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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 15.03.2024	Delivered on 12.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Civil Miscellaneous Appeal No.514 of 2021

and CMP No.3287 of 2021

United India Insurance Company Ltd.,
Divisional Office, Tuticorin,
457, Victoria Extension Road, Tuticorin,
Tamilnadu – 628 002. ... Appellant

Vs

1. Sathya
2. Santhosh
3. Sathish
4. Muthuvedi (Died)
5. C.Balaji
6. Chinnasmy
7. Ayammal
8. Murugesan
9. Selvi
10. Nagajothi ... Respondents

4th respondent died respondents 6 to 10 brought on record as Lrs of the deceased R4 viz Muthuvedi, vide Court Order dated 04.08.2023 made in CMP Nos.18634, 18636 & 18639 of 2022 in CMA No.514 of 2021 by RSMJ & VLNJ

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Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 17.02.2020 made in MCOP No.683 of 2017 on the file of the Motor Accidents Claims Tribunal (Special District Court), Dharmapuri.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.S.Sathiaseelan,
for RR 1 to 4 & 6 to 10
R5 – Not Ready

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

This Appeal is by the Insurance Company challenging the award of a sum of Rs.63,90,285/- for the death of one Chinnapaiyan in a motor accident that occurred on 14.06.2017 around 8.30 p.m.

2. According to the claimants, the deceased Chinnapaiyan was returning to his house in his Motor cycle bearing Registration No.TN 29 BB 7790 on Harur Dharmapuri Main Road, when he was proceeding near Semmanahalli Kanavai, the TATA Sumo Car bearing Registration

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No.TN 29 AV 3900, which came in the opposite direction driven in a rash and negligent manner by its driver while over taking another lorry which was proceeding in the same direction as that of the car dashed against the motor cycle. As a result of the accident, the deceased Chinnapaiyan sustained fatal injuries and died on the spot. Terming the negligent driving of the TATA Sumo Car as the cause of the accident and contending that the death of Chinnapaiyan, who was working in the Police Department had resulted in loss of income to the family, the claimants sought for a compensation of Rs.3,00,00,000/-. The claimants are the wife, two major employed sons and the mother of the deceased.

3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimants. It was contended that the deceased contributed to the accident by his own rash and negligent driving of the motor cycle. It was also contended that the Tata Sumo Car did not have a valid insurance cover on the date of the accident and the driver of the Car did not possess a valid driving license. The quantum of compensation claimed was termed as highly excessive.

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4. At trial, the first claimant, wife of the deceased, was examined as P.W.1 and two eye witnesses were examined as P.Ws.2 and 3. The copy of the FIR was marked as Ex.P1. On the side of the respondent/Insurance Company one Balakrishnan was examined as R.W.1 and Exhibits R1 to R4 were marked.

5. On a consideration of the evidence of P.Ws.2 and 3 and the contents of the FIR, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the TATA Sumo Car. On the claim that the driver of the Car did not possess a valid driving license, the Tribunal found that he possessed a license for driving a Light Motor Vehicle and in view of the judgment of the Division Bench of this Court in CMA No.978 of 2011 which in turn relied upon the judgment of the Hon'ble Supreme Court in ***S.Iyappan v. United India Insurance Company Ltd. And another,*** reported in **2013 (7) SCC 62**, concluded that absence of endorsement alone will not absolve the Insurance Company from the liability to pay the compensation to the third party, though the Insurance Company would be entitled to recover the compensation paid by it from the insurer.

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6. On the quantum, the Tribunal found that as per the Salary Certificate Ex.P.22, the deceased was drawing a last salary of Rs.42,910/- and adding 30% towards future prospects, the loss of monthly income would be Rs.55,783/-. The annual loss of income would be 6,69,396/- after deducting 5% towards income tax and $1/4^{th}$ towards personal expenses, as there were four dependents, the annual loss of dependency was worked out at Rs.4,76,945/- applying multiplier of 13, since the deceased was aged about 48 years at the time of the accident, the total pecuniary loss was arrived at Rs.62,00,285/-. The Tribunal also granted a sum of Rs.40,000/- each towards loss of consortium and love and affection for the four dependents, apart from granting Rs. 15,000/- each towards loss of estate and funeral expenses. Thus the total compensation was arrived at Rs.63,90,285/-

7. The compensation was apportioned by the Tribunal as follows:

1. The first claimant/wife Rs.42,90,285/-;

2. Claimants 2 and 3, the major employed sons Rs.8,00,000/- each; and

3. The mother Rs.5,00,000/-.

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8. We have heard Mr.D.Bhaskaran, learned counsel appearing for the Appellant/ Insurance Company and Mr.S.Sathiaseelan, learned counsel appearing for the respondents 1 to 4 and 6 to 10. Respondents 6 to 10 were impleaded in the Appeal as legal representatives of the deceased fourth respondent, mother of the deceased Chinnapaiyan.

9. Mr.D.Bhaskaran, learned counsel appearing for the appellant/Insurance Company would vehemently contend that though it is claimed that there were four dependents, P.W.1 in her evidence has admitted that claimants 2 and 3, who are the sons of the deceased were gainfully employed on the date of the accident. Therefore, they cannot be treated as dependents. If P.Ws. 2 and 3 are not treated as dependents, the deduction for personal expenses of the deceased should be one half and not one fourth as adopted by the Tribunal.

