BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 31.01.2023

Delivered On : 28.02.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.210 of 2020

The Oriental Insurance Company Limited,
through its Branch Manager,
Pudhukottai, No.3607/21,
Sathiyamoorthy Road 2nd Floor,
Near Teem Hospital,
Pudhukottai Town, Pudhukottai District. .. Appellant /2nd Respondent

Vs.

1.Santhi ...1st Respondent/1st Petitioner

2.Minor.Karunakaran ... 2nd Respondent / 2nd Petitioner

(Minor 2nd respondent rep.,
through guardian and mother 1st respondent Mrs.Santhi)

3.Kunchammal ... 3rd Respondent/3rd Petitioner

4.Rajamanickam ... 4th Respondent/4th Petitioner

5.Yasodha ... 5th Respondent/1st Respondent

(R5 given up)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.184 of 2015 dated 28.02.2019 on the file of the Motor Accident Claims Tribunal cum III Additional District and Sessions Court, Thanjavur at Pattukottai.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.R.Venkatesan (for R1 to R4)
R5-given up

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 28.02.2019, made in M.C.O.P.No.184 of 2015, on the file of the Motor Accident Claims Tribunal cum III Additional District and Sessions Court, Thanjavur at Pattukottai. The appellant herein is the second respondent, the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the claim petition in M.C.O.P.No.184 of 2015, is as follows:

On 28.12.2014 at about 8.30 pm., when the deceased Sivakumar was riding a two wheeler bearing Registration No.TN 49 AS 2158, a tractor bearing Registration No.TN 36 E 7676 annexed with trailer bearing Registration No.TN 49 X 1256 that was proceeding before the deceased and it was suddenly stopped without any signal. In consequence, the two wheeler dashed against the trailer and the deceased died on the spot. The deceased was working as an Assistant in the

Tamil Nadu Electricity Board and he was earning a sum of Rs.13,880/- as salary. The petitioners are his heirs and they claim a sum of Rs.50,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent in M.C.O.P.No.184 of 2015, is as follows:

The driver of the tractor was not having valid driving license. Document regarding the vehicle was not produced. The two wheeler does not belong to the deceased and its registration certificate, policy and driving license are not filed. The deceased was not having driving license. The two wheeler was not having insurance policy. The accident did not take place due to the negligence of the driver of the tractor. There is no damage to the tractor or the trailer. The front portion of the motor cycle was damaged. It was the deceased, who rode the motor cycle in erroneous and negligent manner and he invited the accident. He dashed against the rear portion of the trailer.

4. Four witnesses were examined and seventeen documents were marked on the side of the petitioners. One witness was examined and four documents were marked on the side of the second respondent. After considering both sides, the tribunal awarded a compensation of Rs.34,02,360/- to be paid by the second respondent.

5. Against the award, the second respondent/appellant filed this appeal in the following grounds:

5.1 The tribunal failed to consider that the deceased himself is responsible for the accident. The deceased rode the two wheeler in a rash and negligent manner and dashed behind the trailer and invited the accident.

5.2 Atleast contributory negligence ought to have fixed on the deceased. The first claimant was given appointment on compassionate ground and she is drawing a monthly salary of Rs.27,090/-. The tribunal failed to consider these facts.

5.3 The first claimant is now earning more than what the deceased was earning when he was alive. The tribunal was wrong in adding future prospects. The claimants are not entitled to future prospects at the ratio of 50%. They are entitled to a ratio of 40%. The fourth claimant as the father of the deceased, but tribunal has wrongly deducted ¼ of the income, instead of 1/3 of the income towards the personal expenses of the deceased. The total award amount is excessive.

6. On the side of the appellant, it is stated it was rider of the two wheeler, who dashed against the tractor from behind. The driver of the tractor was not at all responsible for the accident.

7. On the side of the respondents/claimants, it is stated that the appellant has admitted the liability to the tune of Rs.22,02,360/- in the appeal and the appellant cannot question the liability after admitting the same.

8. On the basis of the evidence of P.W.2 and on the basis of Ex.P.1, the tribunal has fixed the liability on the driver of the tractor. In the appeal, the appellant has admitted the liability to a certain extent. Hence, it is decided that the tractor driver is responsible for the accident.

9. On the side of the appellant, it is stated the wife of the deceased got appointment on compassionate ground. She is getting more salary than what the deceased was getting when he was alive. The tribunal has failed to consider in calculating the income.

10. On the side of the appellant, a judgment of the Hon'ble Supreme Court reported in **2008 (6) MLJ 604 (SC)** in the case of ***M/s.Bhakar Beas Management Board Vs., Kanta Aggarwal*** is cited, wherein it is stated as the follows:-

> .....-Benefits which the claimant receives on account of death of deceased to be considered in computing compensation .....-

Ratio Decidendi

While assessing the amount of compensation, the benefits which have accrued to the claimants by reason of death must also to be taken into account to balance the loss and gains occurred as the result of accident. Therefore, when compassionate appointment was made to wife of the deceased and residence provided, those benefits which the claimant received on account of death of her husband to be considered in computing compensation.

