**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : **10.02.2023**

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**
**AND**
**THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN**

**C.M.A(MD)No.927 of 2019**
**and**
**C.M.P(MD)No.12497 of 2019**

The Branch Manager,
National Insurance Company Limited,
No.4132, Keela Raja Veedhi,
Pudukkottai. ... Appellant/Second Respondent

.Vs.

1.Shanthi

2.Vasuki,

3.Karthikkumar

Muthukaruppan(died) ....Respondents No.1 to 3/Petitioners

4.Sekar ... 4th Respondent/Ist Respondent

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.144 of 2014, dated 20.3.2018, on the file of the Motor Accidents Claims Tribunal(Additional District Court), Pudukkottai.

For Appellant : Mr.J.S.Murali

For Respondents 1 to 3 :Mr.R.Balakrishnan

**JUDGMENT**

**DR.G.JAYACHANDRAN,J.**
**AND**
**K.K.RAMAKRISHNAN,J.**

This Civil Miscellaneous Appeal is filed by the Insurance Company being aggrieved by the quantum and fixation of negligence on the driver of the vehicle, insured under the Insurance Company.

2.It is a case where the Special Sub-Inspector of Police attached to the Annavasal Police Station while regulating the traffic on the highways, was hit by a 407 mini van owned by the first respondent, which was insured with the second respondent. In the accident, Shanmugam, the Special Sub-Inspector of Police, Annavasal Police Station died. Hence, his dependants, wife, two children and father has filed the claim petition seeking a compensation of Rs.60 lakhs.

3.The claim was contested by the appellant Insurance Company both the on the ground of quantum as well as negligence.

4.According to the Insurance Company, in their counter, they have claimed that the mini bus bearing Registration No. TN 02 AW 1515, which was hit the 407 goods van, was the cause for the accident. Shanmugam, Special Sub Inspector of Police sustained fatal injuries when the mini bus hit the 407 vehicle, which lost control and hit Shanmugam, who was regulating the trafic. In fact, the deceased came to the spot on hearing the road accident, where two vehciles hit with each other and capsized and while regulating the tranfic, the accident took place. Contending that the 407 van goods van alone was not the cause for the accident and other vehicles should also involved in the accident and due to their negligence, the accident had occurred and therefore, insurer to the 407 goods vehicle, alone cannot be held liable,the Insurance Company contested the claim petition.

5.The Motor Accidents Claims Tribunal, after considering the submissions and the evidence let in by the claimants, has awarded a sum of Rs.37,81,220/-with interest. It has taken the age of the deceased as 53 years, being a Government servant and salaried person, his pay slip to the last drawn salary after deducting one third for his personal expenditures been considered and the loss of income arrived at Rs.30,08,720/- after deducting one third for his personal expenditures. Under the conventional heads, the Tribunal has awarded Rs. 5,37,000/- for medical expenses to of the deceased Shanmuam, Rs. 1 lakh for the loss of estate for the wife and Rs.1 lakh towards loss of consortium for the two children, Rs.25,000/- towards funeral expenses, Rs.7500/- for transport expenses and Rs.3000/- for damage to the wearing apparels.

6.The Insurance Company being aggrieved by the said award, dated 20.3.2018, has challenged the award on the ground that when multiple vehicles involved, all the vehicles ought to have been held responsible for the accident, whereas, in this case, the claimants has not arrayed the mini bus driver and owner as party which was the cause for the accident. Further the counsel would submit that the award passed is excessive and contrary to the guidelines issued by the Supreme Court in ***Pranay Sethi's case***. Further would also submit that income tax at 10% ought to have been deducted by the Tribunal. It is also submitted by the learned counsel for the appellant that the deceased was a Government Servant. He is supposed to retire from service at the age of 58 years. Therefore the Tribunal ought to have applied split multiplier for arriving at the loss of inome. Contrarily, it has applied '11' multiplier instead of split multiplier 4+7.

