



C.M.A.(MD).No.645 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 27.11.2023

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.645 of 2019
and
C.M.P.(MD)Nos.3548 & 5476 of 2018**

The Branch Manager,
M/s. Iffco-Tokio General Insurance Company Limited,
D.No.335/1A, V.V.Complex,
North Bye-Pass Road,
Vannarapettai, Tirunelveli-3 .. Appellant / Respondent No.2
Vs.

1.Meenakshi
2.Minor Pragadeesh
3.Minor Anusiya
Minors R2 & 3 through his/her mother
R1 herein)
4.Muthulakshmi .. Respondents 1 to 4 /Petitioners
5.The Managing Director,
M/s.Subramani & Co (Expo) Pvt. Ltd.,
D.No.20, New No.50, New Colony,
Tuticorin. 5th Respondent/1st Respondent



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Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 28.11.2018 passed in M.C.O.P.No.235 of 2014 on the file of the Motor Accident Claims Tribunal – II Additional District and Sessions Judge (FAC), Tirunelveli, insofar as liability and quantum are concerned.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr. V.Meenakshisundaram for R1 to R4

: Mr.G.Mohan Kumar for R5

JUDGMENT

P.B.BALAJI,J.

The Insurance Company, aggrieved by the award in M.C.O.P.No.235 of 2014 on the file of the Motor Accident Claims Tribunal – II Additional District and Sessions Judge (FAC), Tirunelveli, is the appellant before us.

2. The respondents 1 to 4 herein, as claimants filed the M.C.O.P., seeking compensation for the accident that occurred on 10.06.2012, resulting in the death of one Narasimha Krishnan, who is the husband of the first claimant and the father of the claimants 2 & 3 and the son of the



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fourth claimant. The deceased was aged 40 years and he was an Advocate at the Tirunelveli Bar. The claimants sought for compensation of Rs.70,00,000/-.

3. The appellant herein, as second respondent filed a counter stating that the deceased was riding a two wheeler returning from office to his house and the deceased was under the influence of alcohol, which is evident from *post mortem* as well as the report of the Forensic Science Department of Tamil Nadu. The appellant, therefore, stated that they were not liable to compensate the claimants, since the deceased was negligent and had invited the accident. In any event, the appellant has stated that the compensation claimed is highly excessive and arbitrary.

4. Before the Tribunal, the wife of the deceased examined herself as P.W.1 and two other witnesses, viz., Subramanian and Karthikeyan were examined as P.W.2 and P.W.3 and 25 documents were marked as Ex.P1 to Ex.P25, on the side of the claimants. On the side of the respondents, 3 witnesses were examined as R.W.1 to R.W.3 and no document was exhibited. Court documents, viz., Ex.X1 to X3 were marked.



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5. The Tribunal, after assessing the respective contentions of the claimants and the appellant herein, held that the accident occurred only due to the rash and negligent driving of the offending vehicle's driver, insured with the appellant herein. Insofar as the compensation, considering the claim of Rs.50,000/- per month as stated by the claimants and finding that the deceased had a good practice for over 15 years in various Courts, fixed the notional income at Rs.35,000/-, the Tribunal placing reliance on Ex.X1. It is seen from Ex.X1 that in the year 2007, in connection with obtaining a car loan, the deceased was stated to have been earning Rs. 25,000/- per month. In all, the Tribunal awarded Rs.48,47,500/- together with interest 7.5% p.a. as compensation.

6. Aggrieved by the award of the Tribunal, the appellant has preferred the present Civil Miscellaneous Appeal.

7. The main grounds of challenge to the said award are that the deceased contributed to the accident and the entire negligence could not be fixed on the offending vehicle's driver; the deceased was not wearing helmet; the deceased was under the influence of alcohol and further the



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income of the deceased was not proved by the claimants and therefore, the Tribunal ought not to have fixed the notional income at Rs.35,000/-.

