IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On :28.08.2024

Pronounced On : 20.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.2509 of 2023

1. National Insurance Company Limited,
Muruga Theatre Complex,
K.K.Road, Villupuram ...Appellant

vs.

1. Kulamani
2. Malliga
3. Balamurugan
4. Gomathi
5. Selvamuthukumaran ...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 06.06.2023 made in M.C.O.P.No.486 of 2020 on the file of the Motor Accident Claims Tribunal / Special District Court, Villupuram.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.D.Senthilkumar for R1 to R4

JUDGMENT

(Judgment was made by Mrs.R.Kalaimathi, J.)

The Civil Miscellaneous Appeal is preferred by the Insurance Company against the award dated 06.06.2023 made in M.C.O.P.No.486 of 2020 on the file of Motor Accident Claims Tribunal / Special District Court, Villupuram.

2. Facts led to filing of the claim petition is set out hereunder in brief:

On 15.8.2020 at about 8.00 p.m, while the deceased Ganesan was driving motor cycle which belongs to his brother bearing Registration No.TN 32 AK 1915 with pillion Manikandan along Kumbakonam-Chennai National Highways, at the point of Melmampattu Chemplast Company, Kadampuliyur, the driver of Ertiga car bearing Registration TN 39 AH 123 came in the opposite direction, and the driver of the car drove the vehicle at high speed in a rash and negligent manner and hit on the two wheeler. In the result, the rider of the two wheeler Ganesan sustained fatal injuries and died on the spot. The pillion also sustained injuries in the said accident. Due to the rash and negligent driving of the driver of the first respondent vehicle, the accident occurred. The deceased was working as manager in a Jewellery Shop in Singapore and earning a sum of Rs.1,50,000/- per month. The first respondent who is the owner of the erred vehicle and its insurance company second respondent are liable to pay compensation to the claimants.

3. It was contended by the Insurance Company to the effect that the driver of the first respondent vehicle was not negligent, and the accident occurred only due to the rash and negligent driving of the deceased Ganesan. The claimants are put to strict proof of avocation and monthly income of the deceased. Claimants are also put to strict proof as to the driving licence of driver of the erred vehicle and insurance policy.

4. At trial, on the claimants side, two witnesses were examined and 36 documents were marked. On the side of second respondent, three witnesses were examined and two documents were marked. Ex.X2 is the inspection report of the motor cycle (TN 32 AK 1915).

5. The Tribunal fastened the liability upon the driver of the Ertiga car and based on the evidence of ocular witnesses (P.W.2) and R.W.1, it is concluded that the deceased has contributed negligence to the tune of 20%. As the deceased drove the vehicle without driving licence and

insurance certificate, 10% each was ordered to be deducted out of the total compensation and the liability of the second respondent was fixed at 60%. As regards the quantum, his salary was fixed at Rs.75,000/- and after adding 50% as future prospects, his salary was computed at Rs.1,12,500/-. After deducting 10% income tax and after deducting of 50% for personal and living expenses, the monthly income was arrived at Rs.50,625/-. The said amount was multiplied with 16 multiplier, loss of income was computed at Rs.97,20,000/- For the loss of funeral expenses and for the loss of damage to articles, an amount of Rs.15,000/- was granted each under the above said heads. For loss of love and affection, an amount of Rs.1,60,000/- was granted, and the total compensation granted by the Tribunal is Rs.99,10,000/-.

6. As regards the accident details, one Manikandan has been examined as P.W2 who travelled as pillion along with the deceased Ganesan. It is his evidence that on 15.08.2020 at about 8.00 p.m., while the deceased Ganesan was driving motor cycle bearing Registration No.TN 32 AK 1915 and he was travelling as pillion in the said motor cycle along Kumbakonam-Chennai Highways proceeding from South to Northern direction, in front of Melmampattu Chemplast Company, the deceased was slowly riding his two wheeler and proceeding at the left side

