.BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	05.10.2023
Pronounced on	22.12.2023

CORAM:

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

C.M.A(MD)No.638 of 2022
and
C.M.P.(MD)No.5476 of 2022

The Divisional Manager,
M/s.Oriental Insurance Company Ltd.,
Having its Office at No.1,
Salai Road,
Dindigul. ... Appellant / 2nd Respondent

-vs-

1.T.Kavithamani
2.T.Vigneshwari
3.T.Kiruthika Jeyarani ... Respondents 1 to 3/ Petitioners 1 to 3

4.C.Malliga ... 4th Respondent / 1st Respondent

PRAYER : Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No. 751 of 2019 on the file of the Motor Accident Claims Tribunal cum Principal District Court, Dindigul dated 31.08.2021.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.S.Pugalendhi for R1 to R3

Mr.D.Venkatesh for R4

JUDGMENT

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

The Insurance Company is the appellant herein. Challenging the award passed in M.C.O.P.No.751 of 2019, the Insurance Company/appellant filed this appeal on the ground of negligence and quantum.

2.The respondents 1 to 3 are the claim petitioners and they have filed the above claim petition in M.C.O.P.No.751 of 2019 claiming compensation for the death of one K.Thirumalraju in the road accident on 18.04.2019.

3.The Insurance company filed counter statement before the Tribunal contending that the deceased at the time of the accident, was not wearing helmet and thereby he contributed the same to the accident.

4.Before the Tribunal, on behalf of the the claim petitioners, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.22 were marked. On behalf of the respondents, R.W.1 was examined and Ex.R.1 was marked.

5.Based upon the oral and documentary evidence, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligence driving of the driver of the offending vehicle, which is insured with the appellant/Insurance company and assessed the compensation based upon the document and hence, the appeal.

6.The learned counsel for the appellant/Insurance Company would contend that for not wearing the helmet, contributory negligence at the rate of 10% has to be fixed based upon the Judgment of this Court in ***Royal Sundaram Alliance Insurance Company Vs. Ramakrishnan*** reported in ***2020 (1) TNMAC Page 319 (DB)***. He would further contend that the deceased was working as a Senior Pharmacist at Government Hospital, Aathur, Dindigul and he has got only three more years of service, as the age of the deceased was 55 years at the time of the accident and therefore, while calculating the loss of income of the Government servant, split multiplier method has to be adopted and relied upon the Judgment of this Court in ***Padmavathy's case*** reported in ***2007 (1) TNMAC page 507***.

7.Per contra, the learned counsel for the claim petitioners made submissions in support of the award and on the point of contributory negligence alleged by the appellant/Insurance company, the evidence of P.W.3-occurrence witness is clear and cogent and it is duly corroborated by Ex.P.1-FIR and Ex.P.3-

rough sketch and Ex.P.4-final report and thus, this Court finds that the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle belongs to the fourth respondent herein, which was insured with the appellant/insurance company. The plea raised by the Insurance Company in this appeal is on the point of contributory negligence for not wearing the helmet.

8.On perusal of the lower Court records, we find that on behalf the Insurance company, the driver of the vehicle was not examined and hence, this Court finds that the plea was not raised before the Tribunal and no evidence has been adduced in this behalf by the owner of the vehicle or the insurer of the vehicle and there is no cross examination with the occurrence witness as to the alleged fact of not wearing of the helmet and hence, we find that it is only an after thought for the appellant/Insurance Company to raise a point now. In the absence of any positive evidence to show that at the time of the accident, the deceased was not wearing the helmet and in view of the positive evidence of Ex.P.4-final report, in which, there is no indication as to whether the deceased was wearing helmet or not and we are of the considered view that this point has been raised only as an after thought for the purpose of filing the appeal and the same hereby stands negatived for want of evidence as discussed supra.

9.The date of the accident is 18.04.2019 and the place of the accident is near Apollo Hospital at Madurai and hence, he was immediately taken to Apollo Hospital and he was discharged on 15.06.2019 as reflected under Ex.P.7 and due to the financial cringe they got discharged from the Apollo Hospital and they got admitted at the Vellammal Medical College and Hospital at Madurai as could be seen from Ex.P.8 to Ex.P.10 and he died on 23.06.2019 as could be seen from Ex.P.12-postmortem certificate, wherein, it is stated that the cause of death of the deceased is due to the spinal cord injury sustained in the accident and hence, we have no hesitation to hold that the said Thirumal Raju died due to the accidental injuries sustained in the accident in subject and consequently, the M.C.O.P.No. 751 of 2019 is held to be maintainable. The counter plea raised by the appellant/Insurance Company hereby stands negatived based upon the above referred documentary evidence.

10.On the point of quantum of compensation, a point was raised that on the date of the accident, the deceased was aged about 55 years and hence, multiplier of 11 is properly adopted as per the ***Sarla Verma's case*** and future prospects has been rightly given by the Motor Accident Claims Tribunal cum Principal District Court, Dindigul. The only point remains to be addressed is whether split multiplier method has to be adopted in respect of calculating the loss of income for the Government servant.

11.The judgments of the Hon'ble Supreme Court in ***K.R.Madhusudhan V. Administrative Officer*** reported in ***2011-4-SCC-689*** and ***Puttamma and others V. K.L.Naraya Reddy*** reported in ***2014-1-TNMAC-481 (SC)*** have been referred and relied upon by the learned counsel for the appellant/Insurance.

12.In this connection**,** in ***The Branch Manager Vs. K.S.Vasantha [C.M.A(MD)No.238 of 2018, dated 01.12.2023]*** after referring to the Judgments of the Hon'ble Supreme Court in ***R.Valli's case*** and ***K.R.Madhusudhan V. Administrative Officer*** reported in ***2011-4-SCC-689 and Nagappa Vs. Gurudhayal Singh*** reported in ***2003-2-SCC-274*** and also in ***N.Jeyasree V. Cholamandalam MS General Insurance Company Ltd.,*** reported in ***2021-SCC-Online-SC-967 case,*** we have held that in view of the Judgment of the Hon'ble Supreme Court of India in ***R.Valli's case,*** split up method cannot be applied as the decision rendered in ***Sarla Verma's case***, wherein, multiplier method has been approved as impliedly approved by the Constitution Bench in the ***Pranay Sethi's case*** and therefore, two multipliers cannot be applied.

13.In the result, the plea of split multiplier method no longer holds the field in view of the Judgments of the Hon'ble Supreme Court of India and hence, we have no hesitation to hold so, in accordance with the law laid down of the Hon'ble Supreme Court of India in ***R.Valli's case*** and hence, this point also stands negatived against the appellant/Insurance company and we find that the quantum of compensation in respect of all other claimants is reasonable and the quantum of compensation is exorbitant or excessive.

14.Accordingly, we find that the award is fair and we do not find any points for interfering with the well considered and well reasoned award passed by the Tribunal. Hence, the Civil Miscellaneous Appeal is dismissed and the award dated 31.08.2021 passed in M.C.O.P.No.751 of 2019 on the file of the Motor Accident Claims Tribunal cum Principal District Court, Dindigul, is confirmed. The appellant/Insurance company is directed to deposit the entire award amount with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit being made, the respondents 1 to 3/ claimants are permitted to withdraw their shares together with interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

[T.K.R., J.] [P.B.B., J.]
22.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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RMT.TEEKAA RAMAN, J.
and
P.B.BALAJI, J.

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To

1.The Motor Accident Claims Tribunal cum Principal District Court,
Dindigul.

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

C.M.A(MD)No.638 of 2022

22.12.2023