11. On the side of the respondents, it is stated that getting an appointment on compassionate ground cannot be a ground to reduce the compensation. A judgment of the Hon'ble Supreme Court reported in **(2017) 13 SCC 547** in the case of ***National Insurance Company Limited Vs., Rekhaben and others*** is cited, wherein it is stated as follows:-

"*21.This case seems to superficially support the case of the appellant Insurance Company before us. However, on a deeper consideration, it does not. In Reliance General Insurance (supra), the family of the deceased employee became entitled to financial assistance of a sum equal to the pay and other allowances that were last drawn by the deceased for a certain period after his death, without raising a specific claim. In other words the family became entitled to the pay and allowances that the deceased would have received if he would* *have not died, for a certain period of time. This financial scheme resulted in paying the family the same pay and allowances for a certain period and thus in effect clearly offsetting the loss of income on account of the death of the deceased. Thus, the amount of financial assistance had to be excluded from the loss of income, as to that extent there was no loss of income, and the compensation receivable by the family had to be reduced from the amount receivable under the Motor Vehicles Act.*

22.In the present cases, the claimants were offered compassionate employment. The claimants were not offered any sum of money equal to the income of the deceased. In fact, they were not offered any sum of money at all. They were offered employment and the money they receive in the form of their salary, would be earned from such employment. The loss of income in such cases cannot be said to be set off because the claimants would be earning their living. Therefore, we are of the view that the amount earned by the claimants from compassionate appointments cannot be deducted from the quantum of compensation receivable by them under the Act. "

12. In the light of the judgment of the Hon'ble Supreme Court, where it was decided that on getting an appointment on compassionate ground and the salary thereon should not be taken into account in computing the compensation on loss of income.

13. On the side of the appellant it is stated that the tribunal was wrong in adding 50% towards future prospect and only 40% may be added towards future prospect. Further, it is stated the fourth claimant is the father of the deceased and he is not the legal heir and hence, 1/3 share of the income is to be deducted towards the own expenses of the deceased.

14. On the side of the respondents/claimants it is stated that the deceased was an permanent Employee working in the Electricity Board Department and the dependants are entitled to 50% towards future prospects. The age of the deceased at the time of accident is 32. The deceased was an Assistant working in Tamil Nadu Electricity Board and considering the age of the deceased, it was decided that 50% to be added towards the future prospects.

15. Further, it is stated that only question of dependency is to be decided and that whether the fourth claimant is the legal representative or not, is not an issue and that though he is not a class-I legal heir, he was the dependant of the deceased and hence, the deduction of ¼ is reasonable. The fourth claimant is the father of the deceased and he is not a class-1 legal heir, but in the Motor vehicle cases, the dependency of a particular person is to be taken into account. Since the fourth respondent was a dependant of the deceased, deduction of ¼ towards the own expenses of the deceased is reasonable.

16. The loss of income was fixed Rs.33,22,368/- after adding 50% towards future prospects and after deducting ¼ the share towards own expenses of the deceased and by applying multiplier 16.

17. The tribunal has awarded a sum of Rs.5,000/- towards the transport expenses, Rs.20,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium for the first claimant, Rs.15,000/- towards loss of love and affection, which are all reasonable.

18. Considering the dictum of the Hon'ble Supreme Court in ***National Insurance Co. vs Pranay Sethi and Others reported in 2017 (2) TNMAC 601,*** it is stated that the claimants are entitled to Rs.70,000/- towards conditional charges and the claimants are entitled to Rs.33,22,368/- towards loss of income of the deceased. Accordingly, the claimants are entitled to a sum of Rs.33,92,368/- as total compensation.

19. In the result, the Civil Miscellaneous Petition is **partly allowed**. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from from Rs.34,02,360/- to Rs.33,92,368/-.

(ii) The first claimant, wife of the deceased is entitled to the share of Rs.15,00,000/- as compensation. The second claimant, the son of the deceased, is entitled to the share of Rs.10,00,000/-, the third respondent is entitled to the share of Rs.5,00,000/- and the fourth claimant is entitled to the share of Rs.3,92,368/- . The second respondent herein is a minor, and therefore, his share of compensation amount is ordered to be deposited in any one of the nationalized bank until he attains majority and the first respondent is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor.

(iii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.33,92,368/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Excess amount, if any, shall be refunded to the appellant / Insurance Company.**

(iv) On such deposit being made by the appellant / Insurance Company, the first, third and fourth respondents herein / claimants are permitted to withdraw their shares as apportioned above, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimants are not entitled for interest for the default period, if there is any.

28.02.2023

NCC : Yes/No
Index : Yes/No
Rmk

To

1.The Motor Accident Claims Tribunal cum
III Additional District and Sessions Court,
Thanjavur at Pattukottai.

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

R. THARANI, J.

Rmk

Pre-delivery Judgment made in
C.M.A.(MD)No.210 of 2020

28.02.2023