8. We have heard Mr.V.Sakthivel, learned counsel for the appellant, Mr.V.Meenakshi Sundaram, learned counsel for the respondents 1 to 4 / claimants and Mr.G.Mohan Kumar, learned counsel for the 5th respondent. We have also perused the records placed before us, including the impugned award of the Tribunal.

9. Insofar as the liability, the learned counsel for the appellant would state that admittedly it came out in evidence, especially, *post mortem* report and the chemical analysis report of the Forensic Science Department that the deceased was under the influence of alcohol and therefore, the Tribunal ought to have held that the deceased also contributed to the accident and should have deducted a reasonable percentage from the total award.

10. The learned counsel for the appellant would also state that mere filing of vakalat would not establish the income of the deceased and



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in the absence of income tax returns or any other valid document to prove the income of the deceased, the Tribunal ought not to have fixed the notional income at Rs.35,000/- per month.

11. Per contra, the learned counsel for the claimants would submit that though the deceased was under the influence of alcohol, as seen from the manner of the accident, especially, the evidence of P.W.2, the occurrence witness, it is clear that the deceased was not responsible for the accident in any manner whatsoever and the negligence was only on the driver of the offending vehicle. Therefore, the fact that the deceased was under the influence of alcohol would not of be of any relevance and he would therefore contend that there need not be any contributory negligence factor brought into the case at all.

12. Insofar as the quantum also, the learned counsel for the claimants would submit that the deceased was a reasonably senior Advocate having 15 years standing in the Bar and he was attending various category of cases in various Courts and therefore, there was nothing wrong in the Tribunal fixing the income at Rs.35,000/- per month.



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The learned counsel for the claimants would therefore pray for dismissal of the appeal.

13. Insofar as the deceased being under the influence of alcohol and the contention of the learned counsel for the appellant that reasonable percentage would have to be factored and deducted from the compensation amount, we have gone through the evidence of P.W.2 - occurrence witness. P.W.2 has categorically stated that driver of the vehicle did not follow any traffic Rules and came on the wrong side of the four way road and dashed against the two wheeler, which was being driven by the deceased and that the deceased was thrown away from his two wheeler and fell at distance of 10 feet and died on the spot, succumbing to the injuries. P.W.2 has also lodged a complaint stating that it was the driver of the Car, who drove the vehicle in a rash and negligent manner, that too on the wrong side and caused the accident. The Tribunal has discussed the evidence of R.W.1 as well as P.W.2 and has rightly come to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle.



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14(a). Insofar as the presence of alcohol in the blood as evident from the *post mortem* report as well as the Forensic lab report, the Tribunal has discussed the evidence of R.W.3 and held that the procedure for chemical analysis was not properly conducted and there was no conclusive proof that the blood sample had been taken from the deceased and further found contradictions in the evidence of the Doctor-R.W.2 and R.W.3, regarding the identification of the body of the deceased and the quantum of blood said to have been taken from the body of the deceased. The Tribunal rightly found that the evidence of R.W.3 and Doctor-R.W.2 did not satisfy the basic and fundamental requirement of a fair examination.

14(b). The Tribunal also relied on the decision of the High Court of Kerala in *Jose Beevi V. United India Insurance Co.*, reported in **2016-1-TNMAC-204(DB) (Kerala)** and held that the question to be decided in such cases was whether the deceased was the cause of the accident or not and only if it is proved that the deceased had contributed to the accident, then the question of contributory negligence will have to be gone into.



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14(c). In the light of the evidence of P.W.1 and 2 and the sketch and police report, we find that the deceased did not contribute to the accident and the accident occurred only because of the rash and negligent driving of the driver of the offending vehicle, which admittedly came on the wrong side on the four way road, resulting in the accident. We therefore, confirm the finding of the Tribunal fixing the liability on the appellant.

