BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.11.2023	Delivered on: 22.11.2023

CORAM:

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

C.M.A.(MD).No.774 of 2023
and
C.M.P.(MD)No.10864 of 2023

The Reliance General Insurance Company Ltd.,
10th Cross, Thillai Nagar West,
Trichirappalli – 620 018. ... Appellant / Respondent No.2

Vs.

1.A.Kavitha
2.Tamilventhan
3.Sivasankari ... Respondents 1 to 3 / Petitioners
4.Shahul Hameed
5.K.Murugesan ... Respondents 4 & 5/ Respondents 1&2

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree in M.C.O.P.No.203 of 2020, dated 21.04.2022, on the file of the Motor Accident Claims Tribunal – Sub Judge, Manaparai.

For Appellant	:	Mr.V.Sakthivel
For Respondents	:	Mr.B.Prasath for R1 to R3
	:	No appearance for R4 & R5

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The Insurance Company of the offending vehicle is the appellant before us. The respondents 1 to 3 herein as claimants sought for compensation pursuant to the motor accident which had resulted in the demise of one Mr.Arumugam, who is the husband of the first claimant and father of the claimants 2 and 3.

2. The case of the claimants was that on 20.01.2020, when the deceased was riding his two wheeler, the fifth respondent herein / first respondent in M.C.O.P, drove the vehicle of the sixth respondent / second respondent, in a rash and negligent manner, dashed against the said Arumugam, which resulted in his demise subsequently on 06.02.2020. A sum of Rs.50,00,000/- was claimed as compensation.

3. The appellant herein, as third respondent in the M.C.O.P proceedings, filed a counter denying the allegations and stating that the deceased alone drove the two wheeler in a rash and negligent manner and

that there was a contributory negligence factor that was to be taken in to account as the deceased also contributed to the accident.

4. Before the Tribunal, the first claimant, viz., wife of the deceased, examined herself as P.W.1, apart from examining three other witnesses as P.W.2 to P.W.4 and 14 documents were marked as Ex.P1 to Ex.P14, on the side of the claimants. On the side of the respondents, no oral evidence or documentary evidence was adduced. Ex.C1 to Ex.C4 were marked as Court exhibits.

5. The Tribunal finding that the driver of the offending vehicle alone was responsible for the accident, held that the appellant / second respondent was jointly and severally liable to compensate the claimants and awarded a sum of Rs.44,19,704/- as compensation.

6. Aggrieved by the said award of the Tribunal, the appellant has preferred the present Civil Miscellaneous Appeal, challenging the award on the ground of negligence as well as the quantum of compensation.

7. The main contention of the appellant is that the Tribunal did not take into account the plea of contributory negligence and further, the Tribunal has not also factored income tax payable by the deceased, while fixing the income of the deceased.

8. We have heard Mr.V.Sakthivel, learned counsel for the appellant / Insurance Company and Mr.B.Pragash, learned counsel for the respondents 1 to 3/ claimants. We have also perused the records and the impugned award of the Tribunal.

9. Insofar as the negligence, though Mr.V.Sakthivel, learned counsel for the appellant would contend that the Tribunal has not taken note of the fact that the deceased died because of head injury, as he was not wearing helmet, the accident could have been averted, if the deceased had worn a helmet, from the pleadings, we find that despite a specific statement in the claim petition that the deceased was wearing a helmet, there was no specific denial of the same. Further, from the evidence available and the manner of accident, we find that the deceased – Arumugam was not at fault and the accident occurred only because of the

rash and negligent driving of the driver of the four wheeler, belonging to the fifth respondent herein / second respondent. The Tribunal has rightly appreciated the F.I.R as well as the report of the Motor Vehicle Inspector, in arriving at the said finding and fixing the entire liability on the driver of the vehicle owned by fifth respondent / second respondent and insured with the appellant Insurance Company. We do not therefore see any reason to interfere with the said finding of the Tribunal.

