WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.7 of 2022
and
C.M.P.(MD) No.57 of 2022

The Divisional Manager,
M/s. National Insurance Co. Ltd.,
No.33, Promenade Road,
Contonment, Trichy District. ... Appellant

Vs.

1.Muthulakshmi
W/o.Late.Thiyagarajan

2.Prasanth
S/o.Late.Thiyagarajan

3.Minor.Dhanya
D/o.Late.Thiyagarajan
represented by the first respondent -
her mother and natural guardian

4.T.Chinniah
S/o.Thennappan

5.Ponnusamy
S/o.Rajappa

6.Muthulakshmi
W/o.Ponnusamy ... Respondents

WEB COPY

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 05.11.2019 passed in M.C.O.P.No.1757 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Judge to deal with MCOP cases), Trichirappalli.

For Appellant : Mr.A.S.Mathialagan

For R1 to R3 & R6 : Mr.B.Prahalad Ravi

*****

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Tribunal's finding on liability and the quantum of compensation.

2. The first to third respondents/claimants filed a claim petition before the Tribunal, stating that on 21.12.2013, at about 10:30 p.m., while the deceased was riding his two-wheeler bearing registration No.TN-45-BC-4975, a lorry bearing registration No.TN-55-A-3911, insured with the appellant, was proceeding in front of the two-wheeler; the driver of the said lorry, in a rash and negligent manner, had suddenly swerved the lorry to the left side and applied sudden brake, as a result of which, the deceased collided with the lorry and sustained fatal injuries.

https://www.mhc.tn.gov.in/judis

WEB COPY

3. The owner of the lorry, the fourth respondent herein, remained *ex parte* before the Tribunal.

4. The appellant, Insurance Company, filed a counter before the Tribunal, stating that the accident took place due to the rash and negligent riding of the deceased, and the deceased did not keep a safe distance from the lorry, and therefore, the appellant, as the insurer of the lorry, is not liable to pay any compensation.

5. The fifth and sixth respondents herein, who are the parents of the deceased, were shown as respondents in the claim petition. They filed a counter before the Tribunal, stating that though they were living separately, they were depending on the income of the deceased.

6. Before the Tribunal, the first to third respondents/claimants examined P.W.1 to P.W.3 and marked Exs.P1 to P8, and the appellant, Insurance Company, examined R.W.1 and marked Exs.R1 and R2, and the Attested Copy of the Service Certificate standing in the name of the deceased maintained in the Ordinance Factory, Tiruchirappalli, was marked as Ex.X1.

https://www.mhc.tn.gov.in/judis

WEB COPY

7. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the rash and negligence of both the lorry driver and the deceased, fixed the contributory negligence on the deceased at 25% and on the lorry driver at 75%, and directed the appellant, Insurance Company, to pay the award amount of Rs.55,26,271/-, which is 75% of Rs.73,68,362/- arrived at by the Tribunal.

8. The learned counsel for the appellant submitted that as per the Motor Vehicles Act, 1988, the driver of a vehicle has to maintain a safe distance from the vehicle that is proceeding in front of it; however, the evidence on record would suggest that the deceased did not keep a safe distance, and therefore, the contributory negligence fixed on the deceased at 25% has to be enhanced.

9. The learned counsel for the appellant further submitted that as regards the quantum of compensation, the Tribunal had accepted Ex.P5, Pay Certificate of the deceased for the month of November 2013, to arrive at the income earned by the deceased; that the Tribunal had taken into account the transport allowances, profit (variable), and overtime

https://www.mhc.tn.gov.in/judis

WEB COPY

allowance (variable), which ought not to have been considered; and that the deduction towards 'personal expenses' ought to have been 1/3rd instead of 1/4th, as the parents of the deceased were not living with the deceased and therefore prayed for deduction of the compensation.

10. The learned counsel for the first to third and sixth respondents, per contra, submitted that the appellant had not produced any evidence contra to the evidence let in on the side of the claimants to prove the manner of the accident; that the FIR was lodged against the lorry driver; and that the contributory negligence fixed on the deceased does not call for any interference. The learned counsel further submitted that the Tribunal had adopted the income of the deceased based on Ex.P5, which cannot be faulted, and that the overtime allowance should be considered as salary, and therefore, the Tribunal had rightly taken into account the same for the computation of compensation under the head 'loss of dependency' and hence prayed for dismissal of this appeal.

11. The points for consideration in the instant appeal are:

(a) whether the Tribunal's finding on negligence is justified; and

WEB COPY

(b) whether the quantum of compensation awarded by the Tribunal is just and reasonable.

12. As regards the first point, the claimants examined P.W.2 and P.W.3, who had witnessed the accident. Both P.W.2 and P.W.3 had deposed that the lorry driver had suddenly turned the lorry to the left side and applied sudden brake without any indication, and therefore, the deceased collided with the lorry. The appellant had not let in any contra evidence to dislodge the evidence produced on the side of the claimants. The appellant had examined only the Motor Vehicle Inspector as R.W.1. However, the facts reveal that the accident could have been averted if the deceased had been more cautious and maintained a safe distance. Therefore, the contributory negligence fixed on the deceased at 25% cannot be faulted. Point No.1 is answered accordingly.

13. As regards the quantum of compensation, the learned counsel for the appellant sought for deduction on two grounds: (i) the overtime allowance ought not to have been considered as salary; and (ii) the transport allowance and profit ought not to have been included in the income earned by the deceased. The Salary Certificate (Ex.P5) would

https://www.mhc.tn.gov.in/judis

WEB COPY

reveal that the deceased earned a Basic Pay of Rs.11,930/-, Grade Pay of Rs.4,200/-, Dearness Allowance of Rs.14,517/-, HRA of Rs.3,226/-, Transport Allowance of Rs.1,520/-, Overtime Allowance (variable) of Rs.9,514/-, and Profit (variable) of Rs.3,243/-, totalling to Rs.48,150/- per month. The Tribunal, based on the evidence, has taken into account the lesser gross pay of Rs.45,553/- obtained by the deceased in October 2013 and the higher gross pay of Rs.48,150/- obtained in November 2013, and fixed the average gross pay of the deceased at Rs.46,851.50 per month.

