BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	03.04.2023
Pronounced on	01.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.153 of 2020 and 429 of 2021

C.M.A.(MD) No.153 of 2020:

M/s.Oriental Insurance Company Limited,
Represented by its Divisional Manager,
No.39/40, Divisional Office,
Saratha Shopping Centre,
Simmakkal Workshop Road,
Madurai District. ....Appellant/ 2nd Respondent

Vs.

1. Parameswari
2. Minor Kirubiya
3. Minor Rikesh
(Minor 2nd and 3rd Respondents Represented by their Mother and Natural Guardian of 1st Respondent Parameswari)

4. Vellaichamy
5. Rathinam ... Respondents 1 to 5/ Petitioners 1 to 5

6. Bose ..... 6th Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment made in

M.C.O.P.No.83 of 2017, dated 21.08.2019, on the file of the Motor Accident Claims Tribunal cum VI Additional District Judge, Madurai.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.N.Sudhagar Nagaraj for R1 to R5

: Mr.M.Solaisamy – for R6

C.M.A.(MD) No.429 of 2021:

1. Parameswari
2. Minor Kirubiya
3. Minor Rikesh
4. Vellaichamy
5. Rathinam ... Appellants / Petitioners

(Minors Represented by their best friend and Natural Guardian of 1st Appellant herein)

Vs

1. Bose

2. M/s. Oriental Insurance Company Limited,
Represented by its Divisional Manager,
No.39/40, Divisional Office,
Saradha Shopping Centre,
Simmakkal Workshop Road,
Madurai District. .... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 21.08.2019, made in M.C.O.P.No.83 of 2017, on the file of the Motor Accident Claims Tribunal/ VI Additional District Judge, Madurai.

For Appellants	: Mr.N.Sudhagar Nagaraj
For Respondents	: Mr.M.Solaisamy – for R1
	: Mr.C.Jawahar Ravindran for R2

C O M M O N J U D G M E N T

Both the appeals have been filed challenging the award passed by the Motor Accident Claims Tribunal/ VI Additional District Judge, Madurai, in M.C.O.P.No.83 of 2017. C.M.A 153 of 2020 has been filed by the Insurance Company challenging the quantum. C.M.A(MD) No. 429 of 2021 has been filed by the claimants seeking enhancement.

2. A perusal of the grounds of appeal filed by the Insurance Company would clearly indicate that out of the award amount of Rs.53,78,600/- (Rupees Fifty Three Lakhs Seventy Eight Thousand and Six Hundred only), they have admitted the liability of Rs.35,00,000/- (Rupees Thirty Five Lakhs only) and disputed the liability of Rs.18,78,600/- (Rupees Eighteen Lakhs Seventy Eight Thousand and Six Hundred only). Therefore, it is clear that the Insurance Company has neither challenged negligence nor their liability to satisfy the award and

the only issue that arises for consideration is the quantum of compensation.

3. The claimants in the claim petition have contended that the deceased was aged about 34 years and he was an Electrical Engineer working in a private company and drawing a salary of Rs.60,000/- (Rupees Sixty Thousand only). The claimants have sought for a compensation of Rs.1,00,00,000/- (Rupees One Crore only). On the side of the claimants, the wife of the deceased has been examined as P.W.1 and the HR executive of a Private Company, in which, the deceased was working was examined as P.W.3, through him Ex.P.5-Salary Certificate and Ex.P6 other allowance certificates were marked.

4. As per Ex.P5- Salary Certificate, the take home salary was Rs.21,129/- (Rupees Twenty One Thousand One Hundred and Twenty Nine only) for the month of May 2009. The said Certificate has been issued on 10.11.2016. As per Ex.P.6, the deceased was receiving a bonus of Rs.20,853/- (Rupees Twenty Thousand Eight Hundred and Fifty Three only) for the financial year 2016 -2017 and the variable incentive of

Rs.30,092/- (Rupees Thirty Thousand and Ninety Two only). The accident has taken place on 10.11.2016 and therefore, for the financial year 2016-2017, the deceased was not paid leave encashment or leave transfer allowance. On the other hand Ex.P.6- Certificate reveals that the deceased was paid a sum of Rs.16,494/- (Rupees Sixteen Thousand Four Hundred and Ninety Four only) towards leave enchashment and Rs.12,542/- (Rupees Twelve Thousand Five Hundred and Forty Two only) towards Leave Travel Allowance.

5. The Tribunal after considering the Ex.P5 and Ex.P.6 accepted the monthly salary of Rs.22,916/- (Rupees Twenty Two Thousand Nine Hundred and Sixteen only). As per Ex.P.5 and Ex.P.6 he was paid a bonus of Rs.20,853/- (Rupees Twenty Thousand Eight Hundred and Fifty Three only) and that was also taken into consideration for the calculation of annual income of the deceased person. However, the Tribunal has refused to take into consideration the variable incentive paid to the deceased at Rs.30,092/- (Rupees Thirty Thousand and Ninety Two only).