10. Coming to the next aspect, viz., quantum of compensation, the Tribunal has fixed the income of the deceased as Rs.39,257/- based on Ex.P13. However, the Tribunal has not factored the income tax payable by the deceased and taken the gross income, after adding 15% (Rs.5,888/-) towards future prospects, before tax deduction, as Rs.5,20,897/- per annum. Applying the income tax deductions relevant as on the date of the claim petition, for the first 2.5 Lakhs there would be no income tax payable and for the next slab 2.5 Lakhs – 5 Lakhs at the rate of 5% ie. Rs.12,500/- and for the next slab 5 Lakhs – 7.5 Lakhs at the rate of 20% ie. Rs.8,349/- would be payable. Thus, in all Rs.20,849/- per annum would be the account of income tax to be deducted. After deducting income tax, the

deceased would have earned a sum of Rs.5,20,897/- per anuum (ie.Rs.5,41,746/- (-) Rs.20,849) and after deducting 1/3rd towards the personal expenses of the deceased, Rs.1,73,632/- (Rs.1,73,632.33, the same is rounded off to Rs.1,73,632/-) p.a., the deceased would have contributed Rs.3,47,264/- (Rs.3,47,264.66, the same is rounded off to Rs. 3,47,264/-) p.a., to his family. By applying multiplier '11', the claimants are entitled to Rs.38,19,904/- (Rs.3,47,264/- X 11), towards loss of dependency.

11. The Tribunal awarded Rs.1,50,000/- to the claimants towards loss of consortium to the first claimant and loss of love and affection to the claimants 2 and 3. As per the dictum of the Hon'ble Supreme Court in ***Pranay Sethi's*** case, the claimants are entitled to Rs.1,20,000/- towards loss of consortium to the first claimant and loss of love and affection to the claimants 2 and 3.

12. The Tribunal awarded Rs.20,000/- towards loss of estate, Rs. 10,000/- transport expenses, Rs.15,000/- towards funeral expenses, Rs. 2,48,900/- towards medical expenses, Rs.3,000/- towards damages to

cloths. Insofar as these heads are concerned, we do not propose to interfere with the award of the Tribunal.

13. 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. 39,72,804/-	Rs. 38,19,904/	reduced
2.Loss of consortium	Rs. 50,000/-	Rs. 40,000/-	reduced
3.Loss of love & affection (Claimants 2 &3)	Rs. 1,00,000/-each Rs.50,000/-	Rs. 80,000/- each Rs.40,000/-	reduced
4.Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed
5.Transportation	Rs. 10,000/-	Rs. 10,000/-	confirmed
6.Damages to cloth	Rs. 3,000/-	Rs. 3,000/-	confirmed
7.Medical expenses	Rs. 2,48,900/-	Rs. 2,48,900/-	confirmed
8.Loss of Estate	Rs. 20,000/-	Rs. 20,000/-	confirmed
Total Compensation	**Rs. 44,19,704/-**	**Rs. 42,36,804/-**	**Reduced**

14. In fine, the Civil Miscellaneous Appeal stands partly allowed and the compensation awarded by the Tribunal is reduced from

Rs.44,19,704/- to Rs.42,36,804/-. The first claimant, who is the wife of the deceased is entitled to Rs.22,36,804/- with proportionate interest and costs, the second claimant, who is the son of the deceased is entitled to Rs.10,00,000/- with proportionate interest, the third claimant, who is the daughter of the deceased is entitled to Rs.10,00,000/- with proportionate interest.

14. The appellant / Insurance Company is directed to deposit the modified award amount of Rs.42,36,804/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, together with 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, deposited if any, shall be refunded to the appellant / Insurance Company.

15. On such deposit being made, the respondents 1 to 3 herein are permitted to withdraw their respective 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. 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)
22.11.2023

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

1.The Motor Accident Claims Tribunal
Sub Judge, Manaparai.

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

<u>RMT.TEEKAA RAMAN, J.,</u>
and
<u>P.B.BALAJI,J</u>

Ls

Judgment in
<u>C.M.A.(MD).No.774 of 2023</u>

22.11.2023