BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.10.2023	Delivered on:21.12.2023

CORAM:

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

C.M.A.(MD).No.169 of 2019
and
C.M.P.(MD)No.2240 of 2019

The Branch Manager,

Iffco – Tokio General Insurance Company Limited,

First Floor, Preetham Plaza,

Ponmeni, Madurai,

Madurai District. ... Appellant / Respondent No.2

Vs.

1.Boonachellam

2.Minor.Isani

(Minor Respondent is represented by her next friend, guardian and the first respondent herein)

3.Vimala

4.Balasubramanian ... Respondents 1 to 4 / Petitioners

5.Murugesan ...5th Respondent/1st Respondent

6.M/s.Sivakarthikeyan Transport,

D.No.23A, Pusupathipuram,

Karur, Karur District.

7.The Branch Manager,
National Insurance Company Limited,
D.No.63, Rasi Plaza,
West Pradhashinan Road,
Karur, Karur District. ... Respondents 6 &4/Respondents 3 & 4

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree, dated 03.08.2018, passed in M.C.O.P.No.35 of 2016, on the file of the Motor Accidents Claims Tribunal / Subordinate Judge, Aruppukottai, insofar as liability and quantum is concerned.

For Appellant	:	Mr.V.Sakthivel
For Respondents	:	Mr.G.Mariappan for R1 to R4
	:	Mr.J.S.Murali for R7
	:	No appearance for R5 & R6

JUDGMENT

P.B.BALAJI,J.

The Insurance Company, aggrieved by the award of compensation to the tune of Rs.2,86,29,290/-, is the appellant before us.

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

3. Brief facts, which adjudicating the Civil Miscellaneous Appeal, are as follows:-

The claimants being the wife, minor daughter and parents respectively of the deceased - one Kumaran, filed a M.C.O.P, claiming compensation for the death of said Kumaran in a motor accident on 01.02.2016.

4. The appellant as the second respondent, opposed the said application on the ground that the accident happened only because of the negligent driving of the driver of the third respondent (sixth respondent herein) vehicle and not on account of rash or negligent driving on the part of the first respondent's (fifth respondent herein) vehicle. The claim of Rs.3,50,00,000/- was also opposed on the ground that it was arbitrary and highly excessive.

5. Before the Tribunal, Balasubramanian - father of the deceased was examined as P.W.1 and an eye witness - Ramachandran was examined as P.W.2 and 30 documents were marked as Ex.P1 to Ex.P30 on the side of the claimants. On the side of the respondents, driver of the vehicle, one Murugesan was examined as R.W.1 and his licence was marked as Ex.R1.

6. The Tribunal found that the accident happened only due to the rash and negligent driving of the first respondent's vehicle and proceeded to determine compensation under various heads. The Tribunal arrived at loss of income of Rs.18,96,833/-, deducted income tax of Rs.2,28,134/- and adding 50% future prospects and adopting a multiplier of '15', arrived at a total amount of Rs.2,86,29,290/- as compensation.

7. Aggrieved by the said award, the appellant has preferred the present Civil Miscellaneous Appeal on the grounds that it was a case of composite negligence and the Tribunal has totally failed to appreciate the evidence available on record, in this regard. It is also stated that the award of compensation is excessive and the Tribunal erred in taking into account Form - 16 and Ex.P11 and Ex.P29, which pertain to earlier periods and not

relevant with the date of accident. A specific ground is also taken that the amount shown as income in Form - 16 cannot be taken as income of the deceased, unless corresponding records with regard to source of income have been produced to correlate the same. It is also contended that the Tribunal has not taken note of Ex.P28 - salary slip of January - 2016, which shows the salary of the deceased, without deduction as Rs. 1,28,231/- per month. The award of interest at 9% per annum has also been challenged as being excessive and that the ratio of the dictum of the Hon'ble Supreme Court has not been followed. Equally, the award of 50% towards future prospects is also challenged being in contravention to the ratio laid down by the Hon'ble Supreme Court in ***Pranay Sethi's*** case. The award of Rs.4,00,000/- towards loss of love and affection is also challenged as being contrary to the judgment of the Hon'ble Supreme Court in ***Pranay Sethi's*** case.

