BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.07.2024

Pronounced on : 18.12.2024

CORAM

JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI

C.M.A(MD)Nos.209 and 819 of 2024
and
C.M.P(MD)Nos.2488 and 9279 of 2024

C.M.A(MD)No.209 of 2024

M/s. The National Insurance Company Limited,
represented by its Divisional Manager,
1st Floor, No.50/6, College Road,
Athankudi,
Sivagangai – 630 002. ... Appellant/2nd Respondent

Vs.

1. N.Sornavalli
2.Minor.N.Thivakaran
3.Minor.N.Dinakaran
4.Minor.N.Thirunavukkarasu ... Respondents 1 to 4/Petitioners

(Minor R2 to R4 are represented by their mother and natural guardian Mrs.N.Sornavalli, the 1st Respondent)

5.Sai Surya Traders,
No.2/320, Athangudi Road,
Palavangudi, Karaikudi,
Sivagangai – 630 208. ... 5th Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.733 of 2020, dated 08.09.2023 on the file of the Motor Accident Claims Tribunal, Special District Court No.II to deal with MCOP Cases, Tiruchirappalli and allow the appeal with costs.

For Appellant	: Mr.J.S.Murali
For R1 to R4	: Mr.Mr.N.Sudhagar Nagaraj
For R5	: No Appearance

C.M.A(MD)No.819 of 2024

1.N.Sornavalli
2.Minor.N.Thivakaran
3.Minor.N.Dinakaran
4.Minor.N.Thirunavukkarasu ... Appellants/Petitioners

(Appellants 2 to 4 are minors rep. by their mother 1st Appellant)

Vs.

1.Sai Surya Traders,
No.2/320, Athangudi Road,
Palavangudi, Karaikudi,
Sivagangai – 630 208.
2.M/s. The National Insurance Company Limited,
represented by its Divisional Manager,
1st Floor, No.50/6, College Road,
Athankudi,
Sivagangai – 630 002. ...Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside and modify the judgment and decree, dated 08.09.2023 in M.C.O.P.No.733 of 2020 on the file of the Motor Accident Claims Tribunal/Special District judge No.II, Trichirappalli and award enhanced compensation of Rs.10,00,000/- with 7.5% interest and cost.

For Appellants	: Mr.N.Sudhagar Nagaraj
For R1	: No Appearance
For R2	: Mr.J.S.Murali

COMMON JUDGMENT

(Judgment of the Court was delivered by P.VADAMALAI, J.)

These Civil Miscellaneous Appeals are preferred challenging the Award, dated 08.09.2023 passed in M.C.O.P.No.733 of 2020 by the Motor Accident Claims Tribunal/Special District Court No.II to deal with MCOP Cases, Tiruchirappalli.

2. The 2nd respondent/National Insurance Company in M.C.O.P.No.733 of 2020 has preferred the appeal in C.M.A(MD)No.209 of 2024 to set aside the award.

3. The petitioners/claimants in M.C.O.P.No.733 of 2020 have preferred the appeal in C.M.A(MD)No.819 of 2024 seeking for enhancement of compensation.

4. For the sake of convenience, the parties as arrayed in M.C.O.P.No.733 of 2020 are adopted hereunder.

5. **<u>The brief facts of the case:-</u>**

On 18.06.2020, the deceased M.Nagaraj was travelling as the agent of tiles/owner of goods in the 1st respondent's goods carrying van bearing registration number TN 63 BZ 8357, along with his son and another person, for the purpose of mason work. The van was driven by its driver in a rash and negligent manner with uncontrollable speed from Chennai to Trichy main road and at about 00.15 hours when the van was nearing Trichy Engineering College, the van capsized. Due to the impact, the deceased Nagaraj died on the spot and others sustained injuries. F.I.R. was registered by Siruganur police station in Crime No.510 of 2020 under Sections 279, 337 & 304(A) of IPC, against the driver of the 1st respondent's goods van. The deceased Nagaraj was aged 44 years and working as a mason and earning Rs.30,000/- p.m. The petitioners, who are the wife and children depend on the income of the deceased. Hence, the petitioners 1 to 4 filed the claim petition seeking compensation of Rs.30,00,000/-.