7.The learned counsel for the claimants in response to the above submission made by the learned counsel for the appellant, submitted that the deceased was a salaried person and no additional compensation was awarded for future prospects. Besides, the income of the deceased as per the pay slip was about Rs.35,000/-. The annual income of the deceased was nearly Rs.4,20,000/- which is the gross income. Hence he would not pay Income Tax after giving the standard deductions and that is the reason why the Tribunal has disallowed the said plea, for want of evidence. Regarding the compensation granted under the non-conventional heads, the learned counsel for the claimants submitted that the same may be fixed in accordance with the guidelines issued by the Honourable Supreme Court.

8.Regarding the alleged contributory negligence of the other vehicle, the learned cousnel for the appellant referring to the First Information Report and final report, submitted that the claimants as well as the Police has not found guilty of any other vehicle, insofar as the accident and death of Shanmugam is concerned. Whileso, the vehicle of the first respondent insured under the second respondent alone is liable to pay the compensation.

9.This Court on perusing the evidence and the finding of the Tribunal hold that the FIR Ex.B1 does not attribute any negligence on any other vehicle except the vehicle of the first respondent which is insured under the second respondent. The accident has occurred while the deceased was regulating the traffic and when he asked the driver of the 407 goods van to slow down, the driver instead of stopping the vehicle, has rashly run over the deceased. In view of that, the accident had occurred. It is evident from the deposition of other eye-witnesses that the vehicle which are involved in the accident were capsized along the left side of the road and with the available space for vehicular movement was on the right side. The deceased had been regulating the traffic and at that time, the driver of the 407 goods van has come rash and negligently and hit shanmugam and thereafter stopped after some distance. In the meanwhile, the other minibus following the van, has hit the van.

10.Since this fact has been found in the FIR as well as by the eyewitness P.W.1. This Court holds that no other vehicle involved in the accidident which caused the death of Shanmugam.

11.Regarding the compensation of Rs.2,35,500/- awarded under the non-conventional heads, it is submitted by the learned counsel for the claimants that it is not in tune with the ***Pranay Sethi's case*** and the same was conceded by the respondent counsel. Hence, this Court modified the said award to the effect that the claimants are entitled to a sum of Rs.40,000/- towards loss of consortium(wife) and Rs.40,000/- each for loss of love and affection for the two children, totally a sum of **Rs.1,20000/-.** For funeral expenses, a sum of **Rs. 15,000/-** is awarded and for loss of estate Rs.**15,000/-** is awarded. The compensation towards loss of income at **Rs.30,08,720/-** and compensation for medical expenses of the deceased at Rs.**5,37,000/-** stand confirmed. Totally, the claimants are entitled for a sum of Rs.**37,65,720**/- towards compensation and also entitled for 7.5% p.a interest.

12.This Court concurs with the reasoning given by the Tribunal for not deducting 10% income tax since the Tribunal has consciously omitted to take note of the future prospects of the Government servant, who has died in harness in the course of discharge of his duty.

13.It is reported by the learned counsel for the appellant that the entire award amount with accrued interest as ordered by the Tribunal, has already been deposited before the Tribunal and the claimants are permitted to withdraw one third of the award amount from it.

14.In fine, the Civil Miscellaneous Appeal is partly allowed by modifying the total award by decreasing the compensation from 37,81,220/- to Rs. 37,65,720/- with interest at the rate of 7.5%pa from the date of claim petition till the date of realisation. The claimants are permitted to withdraw their share in the modified award amount with proportionate accrued interest and cost, as per the ratio of apportionment made by the Tribunal, less the award amount already withdrawn, by filing necessary application before the Tribunal. The Tribunal is directed to refund the excess award amount, if any, to the appellant Insurance Company, following the due process of law. No costs. Consequently, connected Miscellaneous Petition is closed.

**[G.J.,J.] [K.K.R.K.,J.]**
**10.02.2023**

Index : Yes / No
Internet : Yes / No
NCC :Yes/No
vsn

To

1.The Additional District Judge,
(Motor Accidents Claims Tribunal)
Pudukkottai.

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

**DR.G.JAYACHANDRAN, J.**
**and**
**K.K.RAMAKRISHNAN,J.**

vsn

**JUDGMENT MADE IN**
**C.M.A(MD)No.927 of 2019**
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