8. We have heard Mr.V.Sakthivel, learned counsel for the appellant, Mr.G.Mariappan, learned counsel for the claimants/ respondents 1 to 4 and Mr.J.S.Murali, learned counsel for seventh respondent.

9. Mr.V.Sakthivel, learned counsel for the appellant would fairly submit that in respect of the negligence aspect, the claim made in C.M.A.No.1857 of 2020 ***(Iffco Tokio General Insurance Company Limited., V. A.Mahitha)***, dated 26.04.2021, the Division Bench of this Court had confirmed the finding on the negligence and therefore, he is not canvassing the same, before us. However, the learned counsel for the appellant would submit that the award requires interference on the following grounds:

(i) The Tribunal erred in relying on Form - 16, which is not conclusive proof insofar as the income of the deceased;

(ii) The Tribunal erred in taking into account 50% of the income towards future prospects and ought to have been deducted only 40%;

(iii) The Tribunal erred in 9% p.a, whereas it is settled proposition of law, it is only at the rate of interest such cases 7.5% pa and not 9% p.a.;

(iv) The Tribunal has not deducted conveyance, leave travel allowance and other allowances from the salary while arriving at the salary of the deceased.

10. Per contra, the learned counsel for the claimants would submit that the findings of the Tribunal are just and proper and it does not warrant any interference in the Appeal.

11. Having heard the learned counsel for the parties and also perused the records as well as the various decisions placed by the counsel on either side, we proceed to decide the Civil Miscellaneous Appeal.

12. With regard to the aspect of negligence, though several grounds raised in the Civil Miscellaneous Appeal alleging that it is a case of composite negligence and the Tribunal has not determined any percentage to be factored towards contributory negligence, in view of the submission of the learned counsel for the appellant that the appellant does not wish to canvass the issue of negligence in view of the judgment in C.M.A.No.1857 of 2020, we confirm the finding of the Tribunal with regard to the negligence.

13. The learned counsel for the appellant would challenge the

quantum of compensation awarded to the claimants. According to him, the Tribunal has erroneously fixed the income of the deceased by falling back on Form – 16 and further has not deducted the amounts towards conveyance leave travel allowances and medical reimbursement, which cannot be treated as the income of the deceased. The learned counsel for the appellant would place reliance on the following decisions:-

(i) judgment of a Division Bench of this Court in ***G.Palaniswame V. Jawaharlal B.Patel*** reported in ***2020-2-TNMAC-25(DB)***;

(ii) judgment of a Division Bench of this Court ***in Reliance General Insurance Co. Ltd., V. Ragini*** reported in ***2023-2-TNMAC-152(DB)***;

(iii) judgment of a Division Bench of this Court in C.M.A.Nos. 2762 and 3033 of 2010 (***S.Chandirakala V. Tamil Nadu State Transport Corporation Limited***), dated 27.09.2013

(iv) judgment of a Division Bench of this Court in ***Management of Oriental Hotels, Ltd., V. Employees' State Insurance Corporation*** reported in ***2001-1-L.L.N-943***; and

(v) judgment of a Division Bench of this Court in

Regional Director, Employees' Insurance Corporation, Madras V. Sundaram Clayton, Ltd., Moppet Division (Registered Office), Madras reported in ***2004-1-L.L.N-630.***

14. Per contra, the learned counsel for the claimants, namely, respondents 1 to 4 herein, would submit that the Tribunal has rightly taken note of various determining factors and awarded fair compensation and the same does not require any interference at the hands of this Court. He would place reliance on the decisions of the Hon'ble Supreme Court in ***Vijay Kumar Rastogi V. Uttar Pradesh State Roadways Transport Corporation*** reported in ***2018-1-TNMAC-367 (SC)***, where the Hon'ble Supreme Court has dealt with denial of claim with reference to commission and interest amount that were earned by the injured and which were claimed under the head “income from other sources”.

15. (a). Coming to the question of quantum, the first point raised is with regard to the income of the deceased. Admittedly, the Tribunal has taken the income of the deceased based on the Form-16 produced by the claimants. The deceased was a Building Engineer earning Rs.1,28,231/-

per month, as per the last month salary slip issued for January - 2016.

