IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.Nos.775 & 2700 of 2023
and C.M.P.No.7129 of 2023

C.M.A.No.775 of 2023:

United India Insurance Co. Ltd.,
Branch Office at,
Kumaran Nagar, Tiruppur.

Now at,
United India Insurance Co. Ltd.,
Regional Office,
No.178, Dr.Nanjappa Road,
Coimbatore – 641 018. .. Appellant

Vs.

1.Mallika

2.Thulasimani

3.Sellammal

4.Minor. Sasikala

(Minor 4th respondent represented by Guardian / Mother, Mallika, 1st respondent herein)

5.Kaliaperumal

6.Balasubramanian .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the Civil Miscellaneous Appeal by setting aside the Award dated 09.06.2022 in M.C.O.P.No.240 of 2012 passed by the District Judge, (EMACT – Tiruppur) and allow the above C.M.A.

For Appellant	:	Mr.P.Sankaranarayanan
For RR 1 to 4	:	Mr.Ma.P.Thangavel
For R5	:	No appearance

C.M.A.No.2700 of 2023:

1.Mallika

2.Thulasimani

3.Sellammal

4.Minor. Sasikala .. Appellants

(Minor 4th appellant represented by Guardian / Mother, Mallika, 1st appellant herein)

Vs.

1.Kaliaperumal

2.Balasubramanian

3.United India Insurance Company Ltd.,
Branch Office at Kumaran Road, Tirupur. .. Respondents

(Respondents 1 & 2 remained exparte before Tribunal.
Hence, notice to respondents 1 & 2 dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of compensation in the award dated 09.06.2022 made in M.C.O.P.No.240 of 2012 on the file of Exclusive Motor Accident Claims Tribunal at Tiruppur.

For Appellants	:	Mr.Ma.P.Thangavel
For R3	:	Mr.P.Sankaranarayanan

COMMON JUDGMENT

These appeals have been filed both by the Insurance Company questioning the liability and the claimants not being satisfied with the quantum of compensation awarded by the Tribunal against the award passed by the Presiding Officer, Exclusive Motor Accident Claims Tribunal, Tirpur, in M.C.O.P.No.240 of 2012, dated 09.06.2022.

2.The claimants who are the wife and daughters of the deceased Vallupooran filed the claim petition on the ground that on 31.07.2011 the deceased was riding his bicycle near N.V.Naicker Mill, Sulur at Coimbatore to Trichy road and at about 05.30 PM, the offending vehicle which is a lorry was driven in a rash and negligent manner and it hit the bicycle from behind and as a result, the deceased fell down and he sustained serious head injuries. Unfortunately, the deceased succumbed to the injuries on 01.08.2011. An FIR came to be registered against the driver of the lorry in Crime No.665 of 2011. It is under these circumstances, the claim petition came to be filed seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. Having rendered such a finding, the Tribunal proceeded to fix the total compensation of Rs.10,86,500/- under various heads as follows:

Sl. No.	Under the Head	Calculation	Amount
1.	Monthly Income (Monthly income + Future Prospects 25%)	(Rs.6,000/- + Rs.1,500/-) = Rs.7,500/-	Rs.7,500/-
2.	Deduction of 1/4th towards personal expenses of the deceased	Rs.7,500/- - Rs.1,875/- = Rs.5,625/-	Rs.5,625/-
3.	Annual loss of Income	Rs.5,625/- X 12 = Rs.67,500/-	Rs.67,500/-
4.	Loss of dependency after applying multiplier 13	Rs.67,500/- X 13 = Rs.8,77,500/-	Rs.8,77,500/-
5.	Compensation		
i)	Loss of dependency		Rs.8,77,500/-

Sl. No.	Under the Head	Calculation	Amount
ii)	Funeral expenses		Rs.16,500/-
iii)	Loss of Estate		Rs.16,500/-
iv)	Loss f consortium - Spousal consortium to 1st petitioner Rs.44,000/- Parental consortium to the petitioners 2 to 4, each Rs.44,000/-		Rs.1,76,000/-
	Total Award amount		Rs.10,86,500/-

4.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5.The Insurance Company questioning the liability imposed against them and the claimants questioning the quantum of compensation fixed by the Tribunal have filed these appeals before this Court.

6.Heard the learned counsel for the Insurance Company and the learned counsel for the claimants.

7.This Court have carefully considered the submissions made on either side and the materials available on record.

8.This Court has also carefully gone through the award passed by the Tribunal.

9.The learned counsel for the Insurance Company submitted that the deceased was under the influence of alcohol and he was in an inebriated condition as a result of which, he fell down from the bicycle and the lorry which was coming behind ran over the front wheel of the cycle. The injuries sustained by the deceased is due to self fall and the insured lorry had nothing to do with the accident. To substantiate his submissions, the learned counsel relied upon the evidence of R.W.1 and also the referred charge sheet that was marked as Ex.R1 along with the statements recorded under Section 161 of Cr.PC.

