IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.3702 of 2021
and C.M.P. No. 21725 of 2021

The National Insurance Company Ltd.,
rep. by its Branch Manager,
Krishnagiri Branch Office, Third Floor,
Anuradha Complex, Bangalore Road,
Krishnagiri Town and District. ... Appellant / 2nd Respondent

Vs.

1. M. Thulasiammal
2. M. Venkatesan
3. Valli
4. Vijiya ... Respondents 1 to 4 / Petitioners

5. A. Palani ... 5th Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 27.09.2021 passed in M.C.O.P. No. 502 of 2020 on the file of the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri.

For Appellant	:	M/s. D. Bhaskaran
For RR 1 to 4	:	Dr. G. Babu
For R5	:	M/s. E. Kannadasan

JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the finding of the Tribunal fixing the age of the deceased Murugan, who died in the road accident took place on 25.05.2018 and secondly, challenging the quantum of compensation awarded in M.C.O.P. No. 502 of 2020, dated 27.09.2021 on the file of the Special District Judge, Motor Accidents Claims Tribunal (Special District Court), Krishnagiri.

2. The only point raised by the insurance company in this appeal is that, the Tribunal failed to appreciate the evidence placed on record and fixed the age of the deceased as 50 years, whereas, the original age of the deceased is about 70 years, hence this Court by an Order, dated 15.03.2022 has remitted the matter to the Tribunal, directing the parties to adduce evidence, more particularly to produce the documents to prove the age of the deceased as well as the age of the claimants herein.

3. Based on the Order passed by this Court, the evidences, which were marked on the side of the claimants and respondents were produced before this Court. The appellant / insurance company has examined R.W.3

– Doctor, who has conducted the postmortem of the deceased herein and Exs.R.3 to R.5 were marked, the Ex.R.5 – Aadhaar card of the deceased, shows that the deceased was born in the year 1948 at the time of accident which was taken place in the year 2018, which reveals that the age of the deceased is 70 years at the time of accident.

4. In the cross examination of P.W.1 – second claimant/ petitioner, suggestion made by the insurance company that the deceased was aged about 70 years, as per the Aadhaar card marked as Ex.R.5. The insurance company further contended that the as per the age described in the claim petition, the first petitioner/ claimant, who is the wife of the deceased would have married the deceased at the age of 8 years, which is not possible. However, the P.W.1 has denied the suggestions and stated that his father and mother was about same age at the time of their marriage and there is a discrepancy in the Aadhaar card relating to the age of the deceased.

5. Ex.P.6 – Aadhaar card copy of the first claimant/ petitioner – Thulasiyammal, who is the wife of the deceased, shows that she was born in the year 1960, therefore she is aged about 58 years at the time of accident.

Similarly, Ex.P.7 – Aadhaar card of the second petitioner namely Vengatesan shows that he was born in the year 1975, Ex.P.8 – Aadhaar card of the third petitioner namely Valli shows that she was born in the year 1967 and Ex.P.9 – Aadhaar card of the fourth petitioner namely Vijiya shows that she was born in the year 1982, therefore the age of the petitioners 2 to 4, who are the son and daughters of the deceased Murugan and first petitioner are 43, 51 and 36 years, respectively at the time of accident. These exhibits including Ex.R.5 - Aadhaar card of the deceased, reveals that the age of the deceased is 70 years at the time of accident, the age gap between the mother and daughter is only 7 years, and the mother is aged more than 58 years.

6. Based on the above observations, this Court accepts the contention of the insurance company that the age of the deceased is about 70 years at the time of accident. Though, the contention of the claimants is true that there is discrepancies in the Aadhaar card, they have not produced any evidence to prove the age of the deceased. Hence, this Court is unable to appreciate their contention.This Court has specifically ordered to produce the documents to show the correct age of the deceased and also directed the

claimants to produce documents to prove the age of the deceased as well as their age. Accordingly, the insurance company has marked the Aadhaar card of the deceased and the claimant have not come forward to adduce any evidence to substantiate their contention but they have come forward to produce their Aadhaar cards, which were marked prior to remanding the matter.

7. Based on the above observations, this Court is of the view that the age of the deceased fixed by the Tribunal without properly appreciating and adverting the evidences marked as Ex.P.6 to P.9 is not proper, and finding of the Tribunal with regard to fixing of age of the deceased as 50 years, is hereby set aside. Therefore, the multiplier adopted by the Tribunal is modified as "5" and the future prospectus of 10% assessed is hereby cancelled. Based on the evidences placed on record, the Tribunal has fixed the notional income of the deceased as Rs.9,000/- and one-fourth deduction towards personal and living expenses of the deceased, this Court finds no infirmity in the above fixing of notional income and deduction of one-fourth since the claimants herein are four in numbers. Accordingly, compensation fixed by the Tribunal under the head loss of income is modified as follows:

(9,000/- X 12 X 5 X (¼) = Rs.4,05,000/-).

8. It is also submitted by the learned counsel for the insurance company that they have disputed the negligence alleged against the driver of the first respondent. Before the Tribunal, on the side of the claimant, P.W.2 - eye witness was examined and on the side of the respondents, driver of the first respondent – R.W.1 examined. The Tribunal after considering the evidences on both sides, accepted that the evidence of eye witness is more probable than the evidence of R.W.1, since R.W.1 has made contradictary evidence regarding acident. The evidence of P.W.2 corroborates with the FIR, and the Tribunal held that the accident has taken place only due to the rash and negligence on the part of the first respondent's driver, this Court finds no infirmity in the above finding of the Tribunal and the same is hereby confirmed. However, the Tribunal has deducted 10% of compensation for non-possession of Driving Licence by the deceased herein. But no where it is found that, he has rode the two wheeler in rash and negligent manner. Therefore, the fixing of 10% of negligence is not valid and this fortified by the decisions of Apex Court in ***Dinesh Kumar.J. @ Dinesh vs. National Insurance Co. Ltd., & others [CDJ 2017 SC 1416]***

and Sudhir Kumar Rana vs. Surinder Singh & others [CDJ 2008 SC 862].

9. The Tribunal has awarded Rs.15,000/- each under the conventional heads loss of estate and funeral expenses and Rs.40,000/- to each of the claimant under the head loss of consortium, this Court finds no infirmity in the compensation, awarded under the above heads and the same is hereby confirmed.

10. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	8,01,900/-	4,05,000/-	Reduced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Consortium (Rs.40,000 X 4 = Rs.1,60,000/-)	1,60,000/-	1,60,000/-	Confirmed
	Total	9,91,000/-	**5,95,000/-**	Reduced
	Deduction of 10% towards Contributory negligence	99,190/-	**---**	**Set aside**
	Total Compensation	8,92,710/-	**5,95,000/-**	**Reduced**

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.8,92,710/- is hereby reduced to **Rs.5,95,000/- [Rupees Five Lakh Ninety Five Thousands only]** along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The appellant - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, 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. 502 of 2020 on the file of the District Judge, Special District Court for Motor Accidents Claims Tribunal, Krishnagiri. On such deposit, the claimants are permitted to withdraw the award amount now determined by this Court along with interest and proportionate costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Accounts of the claimants. The insurance company also given liberty to withdraw the excess amount, if any already deposited. Consequently, connected civil miscellaneous petition stands closed. There

shall be no order as to costs in the present appeal.

08.02.2024

stn
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The District Judge, Special District Court,
   Motor Accident Claims Tribunal,
   Krishnagiri.

2. The Section Officer,
   V.R.Section,
   High Court, Chennai.

K. RAJASEKAR, J.

stn

C.M.A. No. 3702 of 2021

08.02.2024