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C.M.A(MD)No.39 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.02.2023

Pronounced on : 27.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.39 of 2020

United India Insurance Company Ltd.,
represented by its Branch Manager,
Tenkasi Road, Rajapalayam Town,
Rajapalayam Taluk,
Virudhunagar District.

... Appellant /2nd Respondent

Vs.

1.Senthilkumar

2.Mahesh Kumar

3.Uma

...Respondents 1 to 3/Claimants

4.M/s.Vijay Spinners Company
represented through its Managing Director,
No.18A, Pugalendhi Road,
Rajapalayam Town,
Rajapalayam Taluk,
Virudhunagar District.

... 4th Respondents/1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the order passed by the Motor Accident Claims Tribunal/Subordinate Judge, Sankarankovil, dated 01.04.2019 in M.C.O.P.No.13 of 2014.



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For Appellant : Mr.N.Dilip Kumar
For R1 - R3 : Mr.M.Jothi Basu
For R4 : No Appearance

JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.13 of 2014, dated 01.04.2019 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Sankarankovil.

2.The appellant herein is the second respondent, the respondents herein are the claimants and the 4th respondent herein is the first respondent in the claim petition.

3.Brief substance of the claim petition in M.C.O.P.No.13 of 2014 is as follows:

On 26.06.2012 at about 3.45 p.m. when the deceased Sivathaiah Pandian was riding a two wheeler bearing Registration No.TN-76-W-2232, a Swaraj Mazda vehicle bearing Registration No.TN-67-AV-1218 dashed against the two wheeler from behind. The deceased sustained injuries and he died on 07.07.2012. The deceased was working as a Foreman Grade -I in



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TNEB and he was earning Rs.40,000/- per month. The petitioners are his dependants and they claim a sum of Rs.55,00,000/- as compensation.

4. Brief substance of the counter filed by the second respondent is as follows:

The petitioner has to prove the age, occupation and income of the deceased. The manner of accident as narrated in the petition is denied. It was the deceased, who was rash and negligent and he invited the accident. The nature of injuries, mode of treatment are all denied. The nexus between the accident and the death are to be proved. The driver of the first respondent's vehicle was not having driving license. The second respondent is not liable to pay compensation.

5. Three (3) witnesses were examined and twenty (20) documents were marked on the side of the petitioners. No witness was examined and no document was marked on the side of the respondents. One document was marked as witness document. The Tribunal has awarded a sum of Rs.36,56,025/- as compensation to be paid by the second respondent, after deducting 15% towards the own negligence of the deceased.



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6. Against the order, the appellant/second respondent has preferred this appeal on the following grounds:

The Tribunal is wrong in calculating the loss of income. The deceased was aged about 54 years and he was working as Foreman Grade -I in TNEB and he was due to retire in four years. Therefore, he could have been in service only for the remaining period of four years. Considering the fact that after retirement income of the deceased would be substantially reduced, when there is no evidence on record to show that the income of the deceased would not be the same after a certain point of time, the Tribunal ought to have adopted split multiplier method. The Tribunal failed to consider that at least 10% of the amount is to be deducted towards tax. The Tribunal ought to have deducted 1/3rd instead of 1/4th. The award is excessive and that the admitted liability is only Rs.21,53,497/-.

7. A copy of the F.I.R was marked as Ex.P1, copy of the Rough Sketch was marked as Ex.P6, M.V.Reports were marked as Ex.P7 and Ex.P8, copy of the charge sheet was marked as Ex.P9. Considering the evidence of PW1 and PW2 and considering Ex.P1, Ex.P6 to Ex.P9, the Tribunal fixed the negligence of the first respondent's vehicle driver/4th respondent. Considering



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that there was no evidence before the Tribunal on the side of the appellant and on the side of the 4th respondent therein and after considering that a portion of the liability was admitted by the appellant in the appeal, it is decided that the accident has happened due to the rash and negligent driving of the driver of the first respondent vehicle.

8.On the side of the appellant, it is stated that the deceased was 54 years old Government Servant. He was due to retire in 4 years. After the date of retirement, his income would be only half and hence, split multiplier method is to be adopted.

9.On the side of the respondents, it is stated that only income on the date of death is to be taken into consideration and the split multiplier method should not be followed. A judgment of the Hon'ble Supreme Court in the case of ***R.Valli and others v. Tamil Nadu State Transport Corporation Ltd.***, reported in **(2022) 2 TNMAC 289** is cited, wherein it is stated as follows:

“Thus, we find that the method of determination of compensation applying two multipliers is clearly erroneous and run counter to the judgment of this Court in Pranay Sethi, affirming the judgment in Sarla Verma. Since the



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deceased was 54 years of age on the date of incident, therefore, the suitable multiplier would be 11 as per the judgment of this Court in Sarla Verma approved by this Court in Pranay Sethi.”

10. Considering the latest dictum of the Hon'ble Supreme Court, it is decided that applying split multiplier is not necessary. Considering the age of the deceased, the Tribunal has adopted multiplier '11', which is reasonable. Considering the age of the deceased and the nature of his employment, the Tribunal has added 15% towards future prospects. Considering the number of dependants, the Tribunal has deducted 1/4th of the income towards the own expenses of the deceased.

11. On the side of the appellant, it is stated that during the pendency of the case, one of the dependant died and considering the present number of dependant, only 1/3rd is to be deducted. Considering the date of accident, the number of dependants are four and hence, deduction of 1/4th for the own expenses of the deceased is reasonable.



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12.The income of the deceased as per Ex.P20 and as per Ex.X1 is Rs. 36,283/-. After adding 15% towards future prospects, the income is Rs. 41,725/-. After deducting 1/4th towards his own expenses, the deceased might have contributed a sum of Rs.31,293/- to his family. Applying multiplier, the loss of income is calculated as Rs.41,30,775/-, which is reasonable.

13.The Tribunal awarded Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, which are reasonable. On the basis of Ex.P1, the Tribunal has awarded Rs.1,40,439/- as medical expenses. After deducting 15% towards the own negligence of the deceased, the Tribunal has awarded Rs.36,56,025/- as compensation, which is reasonable.

14.As per the above discussions, it is decided that there is no reason sufficient enough to interfere with the order.

15.In the result, this Civil Miscellaneous Appeal is **dismissed**.

(i) The claimant is entitled to a compensation of Rs.36,56,025/- with interest and costs.

(ii) The appellant / Insurance Company is directed to deposit the



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compensation awarded by the Tribunal i.e., Rs.36,56,025/- (less the amount 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 cost to the credit of MCOP.No.13 of 2014 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Sankarankovil, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the respondents / claimants are at liberty to withdraw their respective share as apportioned by the Tribunal, after following the due process of law, less any amount already received by them. The claimants are not entitled for interest for the default period, if there is any.

27.04.2023

NCC : Yes/No

Index : Yes / No

Internet : Yes / No

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To

- 1.The Motor Motor Accident Claims Tribunal/
Subordinate Judge, Sankarankovil,
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.THARANI, J.

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Pre - Delivery Judgment made in
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