BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.08.2024

DELIVERED ON : 19.09.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGOVAN

C.M.A.(MD).Nos.320 and 342 of 2022
and C.M.P.(MD).No.2913 of 2022

C.M.A.(MD)No.320 of 2022

United India Insurance Company Limited,
CWC Building, Palayam, LMS Compound,
Trivandrum,
Kerala – 695 033. ... Appellant/3rd Respondent

Vs.

1.Pushpalatha

2.R.Harish Kumar

3.R.Gopinath ... 1st to 3rd Respondents/Claimants

4.Madhav G.Nair ... 4th Respondent/1st Respondent

5.The Managing Director,
M/s.Hages Business Solution Pvt. Ltd.,
Ground Floor,
Amstor Building,
Technopark Campus,
Trivandrum – 695 581, ... 5th Respondent/2nd Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to call for the records of the Judgment and Decree, dated 26.11.2021 passed in M.C.O.P.No.10 of 2019, on the file of the Motor Accidents Claims Tribunal and Additional District Court, Virudhunagar and set aside the same.

For Appellant : Mr.I.Sudhakaran

For Respondents : Mrs.K.R.Shiva Shankari for R1 to R3
R4 & R5 – No Appearance

C.M.A.(MD)No.342 of 2022

1.Pushpalatha

2.R.Harish Kumar

3.R.Gopinath ... Appellants/Petitioners

Vs.

1.Madhav G.Nair

2.The Managing Director,
M/s.Hages Business Solution Pvt. Ltd.,
Ground Floor,
Amstor Building,
Technopark Campus,
Trivandrum – 695 581,

3.United India Insurance Company Limited,
CWC Building, Palayam, LMS Compound,
Trivandrum,
Kerala – 695 033. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to call for the records of the Judgment and Decree, dated 26.11.2021 passed in M.C.O.P.No.10 of 2019, on the file of the

Motor Accidents Claims Tribunal and Additional District Court, Virudhunagar and set aside the same.

For Appellant : Mrs.K.R.Shiva Shankari

For Respondents : Mr.Jawahar Ravindran for R3
R2 – No Appearance
R1 – Notice dispensed with

JUDGMENT

C.M.A.(MD).No.320 of 2022 has been filed by the Insurance Company/ 3rd Respondent, against the Judgment and Decree, dated 26.11.2021 passed in M.C.O.P.No.10 of 2019, on the file of the Motor Accidents Claims Tribunal and Additional District Court, Virudhunagar and set aside the same. C.M.A.(MD).No.342 of 2022 has been filed by the claimants, seeking enhancement of the above said award.

2.The facts in brief:

On 21.08.2018 at about 06.30 a.m., the deceased Ramaraj was on his routine morning walk on Madurai to Virudhunagar Road. At that time, a vehicle bearing registration No.KL 22 E 3969 was driven by its driver in rash and negligent manner, came on the very same direction and hit the deceased. As a result of which, he fell down and sustained multiple injuries. He died on the spot. A case was registered in Crime No.315 of 2018, under Sections 279 and 304 A IPC. At the time of occurrence, the deceased was Ex-service Man and after retirement from the service doing agricultural work and earning money. Claiming compensation amount of Rs.30,00,000/-, claim application was filed.

3.That was resisted by the Insurance Company contending that the above occurrence took place because of the rash and negligent act on the part of the deceased himself. In the place of occurrence, the deceased suddenly crossed the road and invited the accident. Other customary denials were made. The first respondent in the main petition filed the counter stating that FIR was registered against unknown vehicle. The vehicle belongs to the second respondent in the main petition and insured with third respondent. So only the third respondent is liable to pay compensation if any.

4.Before the Tribunal, to substantiate their case, on the side of the claimants two witnesses have been examined and twenty five documents were marked. On the side of the respondents' side no witness was examined and no documents were marked.

5.With regard to the aspect of negligence, the Tribunal recorded the finding that the occurrence took place because of the rash and negligent driving on the part of the first respondent. Regarding the compensation amount, his age was fixed as 67 on the basis of the Aadhar Card, under Ex.P8. He was drawing monthly pension amount of Rs.20,717/-. Finding that half of the pension amount was received by the wife, after the death of the deceased, loss of income was taken only as Rs.10,358/-, since he was about 67 at the time occurrence multiplier 5 was adopted, after deducting 1/3. Loss of dependency is fixed as Rs.4,14,320/-. To that customary amounts were added and finally Rs.5,34,320/-. Against which the Insurance Company as well as the claimant filed appeals. Claimant seeks enhancement of the quantum and Insurance Company wants to set aside the award.

6.The learned counsel for the claimant / appellant would submit that the Tribunal has erroneously taken half of the amount towards loss of income, which is not permissible under law. Apart from that filial consortium is also not fixed in proper manner.

7.Per contra, the learned counsel for the Insurance Company submitted that there is no income proof for the deceased.