of the road, a Ertiga car bearing Registration No.TN 31 AH 0123 came in a rash and negligent manner and hit on the two wheeler. While the said Ganesan succumbed to the injuries, he suffered fracture and sustained serious injuries. During the cross examination of P.W.2, he would state that it was the Ertiga car which came in the opposite side moved towards his right side and hit on the two wheeler. Whereas, the driver of the Ertiga car would state that the rider of the two wheeler hit on a stone and fell down, and suddenly, he was ran over by his car and he came in a normal speed. R.W.2 is the driver of the erred vehicle namely Ertiga car. It is not the evidence of R.W.2 that he went and lodged the complaint. P.W.2 Manikanda who is the pillion rider of the motor cycle had lodged the complaint. Had he been not at fault, R.W.2 would have lodged the complaint. Rough sketch is enclosed along with the investigation report Ex.R2. A careful perusal of rough sketch would clearly support the version of P.W.2. The accident had occurred in the North - South road at the extreme left-hand side of the two wheeler. Therefore, the allegation of the Insurance Company that the rider of the two wheeler only rode the two wheeler in a rash and negligent manner is totally unacceptable. R.W.1 on one side would state that he drove the car in a normal speed. Rough sketch and the evidence of P.W.2 indicates that the accident had taken place at the extreme western side of the road. Based on the evidence of

P.W.2 and R.W.1 coupled with rough sketch enclosed along with Ex.R2, it is made clear that due to the negligent driving of the driver of the car only the accident had occurred. A suggestion was posed to P.W.2, the deceased Ganesan did ride his two wheeler at high speed and hit on a stone and thereafter hit on the car was denied by P.W.2. In the given circumstances, the finding of the Tribunal fastening the liability on the Insurance Company cannot be found fault with.

7. As regards the income of the deceased, it is the evidence of P.W.1 that the deceased was working as manager in a jewellery shop in Singapore and earning a sum of Rs.1,50,000/- (S$ 4,000/- per month) and at the time of accident, his monthly salary was Rs.3,40,000/- (S$ 6,100/- per month).

8. With regard to foreign employment and income of the deceased, Ex.P10 to Ex.P24 were marked. Ex.P14 is the employment contract. Ex.P15, Ex.P17, Ex.P18, Ex.P19, Ex.P20 and Ex.P21 are the documents speak about the salary being received by the deceased. Ex.P25 and Ex.P26 are the passbooks issued by the Indian Bank, Tirukoilur in the name of the deceased and only the first pages of the passbooks have been filed, which are of no use. What is the income to be fixed, in case the

victim is employed in foreign country, is the moot question. In this case, the deceased was working in Singapore till July, 2019. Thereafter, he came to the mother country and on 15.08.2020, he met with the accident and succumbed to the injuries. As regards the deduction towards income tax and surcharge, it is relevant to refer to the observations made by the Apex Court in *Shyamwati Sharma and others Vs. Karam Singh and others* reported in *2010 ACJ 168 (SC)*, wherein the Apex Court held that the percentage of deduction towards income tax and surcharge was fixed at Rs.30%.

9. Singapore is a developed country and the cost of living is also very high. No one could deny the fact that there will be so much of disparity in the economic conditions between India and Singapore.

10. Ex.P10 to Ex.P23 are documents obtained from Singapore. All the documents have been marked through P.W.1 who is the father of the deceased. How a foreign document has to be admitted is ensconced in Diplomatic and Consular Officers (oaths and fees) Act, 1948. In terms of Section 3(2) of the said Act, the foreign documents are necessarily to be authenticated by the Indian Consulate in Singapore, which would bear the seal of the Indian Consulate. Then the same can be admitted being a

foreign document can be marked through a connected person as per Section 273 of Cr.P.C.

11. The above said provision of law in the Act would explicate that in the absence of seal of Indian Consulate in Singapore, Ex.P10 to Ex.P23 cannot be relied upon. Therefore, as observed by the Apex Court in R.D.Hattangadi Vs. M/s.Pest Control (India) Pvt. Ltd., reported in AIR 1995 SC 755, a balance has to be struck and just compensation has to be arrived at. In the words of the Apex Court, *"In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."*

12. It is pellucid from the evidence of P.W.1 who is the father of the deceased that, the deceased worked as manager in a Singapore Jewellery Shop till July, 2019 and his last pay drawn was S$.6,100/- per month. From the passport Ex.P10, it is discernible that he came to Chennai on 12.07.2019. Thereafter, he did not go to Singapore again. The above said details would explicate that he left the job and came to India.

