BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :14.08.2024

CORAM

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

C.M.A(MD)No.243 of 2019

The New India Assurance Company Ltd.,
Rep by its Branch Manager,
480, Sekkalai Road,
Karaikudi Town,
Sivagangai District. ...Appellant

Vs.

1.Latha

2.Gowtham

3.***Minor.***Radhakrishnan

4.Minor.Kalisaran ...Respondents

(*Minors R3 and R4 are represented through their mother/next guardian, the first respondent)*

(Minor 3rd respondent is declared as Major and guardianship of his mother(1st respondent) is discharged vide Court order dated 02.09.2021 made in C.M.P.(MD).No.4138 of 2021 in C.M.A.(MD).No.243 of 2019)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree in M.C.O.P.No.271 of 2016 dated 11.08.2018, on the file of the Motor

Accident Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.C.M.Arumugam for R1 to R4
R5 Exparte.

JUDGMENT

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

The Insurance company filed this appeal challenging the quantum of the award passed in M.C.O.P.No.271 of 2016, dated 11.08.2018, by the Motor Accident Claims Tribunal Judge/Chief Judicial Magistrate Court, Sivagangai.

2.Facts of the case:

The first respondent's husband and the remaining respondents' father was the deceased Tharmar. On 18.03.2015, the deceased was proceeding in Trichy – Chennai National Highways, in his car bearing registration No.TN 63 L 4492. The same was driven by the first respondent. When his vehicle reached Veppur Polytechnic at about 06.45 p.m, the back wheel of the car broke off and hence, the car capsized. In the result, he died on the spot. Therefore, his dependants namely the respondent Nos.1 to 4 have filed a petition in M.C.O.P.No.271 of 2016, claiming compensation of Rs.3,00,00,000/-. In the claim petition, they stated that the deceased was a class-I construction contractor and he was running the construction company in the name of L&T and he also promoted house flats, Villas and earned more than a sum of Rs.1,50,000/- as a per month.

2.1.The insurance company filed a counter denying the allegation stated in the petition and they disputed the quantum and also disputed the negligence on the part of the first respondent. They also denied the plea of the claimant that the deceased was doing the real estate business and worked as a class-I contractor.

2.3.The claimants to prove the claim examined 3 witnesses and marked Ex.P1 to Ex.P40. The appellant examined R.W.1 and also produced Ex.R1 insurance certificate.

3.<u>Finding of the Tribunal:</u>

The learned Tribunal Judge considering both the evidence, held that the accident happened due to the rash and negligent driving of the first respondent, namely, the driver of the car and based on the various documents, namely, Ex.P6 to Ex.P30 and Ex.P.34 to Ex.P39, fixed the monthly income of the deceased as Rs.53,000/- and added 25% for future prospect considering his age of 49 years at the time of the accident and applied multiplier 13 after the statutory deduction of ¼ for his personal expenditure granted loss of income of Rs.73,12,500/- and adding the conventional damages the Tribunal awarded total compensation of Rs. 73,87,500/- with interest of 7.5%, vide impugned order dated 11.08.2018 under the following heads:-

Heads	***Rs.***
Loss of Income	73,12,500/-
Transport Charges	5,000/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Loss of Consortium	40,000/-
Total	**73,87,500/-**

Assailing the said award, the appellant Insurance Company has filed the present appeal questioning the "quantum only".

4.**Submission of the learned counsel for the appellant insurance company:**

Mr.J.S.Murali, learned counsel for the insurance company submitted that the learned Tribunal Judge without any basis has fixed the monthly salary of the deceased as Rs.53,000/-. He has fixed the said amount only applying some guess work. Even as per the income tax return filed under Ex.P35 to Ex.P38, the deceased was the managing partner of the L & T construction and he had only 25% share. Therefore, the Tribunal without awarding a sum of Rs.6,95,682/- as a compensation, awarded a sum of Rs.73,12,500/- under the head of loss of income. He also submitted that the Tribunal Judge has committed error in fixing a sum of Rs.53,000/- as monthly income. Therefore, he seeks for reduction of the compensation.

5.**Submissions of the learned counsel for the claimants:**

The learned counsel for the claimant submitted that the deceased was not only a partner in the L & T constructions and he was doing construction of the flats and also he was a class-I Government contractor and he had independent income apart from the partnership income in the

L & T constructions. To prove the same, he produced his personal income tax returns under Ex.P26 and in the income tax return the gross total income of the deceased for the assessment year 2014-2015 is shown as Rs.11,29,675/-. The various work orders obtained from the Public Works Department and the Local Bodies relating to his construction activities also were produced. Therefore, the learned trial Judge has correctly fixed the monthly income of the deceased as Rs.53,000/- by applying some guesswork.