6. The deceased had left behind his wife, two minor children and his parents. Considering the fact that he had left five legal heirs, the Tribunal has chosen to deduct 1/4th of the income towards personal expenses. The Tribunal, has added 40% towards future prospectus, considering the age of the deceased at 35 and has arrived at compensation of Rs.53,01,536/- under the head of loss of income.

7. Under conventional heads, the Tribunal has awarded a sum of Rs.40,000/- (Rupees Forty Thousand only) towards loss of consortium to the wife, a sum of Rs.5,000/- (Rupees Five Thousand only) was awarded towards Transport expenses, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) was awarded towards funeral expenses and another sum of Rs.15,000/- (Rupees Fifteen Thousand only) was awarded for loss of estate. A sum of Rs.2,000/- (Rupees Two Thousand only) was awarded towards damage to cloths and articles. The Tribunal arrived at the final award amount of Rs.53,78,600/- (Rupees Fifty Three Lakhs Seventy Eight Thousand and Six Hundred only). This award has been challenged by the Insurance Company on the ground that the deceased was not wearing headgear at the time of accident and he had suffered head injury

and due to the said head injury he had passed away. Therefore, the deceased has also contributed to the accident and hence 15% of the compensation should have been deducted towards contributory negligence on the part of the deceased. He further contended that income tax was not deducted from the award amount. Hence, he prayed for allowing the appeal to the above said extent.

8. Per contra, the learned counsel appearing for the claimants has contended that there is no pleading in the counter that the deceased was not wearing helmet at the relevant point of time. It is also not proved by the Insurance Company that the deceased had died only due to non-wearing of helmet. Therefore, no percentage of the award amount could be deducted towards alleged non-wearing of helmet. He further contended that whenever salary is being paid the tax is deducted at source by the Company and when the Insurance company has not established the fact that the tax was not deducted at source, the question of deducting income tax at the time of fixing the compensation would not arise.

9. The learned counsel for the respondents had further contended that the deceased had passed away leaving behind his wife, two minor children and his parents. When the dependents are more than four, only 1/5 of the award amount should have been deducted towards personal expenses and not $1/4^{th}$ as has been done by the Tribunal. He further contended that the deceased was in a permanent employment in a Private Company and his age was below 40 years and therefore, 50% should have been added under the head of future prospectus. He further contended that only the wife was awarded a sum of Rs.40,000/- (Rupees Forty Thousand only) towards loss of consortium and the minor children and parents have not been awarded any compensation towards loss of love and affection. He further contended that the parental consortium should have been awarded to the parents. Hence, he prayed for enhancement of the compensation.

10. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.

11. The appellant/Insurance Company in paragraph No.4 of their counter have taken a specific plea that the deceased was not wearing the mandatory protective headgear and the accident has happened only due to the rash and negligent driving of the deceased person. A perusal of the Post Mortem Report, which is marked as Ex.P.4, will clearly indicate that the deceased has sustained serious head injuries and it has resulted in his death. Therefore, it is clear that the deceased was not wearing helmet at the time of accident which has resulted in contributory negligence on the part of the deceased person. Therefore, this Court is of the opinion that the 10% of the award amount should be deducted towards the contributory negligence on the part of the deceased person.

12. The judgment of the Honourable Supreme Court reported in ***2013(1) TNMAC 641 (SC) (Vimal Kanwar and others Vs. Kishore Dan and others)*** has held that in absence of such evidence with regard to non deduction of income tax, it is presumed that the salary was paid in accordance with law that is by deducting the Income-Tax on the estimated income of the deceased for the relevant month for the financial year.

13. Therefore, this Court is of the opinion that the contention of the learned counsel for the appellant that no amount was deducted towards Income -Tax is without any basis whatsoever. The learned counsel for the claimants had contended that only 1/4th of the award amount have been deducted towards personal expenses, where as, the Tribunal ought to have deducted 1/5th towards personal expenses when the claimants are five in number. However, a perusal of the judgment of the Honourable Supreme Court reported in ***2009 (2) TN MAC 1(SC) (Sarala Verma & others V.Delhi Transport Corporation and another)*** would clarify that where the number of dependent family members is 2 to 3, 1/3rd has to be deducted towards personal expenses, but, if the number of dependent family members are between 4 to 6, 1/4th should be deducted towards personal expenses. Only if the member of dependent family members exceeds 6, 1/5th could be deducted towards personal expenses. In the present case, there are totally five dependents family members and therefore, the Tribunal was right in deducting 1/4th towards personal expenses.

14. The learned counsel appearing for the respondents has further contended that the Tribunal has added only 40% to the monthly income towards future prospectus. However, as per the judgment of the Honourable Supreme Court reported in ***2017 (2) TN MAC 609(SC) (National Insurance Company Ltd V. Pranay Sethi and others)*** 50% of the income should have been added as future prospectus. He further contended that the deceased was a permanent employee and he had fixed monthly income and his age was below 40 and therefore, 50% of income should have been added towards future prospectus instead of 40%. In the present case, admittedly, the deceased was working in a Private Company and he had fixed income and therefore, this Court is inclined to accept the contention of the learned counsel appearing for the claimants that 50% of the actual salary should have been added to the income of the deceased towards future prospectus.