6. The 1st respondent/owner of the van remained ex-parte before the Tribunal.

7. The 2nd respondent/Insurance Company objected the claim petition by contending that the deceased suddenly got down from the van while it was moving and so the deceased was responsible for the accident. Moreover, the deceased Nagaraj had travelled as an unauthorized passenger in the 1st respondent's van and there was a violation of policy conditions. The offending vehicle had no valid insurance at the time of accident. The driver of the first respondent does not possess a valid driving licence and also the said van has no valid permit. Since the policy condition is violated, the 1st respondent alone has to pay the compensation to the petitioners.

So, the petitioners are not entitled to claim from the 2nd respondent/Insurance Company.

8. The Tribunal has tried the claim petition. Both sides adduced oral and documentary evidence. On the petitioners' side, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.11 were marked. On the respondents' side R.W.1 and R.W.2 were examined and Ex.R.1 and Ex.R.2 were marked. Ex.X.1 and Ex.X.2 were also marked.

9. After hearing both sides and after considering the evidences, the Tribunal has passed the impugned order that the 1st respondent’s van driver was responsible for the accident and fixed the notional income at Rs.12,000/- p.m. with 25% future prospects and awarded a total compensation of Rs.20,80,000/- including incidental benefits with interest.

10. Aggrieved by the said award, the 2nd respondent/Insurance Company and the petitioners/claimants have preferred these respective Civil Miscellaneous Appeals.

11. Heard both sides and perused the records in these Civil Miscellaneous Appeals.

12. The learned counsel for the 2nd respondent/Insurance Company, appellant in C.M.A(MD)No.209 of 2024, has contended that the 1st respondent has violated the policy condition for the van TN 63 BZ 8357 which was goods carrying commercial vehicle and its permitted capacity is 2 members, but at the time of accident driver, cleaner and the deceased along with two others were sitting on the loaded tiles and hence, the 2nd respondent is not liable to pay any compensation. He would further contend that as per Ex.P.1 – F.I.R. as the tyre burst, the vehicle capsized and the tiles fell on the deceased, which resulted in his death and therefore, the Insurance Company cannot be mulcted with liability for non-proper maintenance of the vehicle by its owner. The Insurance Company examined two witnesses and marked Ex.R.1 & Ex.R.2 and also Ex.X.1 and Ex.X.2, but the Tribunal failed to consider them properly. Therefore, the 2nd respondent/Insurance Company is not liable to indemnify the owner of

the vehicle and is not liable to pay any compensation to the petitioners/claimants. Therefore, the Insurance Company prayed for modifying the award under the principle of 'pay and recovery'.

13. The learned counsel for the petitioners/claimants submitted that the Tribunal has properly considered all the evidences adduced by both sides and came to the conclusion that the 1st respondent's van was insured at the time of accident with the 2nd respondent/Insurance Company and its private investigating officer, who prepared Ex.R.2 - Independent Investigation Report, was not examined to prove the contention of the Insurance Company.

14. On perusal of the records and impugned award, the Tribunal has discussed all contentions raised by the Insurance Company. It is not disputed that the 1st respondent's Van TN-63-BZ-8357 was insured with the 2nd respondent/Insurance Company at the time of accident. The 2nd respondent/Insurance Company's main contention is that the said van is goods carrying commercial vehicle with permitted capacity of 2 members

and hence, the deceased travelled as an unauthorized passenger. The Tribunal has taken into consideration of the copies of insurance policies Ex.P.10 and Ex.R.1, which revealed that the 1st respondent paid Rs.15,746/- as basic third party premium and Rs.50/- for legal liability to driver/cleaner/coolies (one number) as premium amount. This was not disputed by the 2nd respondent/Insurance Company. There is no dispute that the deceased was a mason and was carrying tiles as the owner of goods. Hence, the Tribunal has correctly come to the conclusion that there is no proof that the deceased was travelling as an unauthorized person, but he was travelling in the van as an agent of goods, much less under the category 'coolie'. Therefore, the 2nd respondent/Insurance Company is liable to indemnify the 1st respondent as correctly concluded by the Tribunal and the same need not be interfered by this Court.