10.Per contra, the learned counsel for the claimants submitted that the Tribunal has carefully gone through the evidence and has come to a conclusion that the accident had taken place only due the rash and negligent driving on the part of the driver of the lorry and that the said finding does not suffer from any illegality and it does not warrant the interference of this Court.

11.The learned counsel for the claimants further submitted that the accident had taken place in the year 2011 and the deceased was a Loadman who was earning not less than Rs.10,000/- per month and whereas, the Tribunal has fixed the notional monthly income at Rs.6,000/- which is on the lower side.

12.P.W.1 is the wife of the deceased. P.W.2 is the eyewitness to the incident. He has stated in his evidence that the offending vehicle was driven in a rash and negligent manner and it dashed on the bicycle and as a result, the deceased fell down and sustained grievous injuries. During cross examination, the evidence of this witness has not bee discredited and the same was taken note of by the Tribunal.

13.The other evidence that was relied upon by the learned counsel for the Insurance Company was the evidence of Police Officer who was examined as R.W.1 in this case. It must be borne in mind that the Police Officer who was examined in this case was not the Investigation Officer in Crime No.665 of 2011 and he was merely rendering evidence based on records. Therefore, nothing turns out from the evidence of R.W.1.

14.The only other material that has to be taken note of is the referred charge sheet which was marked as Ex.R1. In the referred charge sheet, it is mentioned that the statements of the witnesses were recorded under Section 161 of Cr.PC and the Investigation Officer came to a conclusion that the deceased was under the influence of alcohol and it was a case of self fall and that the lorry was not involved in the accident.

15.The final report that has been filed at the best only has a persuasive value. The Investigation Officer has relied upon the statements recorded from some of the witnesses who talk about the incident. If any of these witnesses had been called by the Insurance Company and examined before the Tribunal to substantiate the referred charge sheet filed by the Investigation Officer, it would have added more weightage to the stand that has been taken by the Insurance Company. Unfortunately, that effort has not been taken and therefore, the Court cannot come to a final conclusion merely going by the final report and the statements recorded under Section 161 of Cr.PC.

16.It is also relevant to take note of the postmortem certificate in this case which has been marked as Ex.P2. In the postmortem certificate, there is a mention about the head injury that was sustained by the deceased. There is nothing to indicate in the postmortem certificate that the deceased was under the influence of alcohol. Even through the viscera was preserved, no steps were taken to get the viscera report in this case which would have given some indication regarding the consumption of the alcohol by the deceased. In the absence of the same, this Court cannot assume that the deceased was under the influence of alcohol.

17.Even in the Accident Register that was marked as Ex.R2, it only states that the deceased breath smells alcohol. That observation by itself will not lead to a conclusion that the deceased was under the influence of alcohol and was in an inebriated condition.

18.The Tribunal has taken the pain to deal with the entire evidence that has been recorded and has come to the conclusion that the accident had taken place not due to self fall and it was only due to the rash and negligent driving on the part of the driver of the lorry. This finding of the Tribunal is not illegal or perverse and it is supported by reasons. Hence, this Court does not find any ground to interfere with the finding of the Tribunal with respect to the negligence and it is sustained.

19.The next issue is with regard to the quantum of compensation fixed by the Tribunal. The Tribunal has fixed the notional monthly income of the deceased at Rs.6,000/- in the absence of any material to show the avocation of the deceased and the monthly income earned by him. This Court is of the considered view that the notional monthly income fixed by the Tribunal is on the lower side and hence, this Court is inclined to enhance to same to Rs.7,500/- per month. 25% can be added towards future prospects considering the age of the deceased. Thus, the compensation under the head of loss of income is calculated as follows:

Monthly income fixed	:	Rs.7,500/-
Future prospects to be added	:	25%
Notional Income arrived at	:	Rs.7,500/- + 25% Rs.9,375/-
After deducting 1/4th for personal expenses	:	Rs.7,031.25
Multiplier to be adopted	:	13
Loss of Dependency Rs.7031.25 X 12 X 13	:	Rs.10,96,875/-

20.The compensation that has been granted under other heads are reasonable and it does not require the interference of this Court. In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

1.Loss of Dependency	-	Rs.10,96,875/-
2.Loss of consortium	-	Rs.1,76,000/-
3.Funeral expenses	-	Rs.16,500/-
4.Loss of estate	-	Rs.16,500/-
		Rs.13,05,875/-

21.The compensation awarded by the Tribunal at Rs.10,86,500/- is hereby enhanced to Rs.13,05,875/-. The 3rd respondent-Insurance Company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.2,19,375/- is concerned, the appellants / claimants will not be entitled for interest for the period of delay of 383 days in filing this appeal. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

22.In the result, C.M.A.No.775 of 2023 is dismissed and C.M.A.No.2700 of 2023 is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

20.06.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Presiding Officer,
Exclusive Motor Accident Claims Tribunal,
Tiruppur.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.

N.ANAND VENKATESH, J.

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C.M.A.Nos.775 & 2700 of 2023

20.06.2024