BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	18.10.2023
Pronounced on	10.11.2023

CORAM:

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

C.M.A(MD)No.322 of 2021
and
C.M.P.(MD)No.2719 of 2021

The Manager,
M/s.United India Insurance Company Limited,
1st Floor, 3E,
Balavinayakar Koil Street,
Tuticorin. ... Appellant / 2nd Respondent

-vs-

1.M.Sangeetha
2.Minor M.Dharneesh
3.R.Kamatchi
4.M.Ramasamy ... Respondents 1 to 4/Petitioners
[Minor second respondent is represented by his mother/1st respondent Sangeetha]

5.Grace Group India (P) Ltd.,
Rep. By its Managing Director,
No.106J/57B, First Floor,
Millerpuram, Tuticorin. ... 5th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeals have been filed under Section 19 of Family Courts Act against the Judgment and Decree dated 25.11.2019 passed by the Motor Accident Claims Tribunal cum Fast Track Mahila Court, Karur.

For Appellant	:	Mr.L.Jawahar Ravindran
For R1 to R4	:	Mr.K.Balasubramani
For R5	:	Given up

JUDGMENT

(Judgment of the Court was made by RMT.TEEKAA RAMAN, J.)

This Civil Miscellaneous Appeal is directed against the Judgment and Decree passed in M.C.O.P.No.48 of 2019, dated 25.11.2019 passed by the Motor Accident Claims Tribunal cum Fast Track Mahila Court, Karur.

2. The Insurance company is the appellant herein. The respondents 1 to 4 are the legal representatives of the deceased Maheswaran. The respondents 1 to 4 have filed M.C.O.P.No.48 of 2019 seeking compensation for the death of the said Maheswaran in the road accident on 25.02.2019.

3. After trial, the Motor Accident Claims Tribunal cum Fast Track Mahila Court, Karur, by an order dated 25.11.2019 granted an award of Rs.44,12,000/- with interest and hence, the appeal.

4. The appellant/Insurance company had admitted liability to the extent of Rs.14,12,000/- only and disputed the liability to an extend of Rs.30,00,000/- and accordingly, paid the Court fee.

5. The learned counsel for the appellant/Insurance company would contend that the appellant challenged the award on the plea of negligence and quantum and relied upon the Judgment of the Hon'ble Supreme Court of India in ***Nishan Singh and others Vs. Oriental Insurance Co. Ltd., and others*** reported in ***2018 (1) TN MAC 745 (SC).*** The Apex Court held that safe distance has to be maintained by the vehicle driver who is following another vehicle and on the point of quantum of compensation awarded by the Tribunal, he would contend that the consortium awarded to the father is on the higher side.

6. The learned counsel appearing for the respondents 1 to 4 made a submission in support of the judgment of the Tribunal.

7. Heard the learned counsel on either side and perused the records.

8. From the lower court records, it reveals that during the trial P.W.2-Sadhasivam/occurrence witness was examined and employer of the deceased was examined as P.W.3 and marked Ex.P.1-FIR, Ex.P.2-rough sketch, Ex.P.4-M.V.I. Report and Ex.P.5-charge sheet. It is seen from the evidence of P.W.2 stated that on 25.02.2019, he and one Jagadeesan of his village, were coming in a two wheeler towards Karur on Salem to Karur N.H.7 road and when they were passing over Vennamalai Temple side road, they saw Maheswaran proceeding ahead of them in a two wheeler bearing Registration No.TN-47-AB-0069 and at that time, a container lorry was also proceeding in front of the said Maheswaran rashly and negligently. He has further stated that the driver of the lorry without showing any signal suddenly turned the container lorry to his right side and in that process, the left rear side of the lorry dashed on the two wheeler and as a result of which, Maheswaran was thrown away and fell down on the road and

sustained grievous injuries over head, face and all over the body. Further, Ex.P.1 - First Information Report, Ex.P.2-rough sketch and Ex.P.5-charge sheet were marked to prove that the accident took place only due to rash and negligent driving of the driver of the lorry. Though the learned counsel for the appellant/Insurance company would contend that the theory of safe distance has to be adopted, we find that no such plea was raised in the counter statement. Furthermore, no one was examined on behalf of the Insurance company to elicit the fact in support of their contentions assumes significance and the appellant/Insurance company has not examined either the driver or any other independent witness to speak as to the manner of the accident as projected by them. In view of the specific evidence of P.W.2/occurrence witness coupled with the documentary evidence Ex.P.2, Ex.P.4 and Ex.P.5, the Tribunal has rightly come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the lorry insured with the appellant/Insurance company.

9. In this regard, the learned counsel for the appellant/Insurance company relied upon the decision of the ***Nishan Singh's case***, that the width of the road is

only 14 feet and there is a specific plea in the counter statement and further, it is also to be noted that there is an evidence on the side of the respondents by the Insurance company. On those factual position, the Hon'ble Supreme Court has rendered a judgment on the above said position that the Truck proceeding in front of the car could not have proceeded in the opposite direction and hence, the rule of 'Safe distance" should follow as per Section 23 of the Rules of Road Regulations, 1989.

