IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

CORAM

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

C.M.A.No.975 of 2023
and
C.M.P.No.8916 of 2023

The National Insurance Co.Ltd.,
Represented by tis Branch Manager,
Anuradha Complex, Bengaluru Road,
Krishnagiri. ... Appellant

Vs.

1. Kalpana,
W/o Sivaprakasam

2. Minor.Prithika,
D/o Sivaprakasam

3. Minor Akshay Aravinthan,
S/o Sivaprakasam

4. Minor.Suryaprakash,
S/o Sivaprakasam

Minors 2 to 4 rep. by their
next friend & guardian/mother
Kalpana,1st appellant herein

5. S.Alagananthan
S/o Sampath ... Respondents

Prayer The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 19.04.2022 made in M.C.O.P.No.1019 of 2020 on the file of the Motor accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : Mr.S.Arunkumar

For Respondent : Mr.M.Selvam
for R1 to R4
No appearance for R5

JUDGMENT

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

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the judgment and decree dated 19.04.2022 passed in MCOP.No.1019 of 2020 by the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri, by which, a sum of Rs.50,41,180/- was granted as compensation and after deducting 10% towards contributory negligence, awarded a sum of Rs.45,37,062/- to the respondents/claimants herein.

2. The case of the claimants in the claim petition is that on 14.01.2020, at about 9.30 hours, the deceased was driving the Motor Cycle at Puliyur Erikkarai in Puliyur to Dharmapuri Road slowly and cautiously in the left side of the road. At that time, a Bolero Pickup vehicle bearing Regn.No.TN-24-AC-6306 belonging to the 1st respondent and insured with the 2nd respondent was

coming in the opposite direction i.e., from Dharmapuri side in a rash and careless manner. The driver of the Bolero pick up vehicle drove the vehicle in a rash and negligent manner and dashed against the motor cycle of the deceased, due to which, the deceased sustained fatal injuries. Immediately, the deceased was taken to Government Dharmapuri Medical College Hospital and admitted as inpatient. Inspite of treatment, the deceased died in the hospital. The accident had occurred only due to rash and negligence driving of the Bolero pickup vehicle driver. Therefore, the claimants claimed a sum of Rs.1,00,00,000/- as compensation from the 1st and 2nd respondents, being the owner and insurer of the Bolero Pickup vehicle.

3. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent/driver of the Bolero Pickup and also as the deceased was not having valid driving license at the time of accident, fixed 10% contributory negligence on the side of the deceased and awarded a sum of Rs.45,37,062/- (90% of the total award amount of Rs.50,41,180/-). As the 1st respondent/ owner of the said Bolero Pickup vehicle has insured with the 2nd respondent, the 2nd respondent insurance company was directed to pay the award amount to the claimants/respondents.

4. Challenging the said award dated 19.04.2022 made in M.C.O.P.No.1019 of 2020, the appellant-Insurance Company has come out with the present appeal.

5. The learned counsel for the appellant/Insurance company would state that P.W.1 has categorically admitted that she is receiving about Rs.26,000/- as family pension which is more than the amount received by the deceased husband as pension. Learned counsel would further state that the Tribunal failed to note that the source of income received by the deceased continue to flow into the hands of the 1st respondent by way of family pension and therefore, the question of monetary loss, does not arise. He would further state that the Tribunal erred in granting future prospects and interest, inspite of the fact, the respondents 1 to 4 failed to prove the loss.

6. Per contra, the learned counsel for the claimants would state that the deceased was hale and healthy and he was just aged 40 years a the time of accident. After retiring from Indian Army, he was doing seasonal crop business and in all, he was getting monthly income of Rs.50,000/- and contributed the entire earnings to the family maintenance and welfare of the family and the

deceased was only the bread winner of the family. Due to the death of the deceased, the pension received by the deceased has been reduced as family pension. Therefore, he would pray to dismiss the appeal.

7. Heard the learned counsel for the appellant as well as the learned counsel for the 1st to 4th respondents and perused the materials available on record.

8. The appellant Insurance Company has filed this appeal mainly questioning the quantum of the award passed by the Tribunal. The Tribunal has awarded a sum of Rs.45,37,062/- (90% from the total award amount of Rs.50,41,180/-) based on the pension received by the deceased as compensation to the claimants. It is not in dispute that the deceased was aged 40 years at the time of accident, hale and healthy and was receiving a sum of Rs.25,668/- as Army pension. It is the contention of the claimants that the deceased, after the retirement from Indian Army, was doing seasonal crop business and was earning a sum of Rs.50,000/- per month. Since the claimants have not proved the agricultural income, the Tribunal did not take any amount from agricultural income for fixing loss of dependency of the deceased. The deceased died at the age of 40 years, leaving his wife and three children. He

was hale and healthy at the time of accident and the deceased would have earned some amount apart from pension. Further, the Hon'ble Supreme Court in the decision reported in *2020(1) TNMAC 182 (SC) National Insurance Co.Ltd. v. Birender and others* has pointed out that the Family Pension drawn by the wife cannot be deducted while computing the Loss of dependency for the death of the husband. Thus, the pension drawn by the deceased can form the basis for determination of compensation for Loss of Dependency. Thus, the Tribunal has fixed the notional monthly income of the deceased as Rs.25,668/-. We find no error in the said finding of the Tribunal warranting interference by this Court.

9. Insofar as future prospect is concerned, considering the age of the deceased, the Tribunal has added 40% future prospects to the monthly income of the deceased, which in the opinion of this Court is fair and proper. Considering the date of accident, age, avocation and income of the deceased, the amount awarded by the Tribunal towards loss of dependency is not excessive and it does not warrant any interference by this Court. The Tribunal, after considering both oral and documentary evidence, awarded a total sum of Rs.45,37,062/- (90% from the total award amount of Rs.50,41,180/- after deducting 10% contributory negligence on the deceased) to the respondents 1

to 4 under different heads, which in our opinion, is not excessive and the same is hereby confirmed.

10. In the result, the Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 19.04.2022 passed by the Tribunal is confirmed. The appellant-Transport Corporation is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 4-claimants 1 to 4 are permitted to withdraw their respective share amount awarded by the Tribunal on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. Insofar as the share of the minor respondents / minor claimants are concerned, the same shall be deposited in Fixed deposit, till they attain the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimants once in three months, directly from the Bank. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

(J.N.B., J.) (R.S.V., J.)
11.11.2024

vsi

To

The Motor Accidents Claims Tribunal,
Special District Court,
Krishnagiri.

J. NISHA BANU, J.
and
R.SAKTHIVEL, J.

vsi

C.M.A.No.975 of 2023

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