15. (b). However, the Tribunal without taking into account, the said salary slip marked as Ex.P28, has relied on Ex.P29, which is the Form-16 for the period 01.04.2014 to 31.03.2015 and proceeded to fix the income at Rs.1,28,231/-, without deducting Rs.1,600/- towards conveyance, Rs.6,000/- towards leave travel allowance and Rs.367/- towards medical reimbursement, as they cannot be a part of the income of the deceased for the purpose of calculating the compensation payable in a motor accident and the said amounts of Rs.1,600/-, Rs.6,000/- and Rs.367/- are liable to be deducted from the salary of Rs.1,28,231/- (Rs.1,28,231/- (-) Rs.7,967/- = Rs.1,20,364/-).

15. (c). Ex.P29 is Form - 16 under Rule 31(1)(a) of the Income Tax Act. The said Form-16 is only giving details of the gross salary and allowances exempted from Income Tax and the consequent taxes payable by the deceased. The Tribunal has verbatim adopted the gross salary of Rs.18,96,832/- available in Form 16, which is seriously challenged by the appellant / Insurance Company, which is only on the basis of a monthly salary of Rs.1,58,069.33.

15. (d). In this regard, the learned counsel for the appellant

would submit that the said Ex.P29 pertains to the Assessment Year 2014-2015 and whereas the salary certificate Ex.P28 is in respect of January - 2016. The accident occurred on 01.12.2016 and therefore, it would be appropriate to take the said salary slip, Ex.P28 to arrive at the monthly income.

15. (e). As rightly contended by the learned counsel for the appellant a sum of Rs.1,600/- towards conveyance allowance Rs.6,000/- leave travel allowance and Rs.367/- towards medical reimbursement, totalling in all a sum of Rs.7,967/- does not form part of the salary and they have to be deducted, thus leaving a sum of Rs.1,20,364/- to be the income of the deceased. A sum of Rs.200/- paid towards professional tax also cannot be included in the salary and therefore the income for the purpose of arriving at compensation is Rs.1,20,164/- per month. The Tribunal has factored 50% towards future prospects. In view of the settled dictum of the Hon'ble Supreme Court, considering the age of the deceased as well as the nature of his employment, only 40% would have to be awarded towards future prospects.

16. Coming to the deduction of income tax, the learned counsel

for the appellant has placed reliance on the income tax rates applicable for the Financial Year 2016-2017 and states that for the first Rs.2,50,000/- no tax is payable; for the next Rs.2,50,000/-, 10% is payable and for the next Rs.5,00,000/- to Rs.10,00,000/-, 20% income tax is payable and for income above Rs.10,00,000/-, 30% income tax is payable.

17. Form - 16 cannot be relied on for more than one reason. Firstly, because it includes conveyance allowance, leave travel allowance and medical reimbursement payment which cannot be part of income of the deceased for the purpose of calculating the compensation amount to the claimants in a motor accident's case. Secondly, the said Form - 16 pertains to the year 2014 - 2015 and it runs contrary to Ex.P28- salary certificate, which is more appropriate as it is for January - 2016 and marked on the side of the claimants themselves in support of the income proof of the deceased. Considering that the accident occurred on 01.12.2016, the most relevant and appropriate document for arriving at the income of the deceased is the said salary certificate is Ex.P28 alone.

18. (a). Though the learned counsel for the first respondent would rely on the decision of the Hon'ble Supreme Court to fortify his

contention that there is no infirmity in the Tribunal in relying on Form - 16 income tax return for the purposes of calculating the income of the deceased, in view of the facts of the present case, we have already seen that the Form - 16 produced is for an earlier period and the salary certificate produced is more nearer in point of time to the accident and the said document has been filed by the claimants themselves. Therefore, placing reliance on the judgment of the Hon'ble Supreme Court and the Division Bench of this Court, arguments of the learned counsel for the claimants that the income tax returns have to be considered cannot be countenanced. 18. (b). The burden is always on the claimants to establish the monthly income of the deceased. There is no explanation on the side of the claimants as to why there is a discrepancy in the salary certificate and the income projected in the Form - 16 in the proceeding. Therefore, we hold that Ex.P28 - salary certificate is the most proper and relevant document for arriving at the income of the deceased.

