IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NO.3011 OF 2024
AND CMP NO.25009 OF 2024

The Branch Manager
Reliance General Insurance Company Limited
Old No.15, New No.29, 3rd Floor,
Vadakku Usman Road, T.Nagar,
Chennai – 600 017 ... Appellant / 2nd Respondent

Vs.

1.Jeevanandh
2.Minor Vinu Dharshana
3.Minor Mayuhai
(Minor Petitioner Nos.2 & 3 are represented by their next friend / Guardian / father - 1st Respondent - Jeevanandh) ... Respondents 1 to 3/ Petitioners 1 to 3

4.Raveendranath ... 4th Respondent / 1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated March 4, 2024 passed in M.C.O.P.No.1420 of 2019 on the file of Motor Accidents Claims Tribunal, III Additional District Judge, Coimbatore.

For Appellant : Mr.P.Suresh

JUDGMENT

(Order of the Court was made by J.NISHA BANU, J.)

Assailing the 'Award dated March 4, 2024 passed in M.C.O.P.No.1420 of 2019' [henceforth 'impugned Award' for clarity and convenience] by the 'Motor Accident Claims Tribunal (III Additional District Judge) Coimbatore' [henceforth 'Tribunal' for brevity], the appellant / second respondent has preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Original Petition.

PETITIONERS' CASE:

3. The 1st petitioner is the husband of the deceased - Vidhaya Priya, while the minor Petitioner Nos. 2 and 3 are her daughters. The petitioners are the dependents of the deceased – Vidhaya Priya. On December 4, 2017 at about 03.00 pm, the 1st respondent was driving his Car bearing Registration No.TN-09-BX-3433 with his friend - Vidhaya Priya sitting in the front passenger seat. They were travelling across Vasistanathi Over Bridge from east to west. As they approached Thalaivasal, Mumudi Bus Stand, due to the first respondent's rash and negligent driving, the Car collided with the left side parapet wall of the bridge and then struck the right side wall as well. After the accident, Vidhaya Priya passed away on her way to the Hospital. The 1st respondent was the Driver cum Owner of the said Car which is insured with the second respondent. His rashness and negligence is the sole cause of the accident. With respect to this accident, Thalaivasal Police registered a Criminal Case in Crime No. 344 of 2017 under Sections 279, 337 and 304(A) of the Indian Penal Code 1860, against the 1st respondent. The deceased was working as a Medical Transcriptioner, earning Rs.25,000/- per month. The petitioners filed Original Petition claiming a compensation of Rs.50,32,000/- along with subsequent interest at the rate of 12% from the respondents.

1ST RESPONDENT'S CASE:

4. The 1st respondent remained absent and was set *ex-parte* before the Tribunal.

2ND RESPONDENT'S CASE:

5. The 2nd respondent / Insurance Company filed counter wherein it is stated that the first respondent’s car bearing Registration No. TN-09-BX-3433 [Honda City] is insured with the second respondent vide

Package Insurance Policy No.12121723110031948. The alleged accident on December 4, 2017 at about 03.00 pm occurred not solely due to rash and negligent act of the 1st respondent. The first respondent was driving the Car bearing Registration No.TN-09-BX-3433 at a slow and steady manner from east to west direction over Vasishta Nathi flyover, Chennai -Salem NH, observing traffic rules duly, along with deceased - Vidhaya Priya as inmate. Since a pedestrian suddenly crossed the road, in order to avoid any mishap, the first respondent swerved his vehicle, in which process unfortunately he dashed against the parapet walls. In a nutshell, the manner of accident demonstrated in the Original Petition is false and incorrect. Further, no Motor Vehicle Inspection report of the Car was filed. The petitioners are not dependent on the income of the deceased. The age, income, occupation of the deceased and that she died due to injuries sustained in the accident are denied. Further that the petitioners' claim and the rate of interest claimed are excessive. Accordingly, the second respondent prayed to dismiss the petition with costs.

EVIDENCE

6. On the side of the petitioners, 1st petitioner was examined as P.W.1 and Ex-P.1 to Ex-P.12 were marked. On the side of the 2nd respondent, while no witness was examined, Ex-R.1 to Ex-R.3 were marked by consent of both parties.