10. In the instant case, there is no such plea in the counter statement filed by the Insurance company before the Tribunal. Further, there is no oral evidence adduced in support of the Insurance company plea on that score. On the other hand, the claim petitioners have examined the occurrence witness/P.W.2, whose evidence is clear. The width of the road in the present case is four way road and furthermore, the lorry which was insured with the appellant/Insurance company was going on one track, while the two wheeler driven by the deceased was going in the another track without giving signal and while such being the case, the lorry insured with the appellant/Insurance Company turned suddenly towards right side without giving any indication and without displaying any side indicator and

dashed the deceased Mahewaran's two wheeler and the deceased Maheswaran was thrown away with the two wheeler and sustained grievous injuries on the head and face. Hence, we find that the above factual background as distinguished from the above cited ***Nishan Singh's case,*** stands on a different footing and the same is not applicable to the facts and circumstances of the case. Hence, we find that the finding rendered by the Tribunal that the accident has taken place due to the rash and negligent driving of the driver of the vehicle insured with the appellant, is well considered and well merited which does not require any interference as the same does not suffer from any irregularity or illegality. Accordingly, the plea of contributory negligence pleaded by the appellant/Insurance company is hereby negatived.

10. On the point of quantum of compensation, heard the learned counsel on either side.

11. The claim petitioners have examined P.W.3/Raviprasad, the employer of the deceased Krishnasamy and also examined P.W.4/Vignesh, the Manager of the Bank, where, the said Maheswaran was holding the account and marked Ex.P.7-

PAN Card, Ex.P.8-Statement of account of the deceased Maheswaran and money transaction and another statement of account of the deceased was marked as Ex.P. 9 to Ex.P.11.

12. The learned counsel for the appellant/Insurance company would contend that the notional income of Rs.20,000/- awarded by the Tribunal is excessive.

13. We have given our anxious consideration.

14. Based upon the statement of P.W.3 and P.W.4, there is specific evidence spoken to by P.W.1 that, apart from the employment, the deceased was supplying and running a Dairy Farm and Ex.P.9 would show that the milk was supplied by the deceased to Krishna Dairy Farm and another Dairy Farm as could be seen from Ex.P.9 and Ex.P.11-bank statement, which were marked through the Manager of the bank, namely, P.W.4. Ex.P.8 and Ex.P.9 would categorically go to show that the deceased was supplying milk to the Krishna Dairy Farm and Kandaian Agro Food Private Limited and the amounts from the said Dairy Farm

have been transferred through NEFT. Hence, the calculation work has been carried out by the Tribunal based upon the above statement and arrived at Rs.20,000/- as notional monthly income of the deceased. Hence, we do not find any error in fixing the said amount, since the Tribunal has rightly made some guesswork based upon the supply since it is a seasonal profession and flexibility of income would be there. Hence, this Court, considering the nature and character and place of occupation and flexibility of income, has rightly come to the conclusion that the notional monthly income of Rs.20,000/- does not warrant interference.

15. Accordingly, the said finding is hereby confirmed and the Tribunal has rightly applied 40% for future prospects considering the age of the deceased was 35 years on the date of the accident and also calculated the multiplier and hence, the pecuniary loss assessed by the Tribunal at Rs.40,32,000/- cannot be termed as excessive and in respect of love and affection, Rs.1,00,000/- each to the claim petitioners 1 and 2, this Court is of the considered view that the same may be confirmed. However, for consortium given to the parents of the deceased at Rs.1,00,000/- is reduced to Rs.40,000/- and therefore, the award of

Rs.44,12,000/- is reduced to Rs.43,52,000/- on the head of the consortium of the parents alone. In all other aspects, the award is hereby confirmed.

16. Accordingly, this Civil Miscellaneous Appeal is partly allowed reducing the compensation from Rs.44,12,000/- to Rs.43,52,000/- (Rupees Forty Three Lakhs and Fifty Two Thousand only) with interest at the rate of 7.5% p.a from the date of claim petition till the date of realization. The appellant/Insurance company is directed to deposit the modified reduced award amount with accrued interest and costs, less the award amount already deposited, if any, within a period of eights weeks from the date of receipt of a copy of this order. The apportionment of the amount shall be as stated by the Tribunal. On such deposit being made, the respondents 1, 3 and 4 are entitled to withdraw their share amount along with proportionate accrued interest and cost, less the amount already withdrawn, if any. The Tribunal shall deposit the share of the second respondent, who is minor claimant, in a Fixed Deposit in any one of the Nationalised Bank, which shall be renewed periodically, till he attains majority. The first respondent-mother of the minor is permitted to withdraw the interest from the share of the minor child, viz, the second respondent, once in three

months from the bank directly. No costs. Consequently, connected miscellaneous petition is closed.

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

10.11.2023

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

1. The Motor Accident Claims Tribunal cum Fast Track Mahila Court, Karur.

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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