BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.03.2024

CORAM:

THE HON'BLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**
and
THE HON'BLE **MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.172 of 2022
and
C.M.P.(MD)No.1516 of 2022

M/s.Shriram General Insurance Company Ltd.,
Madurai. ...Appellant

Vs.

1.Arputhamary
2.Minor Maria Roshan
3.Minor Maria Roshlin
(Minor Respondents 2 and 3 are represented through their mother/first respondent)
4.Kamaleshwaran ...Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 11.01.2021 passed in M.C.O.P.No.338 of 2018 on the file of the Motor Accident Claims Tribunal cum Principal District Court, Pudukkottai.

For Appellant : Mr.N.Shyllappa Kalyan
For R1 to R3 : Ms.A.Banumathy
For R4 : No appearance

JUDGMENT

[Judgment was made by **MRS.V.BHAVANI SUBBAROYAN, J.]**

Being aggrieved over the award passed by the Motor Accident Claims Tribunal cum Principal District Court, Pudukkottai in M.C.O.P.No.338 of 2018, dated 11.01.2021, the insurance company has filed the present appeal.

2.The claimants filed the claim petition in M.C.O.P.No.338 of 2018, claiming a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as compensation for the death of the husband of the first claimant. By the award, dated 11.01.2021, the Tribunal awarded a sum of Rs.27,98,000/- (Rupees Twenty Seven Lakhs Ninety Eight Thousand only) as compensation along with 7.25% interest from the date of filing of the claim petition.

3.Facts of the Case:-

According to the claimants, on 21.11.2017, when the deceased was travelling as a pillion rider with one Palraj on his Hero Honda Splendor Plus two wheeler bearing Reg.No.TN 55 S 5208 in Pudukkottai to Manapparai SH 71 road, and at that time a Tavera Car bearing Reg.No.TN 55 AL 3256 was driven in a rash and negligent manner by its driver from the opposite direction and hit against the deceased and the front wheel of the tavera car ran over the head of the deceased, due to which, he died on spot. FIR was also registered against the driver of the Car belonging to the fourth respondent. The accident occurred only due to the rash and negligent driving of the driver of the car. Therefore, the claimants filed the claim petition, claiming a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as compensation.

4.The appellant insurance company filed the counter statement and denied all the averments made in the claim petition. The appellant insurance company contended that the two wheeler was coming in a breakneck speed and hit against the fourth respondent's vehicle and hence, he prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and 18 documents were marked as Ex.P1 to P18. On the side of the insurance company, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R6 were marked.

6. Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and the respondents held that the accident occurred only due to the rash and negligent driving by the driver of the car vehicle bearing Reg.No. TN 55 AL 3256 and directed the appellant Insurance Company, to pay a sum of Rs.27,98,000/- (Rupees Twenty Seven Lakhs Ninety Eight Thousand only) as compensation along with 7.25% interest from the date of filing of the claim petition under the following heads:-

Heads	***Amount awarded by the Tribunal***
Loss of Income	Rs.26,88,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-
Filial Consortium	Rs. 40,000/-

Total	**Rs.27,98,000/-**

7.Aggrieved against the said award dated 11.01.2021, the appellant insurance company has filed the present appeal.

8. Submission of the learned Counsel for the Appellant:

The learned counsel appearing for the appellant insurance company submits that the rider of the two wheeler is the root cause and major reason for the accident and he also rode the two wheeler without wearing helmet. He submitted that the driver of the insured vehicle drove his vehicle without having the badge and hence, the insurance company is not liable and hence, he prays this Court to allow this appeal.

9.Submission of the learned Counsel for the Respondents:

On other hand, the learned counsel for the claimant submitted that in view of the development of law as per the judgment of the Hon'ble Supreme Court in the case of ***Mukund Dewangan v. Oriental Insurance Co. Ltd.,*** reported in ***[2017 (2) TNMAC 145 (SC)],*** the plea of disowning the liability need not be accepted. He further submitted that non wearing of the helmet is not the cause for the accident. Therefore, she seeks to dismiss the appeal.

10. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused all the materials available on record.

11. The following points arise for consideration of this appeal:

11.1. Whether the liability is correctly fixed on the appellant insurance company?

11.2. Whether the compensation granted is in accordance with law?

12.<u>**Discussion on liability:**</u>

12.1. It is the case of the claimants that the deceased was a pillion rider on Hero Honda Splendor Plus motor cycle bearing Registration No.TN 55 S 5208 for meeting his relatives in Manapparai at Pudukkottai to Manapparai State Highways road roundana and when he reached Illuppur Kottai street near Lucky Driving school, the vehicle driven by driver of a car namely Tavera car bearing Registration No.TN 55 AL 3256 owned by the 4th Respondent and insured with the Appellant/insurance company came in a rash and negligent manner and dashed against the motor cycle, in which the deceased travelled which was coming on the opposite side got damaged and he succumbed to head injuries, as he was not wearing helmet. Then he was taken to the hospital. Ex.P.1 is the FIR against the driver of the 4th respondent and PW.2 is the eye witness in the occurrence. There is no Badge for driving the transport vehicle for the driver of the 4th respondent and as per the policy Ex.R3, if the weight of the vehicle is less than 7500 kgs in terms of Section 2(21) of the Motor Vehicles Act, it is a light Motor Vehicle and in terms of Section 2(47) of Motor Vehicles Act, the transport vehicle includes public service vehicle.