14. This Court is of the view that the transport allowance and the profit cannot be treated as salary, and they ought to have been omitted from the gross pay. At the same time, overtime allowance, though may be variable, should be considered as part of his income. However, the salary certificate for the month of October 2013 was not produced by the claimants to ascertain the exact overtime allowance earned by the deceased. Hence, one cannot come to a conclusion by just one Salary Certificate that the deceased was earning an overtime allowance of Rs.9,500/- for all the months. However, the tendency of the deceased to work overtime should be taken into consideration while fixing the average salary of the deceased.

WEB COPY

15. Considering the evidence on record and income earned by the deceased under the other heads, this Court is of the view that the overtime allowance can be fixed at Rs.5,000/- per month to be added to the salary. Thus, this Court is of the view that the salary would be reckoned as follows:

Basic Pay	- Rs.11,930/-
Grade Pay	- Rs. 4,200/-
Dearness Allowance	- Rs.14,517/-
H.R.A.	- Rs. 3,226/-
Overtime allowance	- Rs. 5,000/-

Total	- Rs.38,873/- rounded off to **Rs.39,000/-**

16. The deceased was 44 years old at the time of the accident and had permanent employment. Hence, 30% has to be added towards future prospects. Thus, the monthly income of the deceased would be Rs. 50,700/- (Rs.39,000 + Rs.11,700). The annual income would be Rs. 6,08,400/- (Rs.50,700 x 12).

17. As far as income tax deduction is concerned, at the relevant time, there was no income tax for earnings up to Rs.2,00,000/-. The tax

WEB COPY

for income between Rs.2,00,001/- and Rs.5,00,000/- was Rs.30,000/-, and the tax for income between Rs.5,00,001/- and Rs.10,00,000/- was charged at 20%. Thus, the tax amount for the annual income of the deceased would be as follows:

Annual income - Rs.6,08,400/-	
Up to Rs.2,00,000/-	: Nil
For income between Rs.2,00,001/- and Rs.5,00,000/-	: Rs.30,000/-
For income of Rs.1,08,400/- at 20% (Rs.6,08,400 - 5,00,000)	: Rs.21,680/-
Total	: Rs.51,680/-

18. Therefore, a sum of Rs.51,680/- is deducted from the annual income of Rs.6,08,400/-. After deducting the income tax, the annual income of the deceased would be Rs.5,56,720/-. The multiplier applicable is 14. Since there is evidence on record to show that the fifth and sixth respondents herein, the parents of the deceased, though living separately, were dependents on the deceased, $1/4^{th}$ has to be deducted towards personal expenses. Hence, the compensation under the head 'loss of dependency' would be Rs.58,45,560/- (Rs.5,56,720/- x 14 x 3/4).

https://www.mhc.tn.gov.in/judis

WEB COPY

19. The compensation awarded by the Tribunal under the other heads is just and reasonable and is confirmed.

20. Thus, the total compensation awarded by the Tribunal is modified as follows:

Sl. No	***Description***	***Amount awarded by the Tribunal***	***Amount awarded by this Court***	***Award confirmed, reduced, enhanced or granted***
1	Loss of Dependency	Rs.71,38,362/-	Rs.58,45,560/-	Reduced
2	Loss of Consortium to the first respondent	Rs. 40,000/-	Rs. 40,000/-	Confirmed
3	Loss of Parental Consortium to the fifth and sixth respondents	Rs. 80,000/-	Rs. 80,000/-	Confirmed
4	Loss of Filial Consortium to the second and third respondents	Rs. 80,000/-	Rs. 80,000/-	Confirmed
5	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
6	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
Total		**Rs.73,68,362/-**	**Rs.60,75,560/-**	Reduced by **Rs.12,92,802/-**

21. After deducting the contributory negligence of 25%, the compensation payable by the appellant would be Rs.45,56,670/- [60,75,560 – 15,18,890].

https://www.mhc.tn.gov.in/judis

WEB COPY

22. Other findings of the Tribunal are confirmed.

23. The appellant Insurance Company is directed to deposit the aforesaid amount of Rs.45,56,670/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization and costs, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

24. The first to third respondents/claimants are entitled to 80% of the above compensation of Rs.45,56,670/- equally. Since it is reported that the fifth respondent is no more, the sixth respondent is entitled to the remaining 20% of the compensation.

25. The first and second respondents are permitted to withdraw their shares along with the proportionate interest and costs, less the amount already withdrawn, if any, by filing suitable application before the Tribunal.

26. The sixth is also permitted to withdraw her share along with the proportionate interest and costs, less the amount already withdrawn by her

WEB COPY

or the fifth respondent during his lifetime, if any, by filing suitable application before the Tribunal.

27. Since the third respondent is minor, her share is directed to be deposited in an interest-bearing fixed deposit [F.D.] in any nationalized bank until she attains majority. The first respondent, who is her natural guardian and mother, is permitted to withdraw the accrued interest once every six months.

28. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.10.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

JEN

Copy To:

1.The Special District Judge,
Motor Accident Claims Tribunal,
Trichirappalli, Trichirappalli District.

https://www.mhc.tn.gov.in/judis

WEB COPY

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

WEB COPY

SUNDER MOHAN, J.

JEN

C.M.A.(MD) No.7 of 2022
and
C.M.P.(MD) No.57 of 2022

24.10.2024