15. Coming to the question of quantum, it is seen from the documents exhibited by the claimants that as early as 1997, the deceased enrolled himself as an Advocate in the Bar Council of Tamil Nadu. He was practicing for 15 years in various Courts. It has also come out in evidence that he was attached to a very Senior Lawyer. The Tribunal has also factored Ex.X1 which probablises the income of the deceased in the year 2007 and considering the date of accident fixed Rs.35,000/- per month, which, we find to be just and reasonable and the same does not require any interference.

16. We also find that the compensation awarded under the other heads have all been made in line with the ratio laid down by the Hon'ble Supreme



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Court in ***Pranay Sethi*** and ***Sarla Verma*** and equally, deductions have also been properly made and we do not find any illegality or perversity in the award of the Tribunal.

17. One another contention that had been taken by the learned counsel for the appellant is with regard to TDS, namely, tax to be deducted at source on the interest component. It is further brought to our notice by the learned counsel for the appellant that in respect of TDS, if the appellant does not apply TDS and deduct the same as contemplated under Section 194 (A) of the Income Tax Act, the Insurance Companies, like the appellant, would face prosecution. We are aware that the issue with regard to the deduction of TDS on accrued interest in M.C.O.P. awards is now at large before the Hon'ble Supreme Court as several High Courts have taken divergent views. The learned counsel for the appellant as well as the claimants would express the difficulty with regard to the payment out of compensation to the claimants, after the award came to be passed, especially, in the light of the issue regarding the TDS issue pending before the Hon'ble Supreme Court as well as a Division Bench of this Court.



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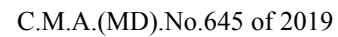
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18(a). It affects not only the claimants, but also the Insurance Company, when it came to the question of payment of the compensation amount deposited.

18(b). In order to facilitate payment out of the compensation amount, in such cases, viz., the award amount, TDS and interest, we direct the Insurance Companies before the Motor Accident Claims Tribunal, at the time of depositing the amount, to give split up details showing the award amount separately, interest separately and TDS amount separately.

18(c). The Executing Court shall insist on such split up details by the Insurance Companies while depositing the amount, so that, the undisputable position of the award amount can be paid out, retaining only the disputed TDS component, viz., the interest accrued on the award, subject to the decision of the Hon'ble Supreme Court, which is seized of the issue.

19. In fine, the Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is hereby confirmed. There shall be



20. The appellant / Insurance Company is directed to deposit the entire award amount 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. It is made clear that the appellant shall provide details of the award amount, interest accrued, TDS payable separately, at the time of deposit, to enable the Tribunal to accordingly order payment out of only the undisputed portion of the total award of compensation. It is however made clear that the payment out of the disputed component, viz., TDS on the interest portion, if any, shall depend on the finality of the issue pending before the Apex Court.

21. On such deposit being made, the respondents 1 & 4 herein / major claimants are permitted to withdraw their respective award amounts along



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with interest and costs as apportioned by the Tribunal, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. However, The shares of the minor claimants 2 & 3 is ordered to be deposited in any one of the Nationalised Banks, till they attain majority. The accrued interest of the minors shall be withdrawn by the mother/natural guardian, namely, the first respondent herein once in three months directly from the bank.

22(a). In view of the problems faced by the Insurance Company as well as the claimants before the Tribunals across the State, with regard to the payment of accrued interest on the compensation awarded.

22(b). In the light of the discussion and direction at para No.18(b), we are of the considered view that necessary circular be issued by the Registrar General for all the Motor Accident Claims Tribunal and accordingly, we direct the Registry to place the copy of this Judgment for consideration of the Hon'ble The Chief Justice for circulating the copy of this order to all the Claimants Tribunal in respect of deposits and procedure for deposits under three heads, namely, principal amount and



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interest separately and TDS amount separately till the disposal of the SLP pending before the Court so as to avoid miscalculation in future.

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

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Neutral Citation: Yes/No
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To

1.The Motor Accident Claims Tribunal –

II Additional District and Sessions Judge (FAC),
Tirunelveli.



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

Ls

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

Copy to:

The Registrar General,
Madras High Court,
Chennai.

judgment in
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