12.2. The issue is well settled in the judgment of the Hon'ble Supreme Court of India in ***Mukund Dewangan v. Oriental Insurance Co. Ltd.,*** reported in ***[2017 (2) TNMAC 145 (SC)]***. On the basis of the judgment of the Hon'ble Supreme Court of India, the Central Government issued a notification dated 16.04.2018, wherein it is specifically stated in clause (3) as follows:-

> *"3. In view of the legal position as settlted by the*

Hon'ble Supreme Court in the above judgment, the requirement under the Motor Vehicles Act, 1988 to obtain the transport licence would arise in case of medium / heavy goods and passenger vehicles only. No other vehicle will require any separate endorsement, even if they are used for commercial purposes. The exemption from the requirement to obtain the endorsement for commercial vehicles would apply to following vehicles:

(i) Motor cycle without gear

(ii) Motor cycle with gear

(iii) Light motor vehicle (goods / passenger)

(iv) e-rickshaw / e-cart”

Therefore, this Court unable to accept the contention of the learned counsel for the insurance company that the insurance company exonerated from the liability on the account of the driver of the car had driven the vehicle without badge.

12.3.The records and the evidence of the witness were considered. At the time of the accident the deceased had ridden his two wheeler without wearing helmet and hence, this Court fixes 10% of contributory negligence upon the deceased by taking into consideration of his head injury. Therefore, to that extent, the award amount is reduced.

13. **Discussion on quantum:**

The deceased Arockiyam was having a two wheeler mechanic shop in the name and style of “Maria” as evident from Ex.P.9/the invitation. Ex.P.11 and Ex.P.14 are the bank pass books of the deceased, in which there were some transaction regarding his income and there were periodical deposits and withdrawals. Ex.P.13 is another pass book in the name of the son of the deceased in the Indian Overseas Bank, in which he was doing some transaction of amount of more than one lakh rupees. The deceased is an income tax assesse and produced a PAN card under Ex.P. 15. The deceased was a skilled person and also a member of Act Wheel an District Association of two wheeler workshop. Even though the claimant claimed monthly income of Rs.50,000/-, the learned Tribunal Judge considering the above documents fixed the monthly income as Rs.15,000/- and the same needs no interference.

13.1. Calculation of the amount:

As per the judgment of the Hon'ble Supreme Court in the case of ***Sarala Varma and others Vs. Delhi Transport Corporation and another*** reported in ***2009(2) TN MAC 1 (SC)*** **,** 1/3rd amount should be deducted for personal expenses having regard to the fact that the respondents are 3 in number. As per Ex.P.3 Death Certificate the age of deceased is taken as 33 years. Further as per the judgment of the Hon'ble Supreme Court in ***Praney Sethi*** case 40% of income should be taken as future prospects. As such the loss of income is calculated as below:

(Rs.15,000 + 40%)= Rs.21,000 x 12 x 16 x 2/3

= Rs.26,88,000/-

Further as per the judgment of Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***cdj 2017 SC 1220,*** the claimants are entitled the compensation under the following heads by the Tribunal:

Heads	***Amount awarded by the Tribunal***
Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Filial Consortium	Rs.80,000/-

Therefore, in total, the claimants are entitled to a sum of Rs.27,98,000/- towards as compensation. Hence, the learned Tribunal Judge has correctly awarded the compensation Rs.27,98,000/- to the claimants.

14.Conclusion:

However, it is found from the pleadings that the deceased did not wear the helmet. Hence, deducting 10% for contributory negligence on the part of the deceased, the compensation awarded by the Tribunal to the claimants is re-determined as follows:-

Heads	*Amount awarded by the Tribunal*
Loss of Income	Rs.26,88,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-
Filial Consortium	Rs. 40,000/-
Total Amount awarded by the Tribunal	**Rs.27,98,000/-**
Less: 10% award reduced on the negligence aspect of the deceased	Rs. 2,79,800/-
TOTAL	**Rs.25,18,200/-**

15. Accordingly, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded in M.C.O.P.No.338 of 2018, on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Pudukottai, dated 11.01.2021 is hereby reduced from Rs.27,98,000/- to

Rs.25,18,200/-. The appellant/insurance company is directed to deposit the modified award amount with accrued interest and costs, less any amount if already deposited, within a period of one month from the date of receipt of a copy of this order.

15.1.Apportionment:

the wife of the deceased lost her beloved husband at her young age. She has to lead her life with much ordeal and hardship as a young widow. Therefore, this Court inclines to give 50% of the award amount to her. The minor son and daughter of the deceased, have to grow and get adequate education and they have to continue their life as fatherless children losing the affection of father and guidance. Therefore, this Court inclines to grant 25% of the award to them. In result, this Court makes the following apportionment:

Claimants	***Amounts in Rupees***	***Entitled of share***
Arputhamary/Wife of the deceased	Rs.12,59,100/-	50%
Minor Maria Roshan/Son of the deceased	Rs. 6,29,550/-	25%

Minor Maria Roshlin/ Daughter of the deceased	Rs. 6,29,550/-	25%
TOTAL	**Rs.25,18,200/-**	**100%**

The first respondent is permitted to withdraw her share. Further, the Tribunal is directed to deposit the share of the minor claimants in any one of the nationalized banks, as fixed deposit under the Cumulative Deposit Scheme, till the minors attain majority and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the Bank. The minor claimants on attaining majority are permitted to withdraw their share. The Insurance Company is permitted to withdraw the remaining amount, if already deposited. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.,) (K.K.R.K.J.,)
21.03.2024

Index:Yes/No
Internet:Yes/No
sm/sbn

To

1.The Motor Accident Claims Tribunal
cum Principal District Judge,
Pudukkottai.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

V.BHAVANI SUBBAROYAN, J.
and
K.K. RAMAKRISHNAN, J.

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