19. In ***G.Palaniswam's*** case, Division Bench of this Court took note of the fact that even after the death of the deceased there was no determination in the income that accrued from other sources, namely, the

agricultural income and other business income which continued to accrue to the claimants.

20. In ***S.Chandirakala's*** case referred hereinabove, the Division Bench of this Court held that the amounts under the head of conveyance charges was only a personal benefit given to the deceased and the same cannot be taken into account, while calculating loss of income. We find that the ratio above two decisions would squarely apply to the facts of the present case as well for the reason that the interest agreeing available in the Bank would continue to be paid to the claimants and therefore the same cannot be taken into account for arriving at the income of the deceased. Similarly, the amounts towards conveyance leave travel allowances and medical reimbursement are only personal benefits that were granted to the deceased and the claimants cannot take advantage of the same. Therefore, as already discussed in paragraph No.15 hereinabove, we fix the income at Rs.1,20,364/- per month.

21. Hence, taking the monthly salary at Rs.1,20,164/- and adding future prospects at 40% (Rs.48,065), the total annual salary is Rs.

20,18,748/- (Rs.1,68,229/- X 12). After deducting applicable income tax (ie.Rs.4,30,625/-), and after deducting 1/4 (Rs.3,97,032/-) towards the personal expenses of the deceased, the amount is Rs.11,91,093/- p.a. After applying a multiplier of '15', the loss of income is calculated at Rs.1,78,66,395/- (Rs.11,91,093/- X 15). The Tribunal awarded Rs.4,00,000/- towards love and affection, which is excessive. As per the dictum of the Hon'ble Supreme Court in ***Pranay Sethi's*** case, the claimants are entitled to Rs.1,20,000/- (Rs.40,000/- each to claimants 2 to 4).

22. The Tribunal awarded Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate, which are all reasonable. In view of the above discussion, the compensation is reworked in the manner hereunder:

Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	Rs. 2,81,59,290	Rs. 1,78,66,395/-	Reduced
2.Loss of consortium	Rs. 40,000/-	Rs. 40,000/-	confirmed
3.Loss of love & affection (Claimant 2 to 4)	Rs. 4,00,000/-	Rs. 1,20,000/	Reduced
4.Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed
5.Loss of estate	Rs. 15,000/-	Rs. 15,000/-	confirmed

Total Compensation	**Rs. 2,86,29,290**	**Rs. 1,80,56,395/-**	**Reduced**

23. The Tribunal awarded interest at the rate of 9% pa., which is liable to be interfered with and the rate of interest is reduced to 7.5%. pa..

24. The Civil Miscellaneous Appeal is partly allowed and the award is modified from Rs.2,86,29,290/- to Rs.1,80,56,395/- together with interest at the rate of 7.5% interest per annum. The first claimant / wife of the deceased is entitled to Rs.75,00,000/- with proportionate interest and costs and the second claimant / son of the deceased is entitled to Rs.75,56,395/- with proportionate interest and the claimants 3 and 4/ parents of the deceased are entitled to Rs.15,00,000/- each with proportionate interest.

25. The appellant / Insurance Company is directed to deposit the modified award amount of Rs. 1,80,56,395/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. Excess amount, if any, shall be refunded to the appellant / Insurance Company.

26. On such deposit being made, the respondents 1, 3 and 4

herein are permitted to withdraw their award amount along with interest and costs as apportioned by this Court, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. In respect of the share of minor - second respondent herein, the Tribunal is directed to deposit her share amount in any one of the Nationalised Banks till she attains majority. Till then, the first respondent - mother of the minor shall be permitted to withdraw the interest accrued thereon, once in three months in order to maintain the Minor. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
21.12.2023

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
Ls

To

1.The Motor Accidents Claims Tribunal
/ Subordinate Judge,
Aruppukottai

2.The Section Officer,

VR Section,
Madurai Bench of Madras High Court,
Madurai.

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

Ls

judgment in
C.M.A.(MD).No.169 of 2019

21.12.2023