IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Civil Miscellaneous Appeal No.2642 of 2021

1. P.Murugampal

2. P.Jaya Sri ... Appellants

Vs

1. K.Ranjith

2. M/s. Reliance General Insurance Company Ltd.,
Sakthi Super Market,
3rd Floor, 408 Perundurai Road,
Erode 638 001. ... Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order dated 05.02.2020 passed in MCOP No.186 of 2017 on the file of the Motor Accident Claims Tribunal/ Sessions (Fast Track Mahila) Court at Namakkal.

For Appellant : Mr.M.Lokesh

For Respondents : Mrs. R.Sree Vidhya
R1 – *Ex-parte*

J U D G M E N T

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

The claimants viz. the mother and sister of P.Manikandan aged about 19 years, who died in a road accident that took place on 02.10.2016 are on Appeal, complaining that the quantum of compensation granted by the Tribunal for the death of the said Manikandan is too low.

2. The claimants sought for a compensation of Rs.20,00,000/- contending that the deceased Manikandan was working as a Mechanic and he was earning Rs.12,000/- per month, since the father of the deceased had also died, the mother and the sister, who were solely dependant on the income of the deceased for their sustenance, had suffered complete loss of support. They would further contend that while the deceased was riding as a pillion rider in the Motor Cycle bearing Registration No.TN 28 BB 2606, the rider rode the vehicle in a rash and negligent manner and dashed against the road side tree, resulting in the death of the pillion driver. Therefore, according to them, the second respondent Insurance Company as the insurer of the Motor Cycle is liable to pay the compensation.

3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimants and that the rider of the Two-wheeler did not possess a valid driving licence.

4. At trial before the Tribunal, the first claimant examined herself as P.W.1 and one Tr.Dineshkumar was examined as P.W.2 and Exhibits P1 to P5 were marked. There was no oral evidence on the side of the respondent, but Exhibits R1 to R4 were marked.

5. On the available evidence particularly the FIR, marked as Ex.P1, the Tribunal arrived at the conclusion that the accident occurred due to the rash and negligent driving of the rider of the Motor Cycle and as the insurer of the Motor Cycle the second respondent would be liable to pay the compensation. It however, concluded that since the rider did not have a valid driving licence at the time of the accident, the Insurance Company would be entitled to recover the compensation from the owner of the Motor Cycle.

6. On the quantum, the Tribunal took the monthly income of the deceased at Rs.5,000/- added 40% towards future prospects deducted 50% towards personal expenses and arrived at the monthly loss of dependency at Rs.7,500/-. It adopted a multiplier of 18 and arrived and the total loss of dependency at Rs.7,56,000/-. It also awarded a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, Rs.10,000/- towards transport and Rs.19,600/- towards medical expenses. In all, the total compensation worked out to Rs.8,15,600/-.

7. We have heard Mr.M.Lokesh, learned counsel appearing for M/s.Ma.P.Thangavel, appearing for the appellant and Mrs.R.Sree Vidhya, learned counsel appearing for the second respondent Insurance Company. Since the liability of the Insurance Company is not in dispute, we do not deem it necessary to hear the owner of the vehicle viz. the first respondent before the Tribunal.

8. Mr.M.Lokesh, learned counsel appearing for the appellants would vehemently contend that the fixation of Rs.5,000/- as notional income for the accident that occurred in 2016 is very low. He would contend that the Tribunal should have taken at least Rs.10,000/- as the notional monthly income. He would also fault the Tribunal for not awarding any amount towards loss of consortium and loss of love and affection.

9. Contending contra Mrs.R.SreeVidhya, learned counsel appearing for the second respondent Insurance Company would submit that in the absence of any evidence to prove income that too for a 19 year old boy, the Tribunal was right in assuming the notional income at Rs.5,000/- per month. She would, however, fairly concede that the non-grant of any amount towards loss of love and affection and loss of consortium cannot be sustained.

10. We have considered the rival submissions.

11. Fixation of Rs.5,000/- as notional income even for a 19 year old boy in the year 2016 cannot be sustained. Even a daily waged employee was earning more than Rs.400/- per day during the relevant period. Therefore, we are unable to sustain the monthly income fixed by the Tribunal. We fixed the monthly notional income at Rs.10,000/- per month. We will have to add 40% towards future prospects which would take the monthly income to Rs.14,000/-, if we deduct 50% towards personal expenses, since the deceased is the bachelor and apply the multiplier 18, the total loss of dependency would work out to Rs.15,12,000/-. Apart from that we find that the claimants would be entitled to Rs.40,000/- each for loss of consortium and loss of love and affection. The award under the other heads is confirmed. Therefore, the compensation allowable would be loss of dependency Rs. 7,000/- X 12 X 18 = 15,12,000/-

12. Thus the modified compensation award is as follows:

Description of the Heads	***Amount***
Loss of Dependency	15,12,000/-
Loss of Estate	15,000/-
Funeral Expenses	15,000/-
Transport Expenses	10,000/-
Medical Expenses	19,600/-
Loss of love and affection for the two claimants at Rs.40,000/- each	80,000/-
Total	16,51,600/-

The award is modified accordingly granting a sum of Rs.16,51,600/- as compensation.

13. In view of the foregoing discussions, the Appeal is **allowed**. The Insurance Company will have 12 weeks time to deposit the enhanced compensation with 7.5% interest from the date of the claim petition i.e. 04.02.2017 till date of realization. The claimants would also be entitled to proportionate costs in the Appeal.

14. It is stated that the Tribunal has not granted any amount to the second claimant sister and has granted the entire amount in favour of the first claimant mother. It is also stated that the mother has withdrawn 50% of the compensation, the remaining 50% has been directed to be deposited for a period of three years.

15. We apportioned the compensation enhanced by us as follows: The second appellant / the sister will take Rs.5,00,000/- with proportionate interest and the remaining amount, less the amount already withdrawn by the mother, will be taken by the first appellant / the mother with proportionate interest. There shall be no order as to costs.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
28.06.2024

jv
Index: No
Internet: Yes
Speaking order
Neutral Citation: No

To

1. The Motor Accident Claims Tribunal/ Sessions
(Fast Track Mahila) Court,
Namakkal.

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

R.SUBRAMANIAN, J.

and

R.SAKTHIVEL, J.

jv

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