BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.416 of 2021
and
C.M.P(MD)No.3704 of 2021

M/s.United India Insurance Co.Ltd.,
Rep. by its Branch Manager having Ofice at
No.78, Kamaraj Salai,
Cauvery Nagar, Kulithalai,
Karur District. ... Appellant

.vs.

1.Rajeswari

2.Manish Kumar

(Minor 2nd respondent is declared as major and the guardianship of his mother/first respondent is discharged vide Court Order dated 02.11.2022 made in CMP(MD) No.9986 and 9987 of 2022 in C.M.A(MD) No.416 of 2021)

A.P.Palanisamy (died)

3.P.Chellammal

4.Arulvel ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the fair and decreetal order dated

16.10.2019 made in M.C.O.P.No.410 of 2015 on the file of the Motor Accident Claims Tribunal (Special District Court), Trichy.

For Appellant	: Mr.B.Rajesh Saravanan
For R1 to R3	: Mr.N.Sudhagar Nagaraj
For R4	: Dispensed with

JUDGMENT

This appeal is filed challenging the quantum of compensation awarded in MCOP No.410 of 2015, on the file of the Motor Accident Claims Tribunal (Special District Court), Trichy.

2. The respondents 1 to 3/claimants filed M.C.O.P.No.410 of 2015 claiming a compensation of Rs.45,00,000/- for the death of the deceased Ravi, who was the husband of the first respondent, father of the second respondent and son of third respondent. It is claimed that on 21.10.2014 at about 6.00 p.m., the deceased was standing with his motorcycle on the extreme left side of Karur Main Road near Cauvery Nagar Branch Road Junction. At that time, a car bearing Registration No.TN-47-X-7728 had

come in a rash and negligent manner and dashed against the deceased. As a result, the deceased suffered severe injuries and died of the injuries. The deceased was an Ex-serviceman and at the time of accident, he worked as Pharmacist in Government Hospital, Aranthangi. He was earning a sum of Rs.28,635/- as monthly salary and Rs.10,563/- as pension for his service in Indian Army. The respondents 1 to 3 are totally depending on his income for running their life. In the absence of the deceased, they lost his love and affection, income and also find it difficult to lead their life.

3. In the counter, the appellant/Insurance Company disputed the manner in which the accident had happened and the quantum of compensation claimed is excessive.

4. During the enquiry before the Tribunal, on the side of the claimants, P.W.1 to P.W.4 were examined and Ex.P.1 to Ex.P.9 were marked. On the side of the Insurance Company, R.W.1 was examined and no document was marked. Ex.X1 to Ex.X3 were also marked.

5. On the basis of oral and documentary evidence, the Tribunal

awarded a compensation of Rs.50,51,731/- as compensation.

6. This appeal is filed by the Insurance Company mainly on the ground that fixing the monthly income of the deceased at Rs.39,198/-, including his monthly income at Rs.28,635/- and Rs.10,563/- drawn by him as pension from Indian Army, is not appropriate. It is further submitted that as per the evidence of P.W.1, she admitted the receipt of the pension of Rs.10,563/- and therefore, including pension amount of Rs.10,563/- with the monthly income, is not correct. The appeal is filed only on this ground.

7. In reply, the learned counsel for the respondents 1 to 3 submitted that the pension is a statutory benefit and even if the deceased died of natural causes, the family would continue to receive the family pension and that cannot be deducted from the monthly income of the deceased. In support of his submission, he produced the Judgment of the Hon'ble Supreme Court in ***Reliance General Insurance Co. Ltd., Vs Shashi Sharma and Others*** reported ***2016(2) TN MAC 721 (SC)*** and it is observed in this Judgment as follows:

Similarly, family pension is also earned by an

Employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive Family Pension even otherwise than the accidental death. No correlation between the two.

8. Considered the rival submissions and perused the records.

9. From the award of the Tribunal, it is found that he had taken the monthly income as Pharmacist in the Government Hospital at Rs.28,635/- and monthly pension at Rs.10,563/- for serving in Indian army, so as to arrive at a monthly income at Rs.39,198/-. As per the Judgment reported above, "the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service and in terms of the service conditions and receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two". Thus, it is evidently made clear that the legal heirs of the deceased are entitled for receiving family pension. The submission of the learned counsel for the appellant that P.W.1 admitted the receipt of Rs.10,563/- as family pension, in the considered view of the Court, may not be correct. The reason is that after

the death of the pensioner, the dependent, who is entitled to get family pension, would normally receive less than 50% of pension. Innocuous admission allegedly made by P.W.1 cannot be considered to come to a conclusion that she was receiving Rs.10,563/- as pension every month. Admittedly, due to the death of the deceased, the family lost his income, i.e., Rs.28,635/- from the State Government and Rs.10,563/- for serving in the army. This is entirely a loss to the family. Therefore, the fixing the monthly loss of income to the family at Rs.39,198/- and calculating the compensation on this basis, cannot be faulted. In this view of the matter, this Court finds there is no reason to interfere with the award passed by the learned Special District Judge, Trichy and the same is confirmed.

10. In fine, this Civil Miscellaneous Appeal is dismissed and the order passed by the Tribunal is upheld. The appellant – Insurance Company is directed to deposit the compensation awarded by the Tribunal, i.e., Rs.50,51,731/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation, less the award amount already deposited if any, to the credit of M.C.O.P.No. 410 of 2015, dated 16.10.2019, on the file of the Motor Accidents Claims Tribunal, Special District Judge, Trichy, within a period of four weeks

from the date of receipt of a copy of this order. On such deposit being made by the appellant, the claimants are permitted to withdraw the same, as apportioned by the Tribunal, after following due process of law. No costs. Consequently, connected miscellaneous petition is closed.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
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06.12.2023

To

The Motor Accident Claims Tribunal,
Principal District Judge, Dindigul.

G.CHANDRASEKHARAN,J.

cp

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