IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Civil Miscellaneous Appeal No.1327 of 2023

and CMP No.13289 of 2023

The Divisional Manager,
Reliance General Ins. Co. Ltd.,
I Floor, T.G.Complex, No.14 Ramasamy Street,
West Tambaram, Tambaram,
Kanchipuram District. ... Appellant

Vs

1. M. Shanthi
2. M. Mohan
3. Amaresan ... Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated

01.03.2022 passed in MCOP No.1014 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court at Vellore.

For Appellant : Mrs.C.Bhuvanasundari

For Respondents : Mr. A.Gouthaman, for RR1 & 2

JUDGMENT

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

The Insurance Company is on Appeal aggrieved by the quantum of the compensation awarded at Rs.38,43,000/- for the death of one Diwakar aged about 26 years in a road accident that happened on 30.09.2016.

2. The claimants, who are the parents of the deceased, had sought for a compensation of Rs.2,50,00,000/-, contending that the accident occurred due to the rash and negligent driving of the driver of the Tipper

Lorry bearing Registration No.TN 22CU 5686. It was the contention of the claimants that the deceased Diwakar was traveling as a pillion rider in a Two-wheeler bearing Registration No.TN 22DD 8088 ridden by his friend Vishnu Prasad on GST Road, near Perungalathur. When they were coming from south to north on the left side of the center median, a Tipper Lorry came from behind and dashed against the Two-wheeler resulting in, the pillion rider sustaining grievous injuries all over the body resulting in his death instantaneously. It was also contended that a case was registered against the lorry driver in Crime No.596 of 2016 under Sections 279 and 304-A of the Indian Penal Code.

3. The claimants sought to support the quantum of compensation contending that the deceased was employed as a Software Engineer in Accenture Private Ltd., and was drawing a sum of Rs.34,000/- per month as salary. It was also contended that he had an offer from employment in Mexico and he would have got promotion up to the level of Manager and would have earned to Rs.3,00,000/- per month. It was also contended that the marriage of the said Diwakar was fixed to be held on 05.12.2016 and the claimants have spent huge amounts in preparation for the marriage.

4. This claim was resisted by the appellant Insurance Company contending that the accident did not occur in the manner suggested and there was contributory negligence on the part of the rider of the Two-Wheeler in which the deceased was a pillion rider. The income particulars when the age of the deceased were denied the claimants were put to strict proof of the same.

5. Before the Tribunal, the first claimant was examined as P.W.1, the rider of the Motor Cycle was examined as P.W.2 and one Purushothaman an employee of Accenture Private Ltd., was examined as P.W.3. Exhibits P1 to P30 were marked. On the side of the respondent one G.Venkatesan, was examined as R.W.1 and Xerox copy of the Rough Sketch was marked as Ex.R1 and the Installation Certificate of the Lorry was marked as Ex.R2.

6. On a consideration of the evidence on record, the Tribunal concluded that both the driver of the Lorry and the rider of the Two-Wheeler had contributed to the accident. It fixed the quantum of negligence in the Lorry Driver at 75% and held that the Insurance Company would be liable to pay 75% of the compensation determined. The Tribunal took the monthly income of the deceased at Rs.35,000/- added 40% towards future prospectus and arrived at the monthly income at Rs.49,000/-. It applied a deduction of 50% and arrived at the monthly loss of dependency at Rs.24,500/-, since the age of the deceased is 26 years, the Tribunal adopted a multiplier of 17 and arrived at the total compensation for loss of dependency at Rs.49,98,000/-.

7. It also awarded a sum of Rs.88,000/- towards filial consortium, Rs.16,500/- each towards funeral expenses and loss of estate and Rs.5,000/- towards transport expenses. In all the Tribunal assessed the compensation at Rs.51,24,000/-, after deducting 25% towards contributory negligence, the Tribunal awarded a sum of Rs.38,43,000/- to the claimants. While the claimants have accepted the award, the Insurance Company has come up with the Appeal.

8. We have heard Mrs.C.Bhuvanasundari, learned counsel appearing for the appellant Insurance Company and Mr.A.Gouthaman, learned counsel appearing for the Respondents 1 and 2.

9. Mrs.C.Bhuvanasundari, learned counsel appearing for the appellant Insurance Company would contend that the Tribunal erred in not deducting Income Tax while determining the loss of dependency. She would also contend that Ex.R1 Rough Sketch would show the nature of the accident and a perusal of the same would demonstrate that apportionment of 25% towards contributory negligence is on the lower side. She is unable to pick holes in the determination of the Salary and the adoption of future prospects as well as multiplier since the same are in accordance with the precedents in this regard.

10. Contending contra, Mr.A.Gouthaman, learned counsel appearing for the claimants would submit that no doubt the Tribunal has not deducted Income Tax, but at the same time, the quantum of contributory negligence is justified in the light of the evidence that is available.

11. We have considered the rival submissions.

12. We find considerable force in the submissions of the learned counsel for the Insurance Company regarding non-deduction of Income Tax. The Tribunal has taken the income at Rs.49,000/- per month. Therefore, the annual income comes to Rs.5,88,000/- which is above the taxable limit. As per the Income Tax rates that prevailed in 2016-2017 income above Rs.2,50,000/- up to Rs.5,00,000/- is taxable at the rate of 10% and income above Rs.5,00,000/- up to Rs.10,00,000/- is taxable at the rate of 20%. Therefore, the income tax payable on Rs.5,88,000/-would be Rs.42,600/-.

13. The Tribunal erred in not deducting the said sum, if the said sum of Rs.42,600/- is deducted from the total income that is arrived at Rs.5,88,000/-, the income after deduction of tax is Rs.5,45,400/- per annum, if we adopt the multiplier of 17, the total loss of income would be Rs.92,71,800/-. The deceased having died a bachelor, we will have to deduct 50% towards his personal and living expenses. Thus, the loss of dependency would work out to Rs.46,35,900/-. The compensation awarded under the other heads, as already stated, is as per the law declared by the Hon'ble Supreme Court. Hence the total compensation payable to the claimants would be Rs.47,61,900/-.

14. The Tribunal has apportioned the contributory negligence at 25%, we have gone through the Rough Sketch as well as the evidence of P.W.2 who was the rider of the Motor Cycle at the relevant point of time. We find that adoption of 25% is just and reasonable, we see no reason to interfere to the quantum of contributory negligence as fixed by the Tribunal. If we deduct 25% from Rs.47,61,900/-, the compensation payable would be 35,71,425/-.

15. The Appeal is therefore **allowed in part**, the compensation payable is reduced to Rs.35,71,425/-. The compensation is apportioned equally between the parents of the deceased. The interest and costs awarded by the Tribunal are confirmed. The Insurance Company will have 12 weeks time to deposit the compensation as determined by us along with interest and costs. On such deposit, the claimants/ the respondents 1 and 2 herein will be entitled to withdraw the entire amount as apportioned by the Tribunal and affirmed by us. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
12.07.2024

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

To

1. The I Additional District and Sessions Judge
Motor Accident Claims Tribunal,
Vellore.

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

R.SUBRAMANIAN, J.

and

R.SAKTHIVEL, J.

jv

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