BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CMA(MD)No.24 of 2019
and
C.M.P.(MD).No.357 of 2019

The Manager,
Iffco-Tokio Insurance Company Limited,
Iffco-Tokio Bhavan,
4th Floor, Hibibullah Road,
T.Nagar, Chennai-17. ... Appellant

vs.

1.Minor.Sivanesh
(represented through his guardian Durai Murugan
S/O.Karunanithi,
Thondarampattu West,
Thirumangalakottai Melacolony,
Oorthanadu Taluk,
Tanjore District.

2.Kamalraj ... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 07.09.2018 passed in M.C.O.P.No.07 of 2017 on the file of the Motor Accidents Claims Tribunal/Special Subordinate Judge, Tanjore.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.N.Tamil Mani (for R1)
No appearance (for R2)

JUDGMENT

(Order of the Court was made by **K.K.RAMAKRISHNAN, J.)**

The insurance company have filed this appeal challenging the award passed in M.C.O.P.No. 7 of 2017 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge, Tanjore.

2. The appellant insurance company insured the vehicle lorry bearing registration No.KA-02-D-2165. When the deceased Duraimurugan was driving his car bearing registration No.TN-48-TMP-6272 in the Dharmapuri - Palacode Main Road, Near Pulikkarai, Nakkalapatti branch road, the said lorry dashed against the car and as result of the rash and negligent driving of the lorry driver, the deceased sustained severe injuries and he died. The jurisdictional police officer registered the case against the lorry driver and final report also was filed against him. The claimant is his minor child the only surviving member and his wife predeceased the deceased and the minor child was in custody of his maternal uncle and he has filed the claim petition before

the Motor Accident Claims Tribunal / Special Subordinate Judge, Tanjore and claimed the compensation of Rs.40,00,000/- with interest of 12%. The claimant specifically pleaded that the deceased was working as a manager in the Himayala traders and earned Rs.50,000/- as a monthly salary.

3. The insurance company filed the counter denying the manner of the accident and disputed the income of the deceased. The insurance company specifically pleaded that the 1st respondent was the owner of the insured vehicle. He had issued the cheque to renew the policy. The said cheque was dishonoured and hence the contract was cancelled and the said cancellation was duly intimated to the insurer and the regional transport office. Therefore, the insurance company is not liable to pay the compensation and seek to dismiss the petition as against the company.

4. To prove the case, on the side of the claimant PW1 to PW3 were examined Ex.P1 to P20 marked. On the side of the respondent, RW1 to RW2 were examined and Ex.R1 to Ex.R10 were marked.

5. The learned tribunal judge did not accept the contention of the insurance company and awarded the compensation of Rs.34,03,300/- by impugned award dated 07.09.2018, which reads as follows:

Sl. No.	***Heads***	***Award Amount in (Rs)***	***Remarks***
1	(A) Income of the deceased	26,000/-	
2	Add-Future Prospects (B)	6,500/-	25% added as age of 46
3	Less personal expenses of the deceased (c)	1/3=Rs.10,833	Since number of dependents is 1
4	Monthly Loss of dependency (A+B)-C =D	21,667/-	
5	Annual Loss of Dependency (D X 12)	2,59,483/-	Upto Rs. 2,50,000 No Tax above 2,50,001-2,60,004 5% Tax is Rs.521
6	Multiplier (E)	13	Age is 46
7	Total Loss of dependency (D X 12 X E =F)	2,59,483 X 13 = Rs.33,73,279/-	
8	Medical Expenses (G)	NIL	
9	Compensation for loss of consortium (H)	NIL	His wife already died
10	Compensation of loss of estate (I)	15,000/-	
11	Compensation towards Funeral Expenses (J)	15,000/-	
	Total Compensation	***34,03,279/-***	

Aggrieved over the same, the insurance company have filed this appeal only on the ground of liability and the quantum and there is no dispute relating to the negligence.

6.1. Mr.V.Sakthivel the learned counsel for the appellant/insurance company would submit that the learned tribunal judge has committed error in not accepting the case of the insurance company that the contract between the insurer and the company was terminated on account of the dishonour of cheque issued towards the payment of premium to renew the insurance policy and erroneously passed award against the insurance company even without direction of pay and recovery. To substantiate the said plea, he relied the judgment of the Hon'ble Supreme Court reported in the case of ***United India Insurance Co Ltd., Vs Laxmamma and others*** reported in ***2012 (1) TNMAC 481 SC***.