13. The Tribunal has also congruously fixed the salary of the deceased at Rs.75,000/-. The deceased has completed his B.Sc. degree in Mathematics (Ex.P9). In the year 2011 to 2012, the deceased had worked as a sales executive in the Chennai Jewellery Shop namely Prince Gem & Jewelry Private Limited. As per Ex.P24-Form 16, his annual salary was Rs.1,11,228/- for the year 2011-2012 and for the year 2013-2014, his annual salary drew from the same establishment was Rs.2,25,144/-. He went to Singapore in the year 2013 as per Ex.P10-Passport. It is not the case of the claimant that having come down from Singapore in July, 2019, he was in employment in India. No doubt, certainly he would have earned a sizeable income by working in Singapore. A guesswork has to be done. All we need to do is a serious guesswork. Had he worked here, what would be the income he would have earned. From the year 2013 to 2020, after a period of seven years, probably he would have promoted to the managerial position had he worked hard. Of course, life is full of imponderables and uncertainties. Therefore, taking into account of overall situations, we deem fit to fix the monthly income of the deceased at Rs.45,000/- per month.

14. As per Ex.P10-Passport, date of birth of the deceased is

14.07.1987. At the time of accident, he was aged about 33 years. As per the law laid down by the Hon'ble Supreme Court as regards the future prospects in *National Insurance Co. Ltd., v. Pranay Sethi and others,* reported in *2017 (2) TN MAC 609(SC),* in respect of persons self-employed or on fixed salary age below 40 years, 40% has to be added while computing the income of the deceased.

15. As regards the multiplier to be applied, the Apex Court has given the multiplier details for the various age group of people in *Smt. Sarla Verma vs Delhi Transport Corporation and another,* reported in *2009(2) TNMAC 1 (SC).* For the age group of persons between 31 to 35 years, multiplier to be adopted is 16m. As regards the deduction for personal and living expenses, *as per Smt.Sarla Verma case,* as the deceased was a bachelor, 50% has to be deducted. Based on the aforestated details, the loss of income is computed as mentioned below:

Computation of loss of income		
A	Monthly Income fixed	Rs.45,000/-
B	Future Prospects (40% of monthly income)	Rs.18,000/-
C	50% Deduction towards Personal Expenses	Rs.31,500/-

Computation of loss of income		
D	Total Dependency (A + B - C)	Rs.31,500/-
E	Annual Income (D x 12)	Rs.3,78,000/-
F	10% Income Tax	Rs.37,800/-
G	Age Multiplier	16
	Loss of Income {(E – F) x G}	Rs.54,43,200/-

16. In all other aspects, the award of the Tribunal appears to be reasonable and we see no reason to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked and tabulated below:

Sl. No.	***Description***	***Amount awarded by Tribunal***	***Amount awarded by this Court***	***Award confirmed or enhanced or granted or reduced***
1	For loss of Income	Rs.97,20,000/-	Rs.54,43,200/-	Reduced
2	For Funeral expenses	Rs.15,000/-	Rs.15,000/-	confirmed
3	For loss of damage to articles	Rs.15,000/-	Rs.15,000/-	Confirmed
4	For loss of love and affection	Rs.1,60,000/-	Rs.1,60,000/-	Confirmed
	Total	Rs.99,10,000/-	Rs.56,43,200/-	Reduced
	Contributory Negligence at 40% as ordered by the Tribunal has to be calculated	Rs.59,46,000/-	Rs.33,85,920/-	Reduced

17. Thus, the compensation awarded by the Tribunal is reduced from Rs.59,46,000/- to Rs.33,85,920/- which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

18. In the result,

(i) The Civil Miscellaneous Appeal stands Partly Allowed. No costs.

(ii) The Insurance Company is directed to deposit the reduced compensation amount now determined by this Court i.e., Rs.33,85,920/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.486 of 2020 on the file of Motor Accidents Claims Tribunal, Villupuram within a period of six weeks from the date of receipt of a copy of this Judgment.

(iii) From the determined award amount of this Court, the 1st petitioner is entitled to a sum of Rs.15,00,000/-, the 2nd petitioner is entitled to a sum of Rs.15,85,920/- and the petitioners no.3 and 4 are entitled to a sum of Rs.2,50,000/- each as compensation.

(iv) On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.

(v) The Tribunal below shall disburse the amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

(J.N.B.,J.) (R.K.M.,J.)

20.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

1. The Motor Accident Claims Tribunal,
   Special District Court, Villupuram

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

J.NISHA BANU, J.

and

R.KALAIMATHI, J.

mac/nvsri

C.M.A.No.2509 of 2023

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