8.With regard to the first aspect of negligence we will go to the evidence available on record. As stated above, it is the contention on the part of the first respondent in the main petition that FIR was registered against the unknown vehicle. As per the FIR, the vehicle, which hit the deceased fled away from that place. So it could not be traceable. But, during the course of investigation, it was found by the police that the first respondent's vehicle was involved in the occurrence. Only the first respondent was charge sheeted before the trial Court, which is evident from Ex.P2, the final report.

9.There was no contrary evidence on the side of the appellant namely the Insurance Company or on the side of the owner of the vehicle. On the side of the claimants PW2 has stated in his evidence that he witnessed the occurrence and saw the deceased was walking on the left hand side of the road. At that time, the vehicle, which came in the same direction hit the deceased and the vehicle driver sped away the vehicle without stopping. He also stated that the deceased was known to him. In the absence of any contrary evidence on the side of the appellant namely the Insurance Company, the vehicle driver and the owner, the evidence of PW2 and the conclusion arrived by the police under Ex.P2 was taken into account by the Tribunal. I have also gone through the evidence of PW2 and the conclusion reached by the Police. There is no evidence on record to show that the deceased suddenly crossed the road and invited the accident. The first respondent, who has driven the vehicle in rash and negligent manner, failed in his duty. So the conclusion reached by the trial court requires no interference.

10.Regarding the compensation amount, the Tribunal was right in deciding the pension amount as the income of the deceased as Rs.20,717/-, which is also proved through Ex.P13. But, regarding the income from the agricultural operations, there was no proper evidence. So that was not taken into account. But, the Tribunal committed a mistake in deducting half of the pension amount as loss of income.

11.Now it has been settled by the Honourable supreme Court in the Judgment in the case of ***R.Valli and others vs. Tamil Nadu State Transport Corporation Ltd.,*** made in ***Civil Appeal No.1269 of 2022*** that such a manner of calculating the loss of income is not permissible. pension amount is entirely different from the compensation to be payable to the victims of motor accident claims. But, pension amount can be taken as base for showing the income, since there is no proper evidence on the side of the claimant to say the correct monthly income of the deceased except the pension amount. So the full pension amount must be taken to calculate the loss of income, in view of the judgment of the Honourable Supreme Court reported in *Valli's* case. Accordingly, the monthly income is fixed as Rs.20,717/-. After deducting 1/3rd amount for living and personal expenses, it comes around (Rs.20,717/- – Rs.6,906/- = Rs.13,811/-) Rs.13,811. Multiplier 5 has to be taken. Rs.13,811 x 5 x 12 = 8,28,660/-. So the Loss of dependency arrived at Rs.8,28,660.

12.Regarding the consortium, the first petitioner being the wife is entitled for Rs.40,000/-, which is correct. But, for the petitioners 2 and 3, who are the children of the deceased, the amount was taken as Rs.

35,000/-, which is not proper. It must be Rs.40,000/- each. Loss of estate – Rs.15,000/-, Funeral Expenses Rs.15,000/-. Total Consortium – Rs. 1,20,000/-. Total compensation of Rs.9,78,660/- is arrived as follows:

1.Loss of Dependency	Rs.8,28,660/-
2.Loss of Estate	Rs. 15,000/-
3.Loss of Funeral Expenses	Rs. 15,000/-.
4.Loss of Consortium	Rs.1,20,000/-.
Total compensation	Rs.9,78,660/-.

13.Regarding the deduction of income tax, now it has been submitted that the matter is referred to the larger bench by the order dated 14.05.2020 in C.M.A.(MD).No.1113 of 2020 in the case of ***M.s,Cholamandalam General Insurance Company Limited, Chennai Vs. M.Ashok Kumar and othres***. Now it is pending for decision before the Larger Bench. So we need not go into that issue now. Depending upon the outcome of the above said decision, the Insurance Company are at liberty to pursue the matter further. But the Insurance Company deposited the entire amount as directed earlier. The claimants are entitled to their proportionate share as decided by the Tribunal.

14.Accordingly, Appeal filed by the Insurance Company in C.M.A.(MD)No.320 of 2022 is dismissed and the Appeal filed by the claimants in C.M.A.(MD).No.342 of 2022 is partly allowed.

(i)The quantum of compensation awarded by the Tribunal is enhanced to Rs.9,78,660/- (Nine Lakhs Seventy Eight Thousand six Hundred and sixty only), which shall carry interest at the rate of 7.5% per annum.

(ii) The insurance company is directed to deposit the entire compensation of Rs.9,78,660/- (Nine Lakhs Seventy Eight Thousand six Hundred and sixty only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs before the trial Court within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimants are permitted to withdraw the their respective shares from the entire award amount of Rs.9,78,660/- (Nine Lakhs Seventy Eight Thousand six Hundred and sixty only) as apportioned by the trial Court, after following the due process of law, less any amount already received by them.

(iv) Consequently, connected miscellaneous petition stands closed.

19.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1.The Additional District Judge, Motor Accident Claims Tribunal,
Virudhunagar.

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

G.ILANGOVAN,J.

TM

C.M.A.(MD).Nos.320 and 342 of 2022

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