6.2. Mr.V.Sakthivel the learned counsel for the appellant/insurance company would submit that the documents marked to prove the employment and the monthly salary of the deceased are not genuine one and on the basis of the said documents the learned tribunal judge has erroneously fixed the monthly salary as Rs.26,000/- and hence he seeks to fix the notional income. To substantiate the said plea he also brings the fact that the claimant is only a minor son and he seeks to reduce the compensation suitably.

7.1. Thiru.Tamilmani, learned counsel for the claimant vehemently countered the said argument of the learned counsel for the insurance company and would submit that the learned tribunal judge considering the discrepancy in the cheque number correctly has held that the insurance company has not proved the case of dishonour of cheque. Therefore he seeks to confirm the award.

7.2. The learned counsel would further submit that on the basis of the undisputed documents Ex.P19, P20, P17, P16 and the evidence of PW3, the monthly income of the deceased was correctly fixed as Rs.26,000/- per month. Hence according to the counsel, the same needs no interference.

8. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available record and also the precedents relied by them.

9. Discussion on Negligence :-

Since the insurance have not disputed the negligence on the part of the lorry driver, this court is not inclined to interfere with the finding of the learned tribunal judge fixing the negligence on the part of the driver of the 1st respondent. Even otherwise, FIR was registered against the driver of the lorry. PW2 independent witness cogently deposed about the negligence of the driver of the lorry and there was no contra evidence adduced and hence this court has no reason to interfere with the said finding of the negligence and hence this court confirms the finding of the learned tribunal judge that accident happened due to the negligence of the driver of the 1st respondent.

10. Discussion on the Dishonour of cheque and the liability:-

10.1. The learned counsel for insurance company would submit that the insurer took policy. The vehicle involved in the accident on 08.11.2016 is bearing Reg.No.KA-02-D2165. The said lorry was originally insured with appellant insurance company for the period from 02.01.2016 to 01.06.2017 and the owner insurer had remitted the cheque No. 984876 dated 02.06.2016 towards premium for renewal of policy.

The said cheque was dishonoured on 16.06.2016. Hence the contract was immediately cancelled and the same was informed through registered post with acknowledgment card to the insurer with correct address and also intimated to the Regional Transport Office. The insurance company produced sufficient material to prove the dishonour of cheque by examining the bank official and marking the cheque (Ex.R8) dishonour return memo (Ex.R3) and the corresponding bank pass book (Ex.R7) cheque return register Ex.R9. The insurance company, following the dishonour of the cheque, duly cancelled the insurance policy and intimated to the insurer and regional transport officer and to prove the same RW1 manager of the insurance company was examined and he deposed about cancellation of policy and sending the intimation to the insurer and RTO through documents Ex.R2, R4 and R5.

10.2. The Learned Tribunal Judge without considering the above unimpeachable evidence has held that the insurance company failed to prove the dishonour of cheque resulting in cancellation of policy. In the considerable view of this court the inadvertant mistake of wrong mentioning of cheque number in the proceeding can not be used against insurance company i.e., instead of 984876, it is mentioned as 984872) when the documentary evidence was produced to substantiate the issuance of cheque bearing number 984876, the learned tribunal Judge ought to have accepted the case of the insurance company relating to the dishonour cheque and the resultant cancellation of policy and intimation to the insured. Therefore, this court inclines to accept the argument of the learned counsel for the insurance company that the policy was duly cancelled upon dishonour of cheque issued to renew the policy and the submission of the learned counsel for the insurance company to modify the award into the pay and recovery considering the death of the third party is accepted on the basis of the principle laid down in the Hon'ble Supreme Court in the case of ***United India Insurance Co Ltd., Vs Laxmamma and others reported*** in ***2012 (1) TNMAC 481 SC***. Hence the award of the learned tribunal judge directing the insurance company to pay compensation is modified with direction to the insurance company to pay the compensation and recover the same from the insurer.