15. The learned counsel appearing for the claimants has further pointed out that the Tribunal has awarded loss of consortium of Rs.40,000/- (Rupees Forty Thousand only) to the wife alone and no amount was awarded towards loss of love and affection to both the minor

children and parents. This Court is inclined to accept the said contention and proceeds to award Rs.40,000/- (Rupees Forty Thousand only) to each one of the claimants in the claim petition.

16. The learned counsel appearing for the claimants has further contended that as per Ex.P.6, the deceased was receiving a variable incentive in every financial year and in the last financial year prior to his death, he has received a sum of Rs.30,092/- (Rupees Thirty Thousand and Ninety Two only). The said amount has not been taken into consideration for fixing the annual income of the deceased person by the Tribunal without assigning any legally acceptable reason. A perusal of Ex.P.6, reveals that apart from bonus and leave encashment the deceased was receiving every year from the financial year 2013- 2014 onwards a sum of Rs.33,000/- (Rupees Thirty Three Thousand only) and no amount was awarded under the head of loss of variable incentive. The last financial year, in which, he had passed away, the deceased was paid a sum of Rs.30,092/- (Rupees Thirty Thousand and Ninety Two only) towards variable incentive. Therefore, it is clear that the variable incentive is being paid to the employee based upon his performance

every year and the same should also be treated as part of the annual income.

17. In view of the above said discussions the award of the Tribunal is modified as follows:-

Annual Income	: Rs.2,74,992/-
Bonus	: Rs. 20,853/-
Variable Incentive	: Rs. 30,000/-
Total	**: Rs.3,25,845/-**

18. Therefore, the total Annual Income of Rs.3,25,845/- (Rupees Three Lakhs Twenty Five Thousand Eight Hundred and Forty Five only) if 50% is added for future prospectus, the total annual income is arrived at Rs.4,88,767/- (Rupees Four Lakhs Eighty Eight Thousand Seven Hundred and Sixty Seven only). After deducting $1/4^{th}$ towards personal expenses the amount comes to Rs.3,66,576/- (Rupees Three Lakhs Sixty Six Thousand Five Hundred and Seventy Six only) and applying the multiplier of “16” the total compensation under the head of loss of Annual Income would be Rs.58,65,216/- (Rupees Fifty Eight Lakhs Sixty Five Thousand Two Hundred and Sixteen only).

19. Under the conventional heads a sum of Rs.2,00,000/- has to be awarded under the head of loss of love and affection to all the five claimants. The award under the other conventional heads are hereby confirmed. Therefore the total award amount is as follows:

Loss of Income	: Rs.58,65,216/-
Loss of Love and Affection	: Rs. 2,00,000/-
Transport Expenses	: Rs. 5,000/-
Funeral Expenses	: Rs. 15,000/-
Loss of estate	: Rs. 15,000/-
Damage of Articles	: Rs. 2,000/-
Total	**: Rs. 61,02,216/-**

20. Therefore, the award amount of Rs.53,78,600/- awarded by the Tribunal is hereby enhanced to Rs.61,02,216/- and the enhanced amount will carry interest at the rate of 7.5% from the date of claim petition. The claimants are hereby directed to pay the deficit Court fee, if any, before drafting of the decree. The Insurance Company is directed to deposit the

enhanced award amount together with interest within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made by the claimants 1, 4 and 5 are entitled to withdraw their share as per the apportionment made by the tribunal by filing necessary petition before the tribunal. In respect of the minor claimants 2 and 3, the amount shall be deposited in a Nationalized Bank till they attain majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months.

21. Since the deceased had travelled without headgear, 10% has to be deducted from the total award amount. After deducting 10% towards contributory negligence, total compensation is Rs.54,91,995/- (Rupees Fifty Four Lakhs Ninety One Thousand Nine Hundred and Ninety Five only). Therefore, the total compensation is enhanced from Rs.53,78,600/- to Rs.54,91,995/-.

22. In the result, C.M.A(MD) No.153/2020 is partly allowed to the extent of fixing 10% of contributory negligence on the deceased person for not wearing headgear at the time of accident. C.M.A.(MD) No.429 of

2021 is partly allowed granting enhancement of compensation as stated above. There shall be no order as to costs.

01.06.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The Motor Accident Claims Tribunal
cum VI Additional District Judge,
Madurai.

2. M/s. Oriental Insurance Company Limited,
Represented by its Divisional Manager,
No.39/40, Divisional Office,
Saradha Shopping Centre,
Simmakkal Work Shop Road,
Madurai District.

3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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Pre-Delivery Judgment in

C.M.A(MD)Nos.153 of 2020 and 429 of 2021

01.06.2023