10. The learned counsel would also point out that the deduction of the Income Tax at a total percentage of 5% is incorrect. It should have been based on the slab rate. Reliance is also placed by the learned counsel on the judgment of the Hon'ble Supreme Court in ***Kirti and***

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another vs. Oriental Insurance Company Limited, reported in ***(2021) 2 SCC 166***, where the Hon'ble Supreme Court has pointed out that the compensation would depend on the dependency of the major sons of the deceased who are married and gainfully employed.

11. Reliance is also placed on the judgment in **National Insurance Company Limited v. Birender and Others,** *reported in* **(2020) 11 SCC 356**, where the Hon'ble Supreme Court had held that even though the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased or not in accordance with law, the loss of dependency would necessarily depend on the facts of each and every case and the nature and extent of dependency.

12. Mr.S.Sathiaseelan, learned counsel appearing for the respondents/claimants would submit that though it is shown that the claimants 2 and 3 are major sons there is nothing to show that they were not dependent on their father. Our attention is drawn to the evidence of

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P.W.1, who has admitted that the third claimant Sathish is working, it is however claimed that the second claimant is not working. The FIR has been lodged by the second claimant. In the FIR, the second claimant viz. Santhosh S/o. Chinnapaiyan had stated that he is working in a Private Bank in Dharmapuri and his brother Sathish/the third claimant is working as a Village Administrative Officer in Morakadiyur Village of Thiruvanamalai District.

13. Relying upon the above evidence Mr.D.Bhaskaran, learned counsel would submit that the two sons cannot be taken to be fully dependent on the father and hence the deduction of $1/4^{th}$ for personal expenses should be increased. The learned counsel would also contend that the deceased was riding without a helmet, therefore, there should be some deduction for contributory negligence also. As regards the contributory negligence, the driver of the car has not been examined and the suggestion that the deceased was riding without a helmet has been specifically denied by P.W.1. R.W.1 who is not an eye witness cannot speak about the nature of the accident. Therefore, we find that there is total lack of evidence on the part of the Insurance Company on the question of contributory negligence. We therefore, do not adopt any

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deduction for contributory negligence.

14. Adverting to the contention of the learned counsel regarding the dependency factor, we find some force in the said contention. In ***National Insurance Company Limited v. Birender and Others,*** the Hon'ble Supreme Court has held that the compensation will depend on the nature of dependency. Once it is found that both the sons were working and drawing sufficient income, we will have to necessarily conclude that they were not totally dependent on the deceased for their sustenance. After considering the question of dependency, the Hon'ble Supreme Court in ***National Insurance Company Limited v. Birender and Others***, had held as follows:

> ***14.*** *It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and*

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not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs 1,00,000 and Rs 1,50,000 per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.

15. Even in ***Kirti and another vs. Oriental Insurance Company Limited***, the Hon'ble Supreme Court had stressed the need for the compensation to be just and reasonable and the Tribunal should be guided by principals of fairness, equity and good conscience, if we are to consider in the case on hand and in the light of the pronouncements of the Hon'ble Supreme Court, we have to necessarily conclude that the second and the third claimants, the major earning sons of the deceased were not completely dependent on the deceased for their sustenance.

16. We therefore find that the adoption of 1/4th as the deduction for personal expenses does not reflect the actual dependency, however, since the deceased has left behind his widow and the mother (who has died

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subsequent to the accident), we have to take it that at least the widow and the mother were dependent on the deceased. Therefore, the appropriate deduction would be 1/3rd and not 1/4th. The learned counsel for the appellant is unable to project any other valid ground against the other conclusions of the Tribunal.

17. In the light of the above, we have to necessarily modify the award by adopting 1/3rd deduction. If we are to adopt 1/3rddeduction, the loss of dependency would be as follows:

Rs.6,69,396 less 5% Income Tax = Rs. 6,35,926.00

Rs.6,35,926 X 2/3 x 13 = Rs.55,11,358.00

If we add a sum of Rs.1,90,000/- towards non pecuniary loss viz. loss of consortium, love and affection, loss of estate and funeral expenses. The total compensation payable would be Rs.57,01,358.00. Since we have held that the sons were not dependent on the deceased the apportionment has to be necessarily between the wife and the mother. The Tribunal has awarded a sum of Rs.5,00,000/- for the mother which will have to be reduced proportionately since we have reduced the total compensation. We therefore apportion a sum of Rs.4,00,000/- to the mother of the

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deceased and the remaining Rs.53,01,358.00 which we round off to Rs.53,01,400/- payable to the wife of the deceased.

18. The Appeal is therefore partly allowed, the total compensation awarded is reduced to Rs.57,01,400.00. The interest awarded by the tribunal and the direction to pay and recover issued by the tribunal are confirmed. The parties will bear their own costs in the Appeal. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
12.04.2024

jv

Index: Yes
Internet: Yes
Speaking order
Neutral Citation: Yes

To

1. The Special District Court
Motor Accidents Claims Tribunal,
Dharmapuri.

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

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