11.Discussion of quantum :-

11.1. The learned counsel for insurance company would submit that the claimant has not proved the occupation of the deceased as a manager in the Himayala Traders and Export company and they relied unbelievable and unacceptable documents and hence he prayed to fix the reasonable notional income and determine compensation. This court considered the said submission upon perusal of the various documents and evidence. According to the claimant, he is the only son of the deceased and his mother predeceased his father and there is no other relation for him. Therefore the claimant/minor son was in the custody of the PW1 who is none other than close relative of the deceased. PW1 deposed that the deceased worked as manager in Himayala Exports and earned Rs.50,000/- as a monthly salary. To prove the same, on behalf of the claimant Ex.P17 (salary certificate) and identification card under Ex.P16 were marked. This court perused the same. Upon perusal of the Ex.P17 and the Ex. P16, this court has every reason to disbelieve the said document. Firstly in the Ex.P16, it is stated that deceased was working in *"Pazhamudhir Nilayam"* from 2001 onwards. On the contrary, in the salary certificate marked under Ex.P17 it is stated that he was working from 2014 till the date of the accident. Apart from that under Ex.P19 it is clear that the Himayala Export obtained license only in the month of March 2003. Therefore, the case of the deceased, he worked from 2001 onwards is not believable one. Apart from that the said Ex.P17 is without any legal particulars to accept as a salary certificate.

11.2. From the perusal of the above said contents and documents this court can easily come to the conclusion that the same was produced in order to claim compensation. This court also perused the bank statement of the deceased. In the said bank statement there is no corresponding remittance of salary of Rs.26,000/- per month. Even though PW2 was examined to prove the salary, he has not produced any document to show his occupation as a manager of the said Himayala Exports. Therefore, the contention of the learned counsel for the insurance company that the existence of the Himayala Exports and the deceased's employment as a manager in the said export and the receipt of the salary of Rs.26,000/- are doubtful and deserves to be accepted. Hence this court perused the bank statement of the deceased and in this bank statement, there was a periodical transaction of Rs.15,000/- per month. The accident happened on 08.11.2016 and the claimant is only minor son and therefore this court inclines to fix the notional monthly income of the deceased as Rs.15,000/-. The deceased's age at the time of the accident was 46 and hence 25% for future prospects is ordered 15000 x 25/100 = Rs.3750/- and the total monthly income comes around Rs.18750/- and the claimant is only a minor son and this Court inclines to deduct ½ expenditure for personal expenditure of the deceased and adopt the multiplier of 13 and calculates the loss of income as follows :-

18750/- x ½ x 13 x 12 = Rs. 14,62,500/-

11.3. The claimant also is entitled Rs.15,000/- under the head of loss of estate, Rs.40,000/- under the head of love and affection and Rs.15,000/- under the head of funeral expenses and the total compensation comes around Rs.15,32,500/-.

11.4. Therefore, this court upon the determination of the compensation on the basis of the appreciation of the evidence is inclined to reduce the compensation from Rs.34,03,300/- to Rs. 15,32,500/-.

Heads	***Amount awarded by the Tribunal***	***Re-quantified Amount by this Court***	***Status***
For Loss of dependency	33,73,279/-	14,62,500/-	reduced
For Loss of Estate	15,000/-	15,000/-	confirmed
For Loss of Love and Affection	-----	40,000/-	awarded
For funeral expenses	15,000/-	15,000/-	confirmed
Total	***34,03,279/-***	***15,32,500/-***	***Reduced***

12. Accordingly, this C.M.A.(MD).No. 24 of 2019 is partly allowed in the following terms:-

12.1.The direction of the learned trial judge in M.C.O.P.No. 7 of 2017 against the insurance company to pay the award amount is modified as follows :-

12.2. The insurance company is directed to pay the compensation of Rs.15,32,500/- with interest of 7.5% and recover the same from the insurer of the vehicle namely the 2nd respondent herein as per law.

12.3. The claimant is minor and the amount was already deposited before the Indian Bank, Madurai Bench of Madras High Court, Madurai, and the claimant is permitted to withdraw the amount on his attaining majority. The legal guardian namely Thiru. Duraimurugan is entitled to withdraw the interest every six months and has liberty to seek permission before the tribunal court to withdraw the necessary amount to meet out any legal necessity like education etc.

13. The insurance company has liberty to withdraw the remaining amount after satisfying the above award amount if any.

14. The connected miscellaneous petition is closed. There shall be no order as to costs.

(P.V.J.,) (K.K.R.K.J.,)
29.10.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Tanjore.

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

P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

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