15. Next, as far as C.M.A(MD)No.819 of 2024 is concerned, the learned counsel for the petitioners/claimants has submitted that the Tribunal has fixed the notional income at Rs.12,000/- p.m. following the Hon'ble Apex Court's verdict in **2014 (1) TNMAC 459 (SC) (Syed Sathiq Case),**

which fixed monthly income at Rs.6,500/- notionally in the year 2008. But, the accident took place in the year 2020, so the notional income has to be enhanced as reported in Andal case in **2019 (1) TNMAC 54 (DB)**. He would submit that the consortium and other incidental benefits have to be awarded as per the decision of the Hon'ble Supreme Court in **Pranay Sethi case 2017(2) TNMAC 609**, wherein the amounts have to be ordered by increasing 10% every three years. So, the award may be enhanced.

16. Whereas, the learned counsel for the 2nd respondent/Insurance Company contended that the income arrived at along with future prospectus by the Tribunal is on the higher side. There is no income proof produced by the petitioners.

17. On perusal of records and impugned award of the Tribunal, it is clear that the deceased was aged 44 years at the time of accident. The petitioners/claimants stated that the deceased was working as a mason, it is also revealed that he was travelling in the offending vehicle as an agent/owner of tiles. In the absence of any income proof, the Tribunal has

fixed notional income as Rs.12,000/- following the decision reported in **2023 (1) TN MAC 710**, **(TN State Corporation (Kumbakonam Division Ltd.,) vs. M.Muthulakshmi & Ors.),** in which, this Court fixed the notional income at Rs.12,000/- for a mason, who died in an accident on 30.10.2019. In this case, the accident took place in the year 2020. The fixation of such notional income of the deceased by the Tribunal needs no interference. Further, the age of the deceased was 44 years, which is not disputed. As per settled proposition of law in **Pranay Sethi** case reported in **2017 (2) TNMAC 609 (SC)**, the deceased was not a permanent employee and therefore, the Tribunal has correctly added 25% future prospectus considering the age of the deceased. Thus the income of the deceased is Rs.12,000 x 25% = Rs.15,000/-. The deceased had a wife and three children and hence, the Tribunal has also correctly deducted 1/4 towards his personal expenses i.e., Rs.3,750/- deducted from the income of Rs.15,000/- and the Tribunal arrived monthly contribution of the deceased was Rs.11,250/-. There is no error in it.

18. Considering the age of the deceased as 44 years, the multiplier is '14' according to the settled principle in **Sarla Verma** Case. Hence, the Tribunal has correctly adopted the multiplier '14'. The loss of income due to the death of the deceased Nagaraj would come to Rs.11,250/- x 12 x 14 = Rs.18,90,000/-.

19. While considering the loss of consortium, the Tribunal has awarded Rs.40,000/- to the petitioners/claimants and Rs.15,000/- each towards loss of estate and funeral expenses. Admittedly, as per the dictum laid down by the Hon'ble Supreme Court in **Pranay Sethi** case **(2017 (2) TNMAC 609 (SC)**, each dependents of the deceased are entitled to Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium and the same added 10% for every three years. In this case on hand, the accident took place in the year 2020 and the award passed in 2023. So, there is no need for an addition of 10%. Thus, this Court holds that the total compensation payable to the appellants/petitioners/claimants is as per the award passed by the Tribunal. In respect of apportionment, the award has to be confirmed.

20. In view of the above discussions, the Civil Miscellaneous Appeals in CMA(MD)Nos.209 of 2024 and 819 of 2024 are liable to be dismissed.

21. In the result,

(i) The Civil Miscellaneous Appeals in CMA(MD)Nos.209 of 2024 and 819 of 2024 are dismissed. No costs.

(ii) The Award, dated 08.09.2023 passed in M.C.O.P.No.733 of 2020 by the Motor Accident Claims Tribunal/Special District Court No.II to deal with MCOP Cases, Tiruchirappalli is confirmed.

(iii) Consequently, the connected Miscellaneous Petitions are closed.

(N.S.S.,J.) **(P.V.M.,J.)**
18.12.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

1.The Motor Accident Claims Tribunal /
Special District Court No.II to deal with MCOP Cases,
Tiruchirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

N.SESHASAYEE, J.
AND
P.VADAMALAI. J.

VSD

Pre-delivery Judgment made in
C.M.A(MD)Nos.209 and 819 of 2024
and
C.M.P(MD)Nos.2488 and 9279 of 2024

18.12.2024