BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.06.2023**

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.191 of 2023

1.S.Pramila
2.Minor Stephen Infant Rozar
Minor appellant represented through
his guardian/mother S.Pramila. ... Appellants

Vs.

1.Abuthahir

2.The Branch Manager,
United India Insurance Company Limited,
Sundaram Maasila Maligai,
TS No.5476 / 79,
Old Thirumayam Road,
Pudukottai District.
... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.12.2021 in M.C.O.P.No.126 of 2020 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukottai.

For Appellants : Mr.P.Ganapathi Subramanian

For R1 : No appearance

For R2 : Mr.J.S.Murali

J U D G M E N T

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal, Additional District Court, Pudukottai in M.C.O.P.No.126 of 2020, dated 16.12.2021.

2. The brief facts leading to the filing of this appeal are as follows:

The deceased Ganesan was working as Artist cum Photographer in the Department of Tamil Nadu Agriculture and retired on 31.05.2017. He was also doing business in the name of Baskar Digital and earning a sum of Rs.60,000/- per month. Besides, he had been getting pension of Rs.22,802/-. On 05.06.2019, at about 9.15 a.m., while the deceased was riding the motorcycle bearing Registration No.TN 55 AC 2425 towards the new bus stand from Thiruvappur, a lorry bearing Registration No.TN 04 L 2887 owned by the first respondent was driven by its driver in a rash and negligent manner and dashed against the deceased. As a result, he died on 07.06.2019. Hence, the claimants being the legal heirs of the deceased have filed the claim petition before the Tribunal seeking compensation. It is the contention of the Insurance Company that the first respondent had driven the vehicle in a moderate speed, however the deceased rode the vehicle in a rash and negligent manner and dashed against the lorry.

3. Before the Tribunal, on the side of the petitioners, P.Ws.1 and 2 were examined and Exs.P1 to P13 were marked and on the side of the respondents, no oral and documentary evidence marked.

4. The Tribunal, on perusal of the evidence of P.Ws.1 and 2 and other documents, particularly the F.I.R. filed against the driver of the lorry, found that only the driver of the lorry was negligent in driving the lorry. Thereafter, on considering the evidence adduced on the side of the petitioners, the Tribunal has awarded a sum of Rs.9,02,570/- in the following manner:

S. No	Description	Amount awarded by the Tribunal
1.	For loss of income	Rs.8,28,036/-
2.	Loss of consortium and loss of estate	Rs.55,000/-
3.	Loss of love and affection	Rs.50,000/-
4.	Medical expenses	Rs.1,70,181/-
5.	Ambulance charges	Rs.10,000/-
6.	Funeral expenses	Rs.15,000/-
	Total	Rs.11,28,217/-

After deducting 20% towards negligence on the part of the deceased, awarded a sum of Rs.9,02,574/-.

5. The only contention raised by the learned counsel for the appellants/claimants is that the Tribunal has not awarded the compensation based on the pension received by the petitioners. According to the learned counsel, the same is not valid in the eye of law. In support of his contention, he has relied on a judgment of this Court in the case of ***the Branch Manager, National Insurance Company Limited vs. Shanmugathai and others*** reported in ***2008(2) TN MAC 314.***

6. The learned counsel appearing for the second respondent/Insurance Company would submit that the wife of the deceased is paid family pension. Therefore, the Tribunal has rightly deducted the pension amount received by the wife of the deceased.

7. In the light of the above submissions, now the points for consideration in this appeal are (i) whether the Tribunal is right in deducting the pension amount while calculating the loss of income? (ii) whether the compensation arrived by the Tribunal is just and reasonable?

8. Since the negligent aspect has not been disputed by the Insurance Company, now the only point is with regard to the quantum of compensation

awarded by the Tribunal. The deceased was aged about 59 years and retired Government employee. This fact is not disputed and to prove the fact that the wife of the deceased also receiving a sum of Rs.22,802/- as pension, Exs.P6, P7 and P13 were also filed, whereas the Tribunal has not taken that amount while calculating the loss of income. It is well settled that the deduction of pension amount on the basis of family pension is not permissible.

9. The Hon'ble Apex Court in the case of ***Helen C.Rebello and others*** vs. ***Maharashtra State Road Transport Corporation and another*** reported in ***1999 (1) SCC 90,*** has held that 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. Hence, the pension payable to the wife of the deceased cannot be deducted. Following the above judgment, this Court, in the judgment reported in ***2008 (2) TN MAC 314*** held that deduction of compensation on account of receipt of family pension is illegal.

10. In such a view of the matter, the Tribunal erred in deducting the pension while calculating the loss of income. Admittedly, the wife of the

deceased was receiving a sum of Rs.22,802/- as pension. Therefore, this Court fixed the monthly income of the deceased at Rs.22,801/- and added 15% towards future prospects (Rs.22,802/- + Rs.3,420/- = Rs.26,222/-) and after deducting 1/3rd amount towards future prospects, the total monthly income comes around Rs.17,481/- (Rs.26,222/- -Rs.8,741/-). Thus, the total loss of income comes to Rs.18,87,948/- (Rs.17,481/- x 12 x 9). Further, the amount awarded by the Tribunal towards loss of love and affection is reduced from Rs. 50,000/- to Rs.40,000/-. The Tribunal has deducted 20% merely on the ground that the deceased did not possess licence, whereas the licence was very much available, which is also found place in the M.V. Report. In such a view of the matter, this Court reduced the contributory negligence from 20% to 10% for non-wearing of helmet. In respect of the other aspects, the amount awarded by the Tribunal is confirmed. The modified award amount is as follows:

S. No	Description	Amount
1.	For loss of income	Rs.18,87,948/-
2.	Loss of consortium and loss of estate	Rs.55,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Medical expenses	Rs.1,70,181/-
5.	Ambulance charges	Rs.10,000/-
6.	Funeral expenses	Rs.15,000/-
	Total	Rs.21,72,948/-

After deducting 10%, the total compensation payable to the claimants is Rs.19,55,653/-.

11. In the result, the Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the entire award amount within a period of four weeks from the date of receipt of a copy of this order. The award amount shall carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation. On such deposit, the first appellant is permitted to withdraw her share as apportioned by the Tribunal. In respect of the minor claimant, the amount shall be deposited in a Nationalised Bank till he attains majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months. No costs.

19.06.2023

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To

1.The Motor Accident Claims Tribunal,
Additional District Court,
Pudukottai.

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

N.SATHISH KUMAR,J.

akv

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