an employee getting salary slip. Grocery shop owners cannot be expected to issue salary slip every month for disbursement of salary. The salary certificate was produced only for informing the monthly income of the deceased. It is quite obvious that the appellants should have approached P.W.3 with a request for issuing a salary certificate for producing in the enquiry before clams Tribunal. Therefore, obtaining the salary certificate on 17.02.2019 and giving evidence on 18.02.2019, cannot be faulted. What we have to consider is what would be the salary that would have been received by the deceased. It is observed in ***S.B.I.General Insurance Co. Ltd.'s case (cited supra),*** in a case of Sweet Master, it is improper to expect any salary certificate. It is a common knowledge that Sweet Master normally paid not less than a sum of Rs.500/- per day. On the basis of this reasoning, the monthly salary of the Sweet Master was fixed at Rs. 12,000/-. The deceased in this case was working as a Sales man in the grocery shop. Normally, the grocery shop opens at 6.00 a.m. and closes only after 9.00 p.m. The deceased might have worked not less than 10 hours per day. Therefore, it is quite possible that he would have earned Rs.

400/- per day for 25 days in a month. Thus, the deceased might have earned at Rs.10,000/- p.m. Therefore, this Court fixes the monthly income of the deceased at Rs.10,000/- per month. The deceased was aged about 21 years at the time of his death. As per ***Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC),*** 40% of monthly salary has to be added towards future prospects. 40% of Rs. 10,000/- comes to Rs.4,000/- and thus, monthly income with future prospectus comes to Rs.14,000/-.

13. With regard to the submission of the learned counsel for the appellants that the Tribunal had wrongly deducted 1/3rd towards personal expenses of the deceased instead of 1/4th, the learned counsel for the second respondent submitted that first appellant / first claimant got remarried and therefore, she cannot be considered as the dependant of the deceased. The Tribunal had rightly deducted 1/3rd towards personal expenses.

14. In the order of the Tribunal, it is observed that "the petitioners themselves admitted that the first petitioner got remarried". This Court agrees with the submission of the learned counsel for the second respondent that 1st appellant cannot be considered as dependent of the deceased any more. In that view of the matter, this Court finds that deduction of 1/3rd from monthly income towards personal expenses is just and appropriate.

15. When 1/3rd amount is deducted from Rs.14,000/- towards personal expenses of the deceased, it comes to Rs.4,666.66 rounded off to Rs.4667/-. 2/3rd comes to Rs.9334/-. The deceased was 21 years at the time of the accident and the appropriate multiplier for computing the loss of dependency is “18”. When calculated 9334x12x18, it comes to Rs.20,16,144/-. Thus, this Court finds that the appellants/ claimants are entitled for loss of dependency at Rs.20,16,144/-. The amount awarded by the Tribunal under the other heads are confirmed.

16. In view of the discussions held above, this Court modifies the compensation awarded by the Tribunal, as under:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of dependency	12,09,600	20,16,144	enhanced
2.	For funeral expenses	15,000	15,000	confirmed
3.	For loss of estate	15,000	15,000	confirmed
4.	For loss of spouse	1,00,000	1,00,000	confirmed
	Total	Rs.13,39,600	Rs.21,46,144	By enhancing a sum of Rs.8,06,544/-

17. In the result,

(i) This Civil Miscellaneous Appeal is allowed, enhancing the award of the Tribunal from **Rs.13,39,600/-** (Rupees Thirteen Lakhs Thirty Nine Thousand and Six Hundred Only) to a sum of **Rs.21,46,144/-** (Rupees Twenty One Lakhs Forty Six Thousand One Hundred and Forty Four Only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

(ii) The second respondent/Insurance Company is directed to deposit the enhanced amount, less the amount already deposited, within a period of four [4] weeks from the date of receipt of a copy of this judgment.

(ii) From the aforesaid compensation amount, the first appellant / first claimant is entitled to a sum of Rs.5,00,000/- (Rupees Five Lakhs only), second appellant/ second claimant is entitled to a sum of Rs. 2,46,144/- (Rupees Two Lakhs Forty Six Thousand One Hundred and Forty Four only) and the third and fourth claimants are entitled to a sum of Rs.7,00,000/- each (Rupees Seven Lakhs only). The appellants / claimants are permitted to withdraw their respective shares with proportionate interests and costs. No Costs.

11.10.2023

Index:Yes/No
NCC:Yes/No

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G.CHANDRASEKHARAN, J.

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To

1.The Motor Accident Claims Tribunal,
Special Subordinate Judge, Thanjavur.

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

C.M.A(MD)No.18 of 2021

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