THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No. 904 of 2024
and
C.M.P.No. 8373 of 2024

The United India Insurance Co. Ltd.,
No.13-A, Nethaji Road,
Manjakuppam,
Cuddalore. ...Appellant

Vs.

1.M.Sivagangai

2.P.Deepalakshmi

3.M.Sethuraman

4.S.Vairamala

5.The Managing Director,
Tamil Nadu State Transport Corporation,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.3007 of 2017 dated 30.10.2023 on the file of the Motor Accident Claims Tribunal, Special Sub-ordinate Court No.1, Cuddalore.

For Appellant : Mrs.C.Harini for
M/s.M.B.Gopalan Associates

For Respondents : Mr.F.Terry Chella Raja for R1 to R3
Mr.T.Chandrasekaran for R5

JUDGMENT

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

The Insurance Company is on appeal, aggrieved by the award of a sum of Rs.26,79,000/- for the death of one Murugan in a road accident that occurred on 01.02.2017.

2. The Claimants sought for a compensation of Rs.25,00,000/- for the death of the said Murugan, contending that while the said Murugan was travelling in the car belonging to the 1st respondent bearing Registration No.PY-01-BA-1959 on the Chennai - Kumbakonam National Highway near Maruvai causeway, the bus belonging to the 3rd respondent / Corporation

bearing Registration No.TN-32-N-3335 driven in a rash and negligent manner in the opposite direction dashed against the car resulting in the instantaneous death of the said Murugan. It was claimed that the deceased was about 48 years old and was working in the Puducherry Co-operative Spinning Mill earning Rs.20,000/- per month. It was also contended that the claimants who are the wife and children of the deceased have lost their only source of sustenance due to the death of the said Murugan.

3. The claim was resisted by the 2nd respondent / Insurance Company contending that the driver of the car did not have a valid driving license and the car did not have a valid fitness certificate. It was also claimed that the driver of the car had not contributed to the accident by his negligence and it was the negligence of the driver of the bus belonging to the 3rd respondent / Corporation which was the sole cause for the accident. The 3rd respondent / Corporation contended that the accident occurred due to the negligence of the car driver. The fact that the criminal proceedings were closed as having abated due to the death of the car driver was also sought to be taken advantage of by the Transport Corporation.

4. At trial, before the Tribunal, the 1st claimant was examined C.W.1

and one Lakshminarayanan was examined as C.W.2. Exs.C1 to C6 were marked. None of the respondents let in any evidence. On a consideration of the evidence of record, the Tribunal concluded that both the drivers have contributed to the accident equally and apportioned the liability at 50% each.

5. On the quantum, since the claimants did not produce any documents, except an Identity Card issued by the Co-operative Spinning Mill, the Tribunal took the monthly notional income at Rs.18,000/-, adopted 30% towards future prospects, applied deduction of 1/3rd and adopted the multiplier of 13 and arrived at the total loss of dependency at Rs.24,34,000/- It also awarded Rs.50,000/- each to the three claimants towards loss of love and affection. Another sum of Rs.40,000/- was awarded towards loss of consortium to the 1st claimant. A sum of Rs.15,000/- each was awarded towards funeral expenses and Transportation. A sum of Rs.25,000/- was awarded towards loss of dress. In all, the Tribunal awarded a compensation of Rs.26,79,000/- and directed the Insurance Company to pay 50% of the said amount. Aggrieved, the Insurance Company is on appeal.

6. We have heard Ms.C.Harini, learned counsel for the appellant,

Mr.F.Terry Chella Raja, learned counsel for the respondents 1 to 3 / claimants and Mr.T.Chandrasekaran, learned counsel for the 5th respondent. Though the owner of the car has not been served, since the Insurance Company is not disputing its liability, we do not see any necessity to issue notice to the 4th respondent.

7. Ms.C.Harini, learned counsel appearing for the Insurance Company would vehemently contend that fixation of Rs.18,000/- as notional income and adoption of 30% towards future prospects is on the higher side. She would also contend that the Tribunal erred in awarding a sum of Rs.50,000/- each to the claimants towards loss of love and affection and also awarding another sum of Rs.40,000/- to the 1st claimant for loss of consortium. She would contend that it amounts to duplication. It is also contended that the award of Rs.25,000/- for loss of dress is on the higher side.

8. Contending contra, Mr.F.Terry Chella Raja, learned counsel for the claimants would submit that the fixation of Rs.18,000/- as monthly income for an accident that taken place in 2017 cannot be said to be high. He would contend that last grade servants employed temporarily on daily wage basis

by the Government were getting around Rs.17,000/- as monthly emoluments at the relevant point of time. He would also point out that once it is conceded that the deceased was employed in the Puducherry Co-operative Spinning Mill in a permanent job, adoption of 30% towards future prospects is also justified. He is however, unable to support the award of compensation of Rs.1,50,000/- towards loss of love and affection and another sum of Rs.40,000/- towards loss of consortium. The compensation awarded for loss of dress at Rs.25,000/- is also on the higher side which, the learned counsel is unable to support.