FINDINGS OF THE TRIBUNAL

7. The Tribunal, relying on the evidence of P.W.1 and Ex-P.1 – First Information Report (FIR), concluded that the accident occurred due to the rash and negligent driving of the first respondent. Further, relying on the evidence of P.W.1 and Ex-P.12 - Bank Statement, the Tribunal fixed income at Rs.20,000/- per month. Considering the age of the deceased at the time of accident, the Tribunal, relying on the Judgment of the Hon'ble Supreme Court in ***Sarla Verma & Ors. -vs- Delhi Transport Corporation & Anr.*** reported in ***(2009) 6 SCC 121,*** adopted the multiplier of 14. Further, in accordance with the guidelines laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi & Ors*** reported in ***(2017) 16 SCC 680***, the Tribunal fixed future prospects at 25% and awarded compensation under various heads with interest at the rate of 7.5% per annum from the date of presentation of the petition till the date of realization, as hereunder:

S.No.	Head	Amount
1.	Loss of Dependency	Rs.28,00,056.00
2.	Loss of Consortium	Rs.1,44,000.00
3.	Loss of Estate and Funeral Expenses	Rs.36,000.00
	Total	**Rs.29,80,056.00**

8. Challenging the quantum of compensation, the 2nd respondent/Insurance Company has preferred this Civil Miscellaneous Appeal.

ARGUMENT:

9. Mr.P.Suresh Srinivasan, learned Counsel for the appellant / Insurance Company submits that the petitioners have not proved the deceased's income. In these circumstances, the Tribunal fixing the income of the deceased at Rs.20,000/- per month solely based on Ex-P.12 – 'Bank Statement for the year 2017' is not sustainable in law. The Tribunal ought to have considered the fact that the petitioner failed to produce Bank Statement for any other year. Further submits that the compensation under conventional heads are not in line with ***Pranay Sethi's Case*** (*supra*). Accordingly, he prays to admit the Civil Miscellaneous Appeal and order Notice to the respondents herein.

DISCUSSION:

10. This Court has heard the learned Counsel for the second respondent / Insurance Company and perused the typed sets of papers and the impugned Award.

11. The second respondent in Paragraph No.3 of its Counter has specifically admitted that the first respondent's car bearing Registration No. TN-09-BX-3433 [Honda City] is insured with the second respondent under Package Insurance Policy No. 12121723110031948. The policy being a Package Policy, no doubt that the co-passengers / occupants of the car are also covered under the said Policy. In other words, if the petitioners proved that the accident occurred due to the rash and negligence of the first respondent, then the second respondent is liable to compensate the petitioners.

12. Relying on the evidence of P.W.1 coupled the evidence of

Ex-P.1 – FIR, Ex-R.1 – Rough Sketch Ex-R.2 – Final Report, the Tribunal held that the first respondent is the sole cause of the accident. Further, relying on Ex-P.5 – Insurance Policy, the Tribunal fastened the liability to compensate the petitioners on the second respondent / Insurance Company. No contra evidence was adduced on the side of the respondents. No witness was examined. Hence, the Tribunal is right in fixing the negligence on the first respondent and fastening the liability to compensate on the second respondent. There is no need to interfere with the said findings.

13. As regards quantum of compensation, the Tribunal on the basis of the evidence of P.W.1 and Ex-P.12 - Bank Statement covering the transactions from 1 year prior to the date of accident, the Tribunal concluded that the deceased has been regularly receiving salary ranging from Rs.16,000/- to Rs.30,000/-. Also bearing in mind the educational qualifications of the deceased, the Tribunal concluded that the deceased would have earned at least a sum of Rs.20,000/- per month as a Medical Transcriptioner. This Court does not find any irregularity or illegality with the said finding.

14. The age of the deceased being 42 years, the Tribunal has rightly applied 25% future prospects, deducted 1/3rd towards personal expenses of the deceased, and applied the multiplier of 18 to arrive at the compensation of Rs.28,00,056/- under the head loss of dependency. Further, the Tribunal reasoned that since it has been more than six years from the date of Judgment in ***Pranay Sethi's Case***, as observed therein, it is apropos to enhance the reasonable figures on conventional heads laid down therein by 20%. Accordingly, it awarded compensation under the conventional heads. This Court does not find any infirmity with the same.

CONCLUSION:

15. Resultantly, this Civil Miscellaneous Appeal must fail. Accordingly dismissed without costs. Connected Civil Miscellaneous Petition is closed.

[J.N.B., J.] **[R.S.V., J.]**

08.11.2024

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
TK

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

TK

To

The Motor Accidents Claims Tribunal
III Additional District Judge
Coimbatore.

CMA NO.3011 OF 2024

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