6. This Court carefully considered the submissions of the learned counsel for the appellant insurance company and the learned counsel appearing for the respondents/claimants and perused the materials available on record.

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

7.1.Whether the negligence is correctly fixed on the driver of the vehicle insured with the appellant?

7.2.Whether the learned tribunal Judge correctly fixed the liability upon the insurance company?

8. **Discussion on negligence:**

The learned trial Judge considering the evidence of P.W.2 independent witness and the registration of the FIR as against the first respondent/driver of the car and the final report with a finding that the accident occurred due to the rash and negligence of the driver of the car and on appreciation of all other circumstances, the learned Tribunal Judge has correctly fixed the negligence on the driver of the car and there was no contra evidence adduced to differ with the conclusion of the said finding of the learned tribunal Judge. Therefore, this Court confirms the finding of the learned Tribunal Judge that the accident has happened only due to the negligence of the car driver.

9.Discussion on quantum:

9.1.The deceased was registered class-I contractor in the Public Works Department. To prove that, the claimant produced various documents under Ex.P14, Ex.P15, Ex.P16, Ex.P17, Ex.P18, Ex.P20, Ex.P21, Ex.P22. Upon consideration of the above un-objected and un-disputed documents, this Court has no other option except to hold that the deceased was doing the construction activities in a flourishing way and his construction activities had been prospering well till his death. From Ex.P9, Ex.P12, and Ex.P35, Ex.P36, Ex.P37 and Ex.P38, it is found that the deceased was partner of the L & T construction and he received 25% profit and Rs.4,000/- as a monthly salary. That apart, his personal income tax assessment were also marked as Ex.P26 and the same was not objected and its genuineness is not disputed. In the said documents, it is stated that his annual income is Rs.11,29,675/-. To prove all the income tax returns and other documents, apart from P.W.1's evidence, P.W.3 also was examined. P.W.1 cogently deposed on the basis of the documents apart from her personal knowledge that the deceased was earning more than a sum of Rs.1,50,000/- per month. She was subjected to cross examination and in the cross examination, it was asked that the income tax department directed him to pay tax for the financial year of 2014-2015 and he paid the income tax. Except the said question, there was no cross examination disputing the documents filed by the claimants.

9.2.P.W.3 was examined from the income tax department. He was the Income Tax Inspector and he produced all the documents and the same was marked. He also affirmed that the income tax department demanded the income tax and the deceased paid the income tax for the assessment year 2014-2015. Therefore, the document was marked through the Income Tax authorities and this Court has no reason to doubt the genuineness of the documents, more particularly, Ex.P26. Therefore, this Court on re-appreciation of the entire oral and documentary evidence has no reason to differ with the finding of the learned Tribunal Judge fixing the monthly income of the deceased as Rs.53,000/-.

9.3.The deceased was 49 years at the time of accident and hence, 25% of future prospect was correctly added and 1/3 was deducted for personal expenditure considering 4 dependants and correctly applied the 13 multiplier and also granted conventional damages. Hence, this Court is unable to accept the contention of the learned counsel for the insurance company to fix the monthly income of the deceased as Rs.4,757/- and should award Rs.6,95,682/- only. Hence, this Court finds no merit to entertain this appeal to reduce the compensation.

10. Conclusion

Accordingly, this Civil Miscellaneous Appeal is dismissed by confirming the award passed by the learned Tribunal Judge. The compensation awarded in M.C.O.P.No.271 of 2016 on the file of the Motor Vehicle Accidents Claims Tribunal/Chief Judicial Magistrate, Sivagangai, dated 11.08.2018 is hereby confirmed. The appellant/insurance is directed to deposit the award amount with accrued interest and costs, less any amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order.

11.**Apportionment of compensation:**

The claimants are entitled to withdraw the compensation amount as apportioned by the Tribunal with respective proportionate accrued interest and costs by making necessary application before the Tribunal. There shall be no order as to costs.

[P.V.J.,] [K.K.R.K.J.,]
14.08.2024

NCC : Yes/No
Index : Yes/No
sbn

To

1.The Motor Accident Claims Tribunal,
The Chief Judicial Magistrate, Sivagangai.

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

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

sbn

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