IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

CORAM

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

C.M.A.No.2313 of 2024
and
C.M.P.No.18151 of 2024

The Manager
M/s.Royal Sundaram General Insurance Co.Ltd.,
D.O.No.1, II Floor,
Subramaniyam Buildings,
Club House Road, Anna Salai
chennai - 600 002. … Appellant / 2nd Respondent

Vs.

1. Tamilselvi,
   W/o Thanavandhan

2. Vivek,
   S/o Thanavandhan

3. Vishali(Minor),
   D/o Thanavandhan

4. Chokkammal
   W/o Kalipillai …Respondents 1 to 4 / Petitioners

5. B.Sakthivel
   S/o Balaraman …5th Respondent / 1st Respondent

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 praying to set aside the Award dated October 31, 2023 made in MCOP.No.5999 of 2016 on the file of Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant	:	Mr.M.B.Raghavan
For R1 to R4	:	Mr.Terry for Mr.Velu
For R5	:	*Ex-parte*

JUDGMENT

(The judgment of the Court was delivered by ***J.Nisha Banu, J*** *)*

This Civil Miscellaneous Appeal has been preferred by the Insurance Company, challenging the Award dated October 31, 2023 passed in MCOP.No.5999 of 2016 on the file of 'the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai' ['Tribunal' for short].

2. The case of the claimants is that on July 30, 2016 at about 07.45 hours, while the deceased was riding his motorcycle bearing Registration No.TN-19-X-3541 in ECR Road, near Pallavan Village

Bank, Venangupet, a car bearing Registration No.PY-01-CH-1594 came from the opposite direction in a rash and negligent manner, and dashed against the deceased. Consequently, the deceased sustained multiple injuries and passed away at Rajiv Gandhi Government General Hospital, Chennai, on August 15, 2016. The accident occurred only due to rash and negligent driving of the driver of the car. The owner and the insurer of the car are liable to pay compensation to the claimants. Accordingly, the claimants claimed a sum of Rs.2,00,00,000/- before the Tribunal.

3. The 1st respondent (5th respondent herein) remained *ex-parte* before the Tribunal.

4. The 2nd respondent / Insurance Company denied all allegations in the petition, including the manner of the accident and the deceased's age, profession, and relationship with the petitioners, and claimed that the petition is not maintainable in law or on facts and attributed negligence to the deceased. Further, the compensation claimed is excessive and imaginary, and the car was falsely implicated. They also denied that the car was insured with them and that the driver had a valid license or permit. Thus the 2nd respondent / Insurance Company sought to dismiss the claim petition.

5. On the side of the petitioners, the first petitioner - Mrs.Tamilselvi was examined as P.W.1; one Mr.Vivek was examined as P.W.2; one Mr.Sakthivel and one Mr.Shanmugam, eyewitnesses to the accident, were examined as P.W.3 and P.W.4 respectively; and Ex-P.1 to Ex-P.31 were marked. On the side of the 2nd respondent / Insurance Company, no oral evidence was adduced and no exhibit was marked.

6. The Tribunal found that the accident took place only due to the rash and negligence on the part of the driver of the 1st respondent's car and awarded compensation of a sum of Rs.73,46,000/- (Rupees Seventy Three Lakhs and Forty Six Thousand only) with interest at the rate of 7.5% per annum.

7. Learned Counsel for the appellant / Insurance Company would submit that the quantum of compensation awarded by the Tribunal to the claimants is excessive and not in tune with the facts and circumstances of the case. The Tribunal failed to consider that the deceased was not an income tax assessee and erred in fixing his monthly income at Rs.50,000/-, which is excessive. The Bank statements, Sale Deeds and Vehicle Loan Statement cannot be treated as substantial proof of income. The Tribunal failed to appreciate the evidence in the right perspective and erred in granting excessive compensation. Accordingly, he would pray to set aside the Award.

8. Learned Counsel for the Respondent 1 to 4 / Petitioners would argue that the Tribunal appreciated the facts and circumstances in the right perspective and awarded compensation. However, the Tribunal miscalculated the 25% Future Prospects as Rs.11,000/-, while 25% of Rs.50,000/- is Rs.12,500/-. The Tribunal's Award is well considered and need not be interfered with in any other aspect. Accordingly, he would pray to dismiss the Civil Miscellaneous Appeal and rectify the calculation mistake in the Award.

9. Heard on either side and perused the materials available on record.

10. The Tribunal, under the impugned award, directed the Insurance Company to pay the claimants, a compensation of Rs.73,46,000/- (Rupees Seventy Three Lakhs Forty Six Thousand only) as detailed hereunder :

Heads	***Amount awarded by the Tribunal in Rupees***
Loss of dependency	71,37,000
Loss towards consortium	1,76,000
Loss of estate	16,500
Funeral expenses	16,500
Total	73,46,000

11. On perusal of the Award passed by the Tribunal, it is seen that the Tribunal had taken into consideration, the evidence of P.W.1 to P.W.4 as well as Ex-P.1 – First Information Report (FIR) and fixed the negligence on the part of the driver of the car, which in our opinion, does not warrant any interference. Further, on the date of accident, the car bearing Registration No.PY-01-CH-1594 was insured with the 2nd respondent and the insurance policy was in force. The Insurance

Company has not disputed the same. Hence, the Tribunal has rightly held the 2nd respondent liable to pay compensation to the claimants.