9. Mr.T.Chandrasekaran, learned counsel for the 5th respondent / Corporation would submit that in another claim relating to the very same accident, this Court has upheld the apportionment of compensation at 50% on the driver of the car and the driver of the bus therefore, he is unable to canvass the correctness of the apportionment. We have considered the rival submissions.

10. Since the learned counsel for the Insurance Company has addressed arguments only on the quantum of compensation, we do not dwell

into the evidence regarding negligence and conclusion of the Tribunal regarding negligence. As far as the quantum is concerned, the major attack by the learned counsel for the Insurance Company is the fixation of Rs.18,000/- as notional income. There is evidence to show that the deceased was working in a Co-operative Spinning Mill and the job is of a permanent nature. As rightly pointed out by the learned counsel appearing for the claimants, even a temporary last grade servant employed by the Public Works Department of the Tamil Nadu Government was paid Rs.17,000/- as monthly emoluments at the relevant point of time. Therefore, we are unable to fault the Tribunal for having fixed Rs.18,000/- per month as notional income.

11. No doubt, the claimants have not produced any evidence in the form of salary certificate to show the income. Once it is established that the deceased was working in a permanent job in a Co-operative Spinning Mill, the Tribunal can always fix a notional income. In the case on hand, we find that the Tribunal has fixed a very fair sum as a monthly notional income. We do not see any cause for interference with the quantum of monthly income fixed by the Tribunal.

12. The next contention of the learned counsel for the Insurance Company is that the Tribunal has taken 30% for future prospects on the assumption that the job is of permanent nature, it should have been adopted only 25%. Reliance is placed on paragraph 59.4 of the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680.*** The Hon'ble Supreme Court while fixing future prospects has dealt with various kinds of employers. Paragraph 59.3 deals with the employment of permanent nature. Paragraph 59.4 deals with self-employment and monthly salaried employment. The identity card produced as Ex.C6 shows that the deceased was working in a Co-operative Spinning Mill.

13. Undoubtedly, the said job is of a permanent nature therefore, the Tribunal was right in adopting 30% towards future prospects. The deduction made at 1/3rd as well as the multiplier adopted at 13 are in tune with the pronouncements of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and Others*** as well as ***Sarla Verma and Others***. We therefore, see no cause for interference with the

compensation awarded towards loss of dependency at Rs.24,34,000/-.

14. Coming to the compensation under the conventional heads, we find some justification in the contention of the learned counsel for the Insurance Company. The compensation for loss of love and affection and consortium fixed by the by the Hon'ble Supreme Court is Rs.40,000/-, but the Tribunal has awarded Rs.50,000/- each. So, the award under the said head has to be modified as Rs.1,20,000/- instead of Rs.1,50,000/-. The Tribunal has awarded another sum of Rs.40,000/- towards loss of consortium which is actually a duplication.

15. Once compensation awarded under the head of loss of love and affection, there cannot be any further compensation for loss of consortium. Therefore, the award of R.40,000/- on the head of loss of consortium deserves to be set aside and it is accordingly, set aside. The award of Rs.25,000/- towards loss of dress is also high and the same is reduced to Rs.5,000/-. Thus, the total compensation works out to Rs.25,89,000/-.

16. The modified compensation is as follows:-

S.No.	***Description***	***Amount Rs.***
1	Loss of dependency	Rs.24,34,000/-
2	Loss of love and affection (Rs.40,000 /- x 3)	Rs.1,20,000/-
3	Funeral Expenses	Rs.15,000/-
4	Transportation	Rs.15,000/-
5	Loss of Dress	Rs.5,000/-
	Total	**Rs.25,89,000/-**

17. The interest awarded at 7.5% is confirmed. Apportionment as made by the Tribunal on the head of contributory negligence is also confirmed. The compensation awarded is apportioned as follows:-

i) the wife/ 1st claimant would be entitled to Rs.15,00,000/-.

ii) The 2nd claimint / daughter will take Rs.4,00,000/-.

iii) the balance of Rs.6,89,000/- will be taken by the 3rd claimant / son.

18. This Civil Miscellaneous Appeal is **allowed** as modified above. The Insurance Company will have two weeks time to deposit the amount as per the modified award with interest at 7.5% . Both the Insurance Company and Transport Corporation will have twelve weeks time to deposit the award

amount. Upon deposit, the claimants are entitled to withdraw the said amount. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) **(R.S.V., J.)**
05.07.2024

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Speaking
Nuetral Citation : No

To:-

The Motor Accident Claims Tribunal,
Special Sub-ordinate Court No.1,
Cuddalore.

R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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