12. The 1st respondent is the wife of the deceased, while the 2nd respondent is his son, 3rd respondent is his daughter and the 4th respondent is his mother. The father of deceased pre-deceased him.

13. It is the case of the petitioners that the deceased - Thanavandhan was a Proprietor cum Owner, doing coconut wholesale business earning a sum of Rs.1,50,000/- per month at the time of accident. To prove the avocation and income of the deceased, the claimants had produced Exs-P.11 to P.13 - Bank Statements, Exs-P.22 and P.23 - Sale Deeds, and Exs-P.18 & P.20 - Vehicle Loan Statements.

14. The Tribunal has assessed the monthly income of the deceased at Rs.50,000/- and by adding 25% towards future prospects, fixed the income of the deceased as Rs.61,000/- per month. After deducting 1/4th for his personal expenses, and also considering the age of the deceased as 49 years and applying the multiplier of 13, the Tribunal fixed the loss of income at Rs.71,37,000/- (61,000x12x13x3/4).

15. It is seen that though the Tribunal, on considering the age of the deceased as 49 years, rightly added 25% of the income towards future prospects, it has made a calculation error. It has wrongly calculated 25% future prospects as Rs.11,000/- instead of Rs.12,500/-. In other words, while 25% of Rs.50,000/- is Rs.12,500/-, the Tribunal wrongly calculated the 'income after adding 25% future prospects' as Rs.61,000/- [Rs.50,000/- + Rs.11,000/-] while it ought to have been Rs.62,500/- [Rs.50,000/- + Rs.12,500/-].

16. Further case of the petitioners is that the deceased was an income tax assessee. However, there is no evidence available on record to suggest the same. As stated *supra,* the documents shown to prove income of the deceased are his Bank Statements, Sale Deeds and Vehicle Loan Statements. These cannot be construed to mean the actual net income of the deceased. The deceased being a businessman, would naturally have a significant cash flow in his account and the same does not show his actual income. The Tribunal failed to appreciate the evidence in the right perspective, while calculating the income of the deceased. Hence, this Court is of the view that fixing the monthly income of the deceased at Rs.45,000/- instead of Rs.50,000/- would be fair and proper. Accordingly, if the loss of monthly income is taken at Rs.45,000/-, by adding 25% towards future prospects, the annual loss of income comes to Rs.6,75,000/- [Rs.45,000/- + Rs.11,250/- x 12]. By deducting 1/4th towards his personal expenses, it comes to Rs.5,06,250/- [Rs.6,75,000 x ¾ = Rs.5,06,250/-]. After applying the multiplier of 13 as per the decision of the Hon'ble Supreme Court in ***Sarala Verma vs. Delhi Transport Corporation*** reported in ***2009 (2) TANMAC 1(SC)***, the total loss of income/dependency comes to Rs.65,81,250/- [Rs.5,06,250 x 13].

17. Insofar as the amount awarded by the Tribunal towards funeral expenses *i.e.,* Rs.16,500/-, towards loss of estate *i.e.,* Rs.16,500/- and towards loss of consortium *i.e.,* Rs.1,76,000/- are concerned, we are of the opinion that the amount awarded under these heads are just and proper and warrants no interference.

18. In the light of the above, the compensation awarded under the various heads by the Tribunal is hereby modified as tabulated under:

S. No	*Description*	*Amount awarded by Tribunal (Rs)*	*Amount awarded by this Court (Rs)*	*Award confirmed or enhanced or granted*
1.	Loss of income / dependency	71,37,000/-	65,81,250/-	Reduced
2.	Loss towards consortium	1,76,000/-	1,76,000/-	Confirmed
3.	Funeral expenses	16,500/-	16,500/-	Confirmed
4.	Loss of estate	16,500/-	16,500/-	Confirmed
	Total	**Rs.73,46,000**	**Rs.67,90,250/-**	**Reduced by Rs.5,55,750/-**

19. In the result, the Civil Miscellaneous Appeal is partly-allowed, and the compensation awarded by the Tribunal *viz.,* **Rs.73,46,000/- is hereby reduced to Rs.67,90,250/-.** The appellant-Insurance Company is directed to deposit the award amount now determined by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment, to the credit of M.C.O.P.No.5999 of 2016 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai. On such deposit, the claimants are permitted to withdraw the Award amount now determined by this Court, along with interest and costs, less the amount if any already withdrawn, by making necessary applications before the Tribunal. The 2nd to 4th respondents are entitled to Rs.10,00,000/- each and the 1st respondent / wife is entitled to a sum of Rs.37,90,250/-. In all other aspects, the directions issued by the Tribunal remains unaltered. In view of the facts and circumstances of this case, no costs for this Civil Miscellaneous Appeal. Consequently, connected miscellaneous petition is closed.

(J.N.B., J.) **(R.S.V., J.)**

20.12.2024

vsi/tk

To

The Motor Accidents Claims Tribunal,
II Court of Small Causes,
Chennai.

J. NISHA BANU, J.

and

R.SAKTHIVEL, J.

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