BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **24.04.2024**

CORAM

JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI

C.M.A(MD)No.81 of 2019
and
C.M.P(MD)No.827 of 2019

M/s. Reliance General Insurance Company
through its Manager,
No.6, Nungampakkam,
Chennai. ... Appellant/2nd Respondent

Vs.

1.Saraswathy

2.Balaguruvamal

3.R.Prabakaran

4.R.Prasad

5.R.Satheeshkumar

6.R.Ramdevi ... Respondents 1 to 6/Petitioners

7.T.M.Venkateswaran ...7th Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the decree and judgment of the Motor Accident Claims Tribunal/5th Additional District and Sessions Judge, Madurai, dated 05.02.2014 made in M.C.O.P.No.1854 of 2008 and allow the appeal.

For Appellant	:	Mr.V.Sakthivel
For R1 to R3	:	Mr.C.G.Pethanaraj
For R4 – R6	:	No Appearance

JUDGMENT

(Judgment of the Court was delivered by P.VADAMALAI, J.)

This Civil Miscellaneous Appeal is preferred against the Award dated 05.02.2014 passed in M.C.O.P.No.1854 of 2008 by the Motor Accident Claims Tribunal/V Additional District Judge, Madurai.

2.The 2nd respondent in M.C.O.P.No.1854 of 2008 is the appellant herein.

3. The respondents 1 to 6 herein are the petitioners/claimants, who filed the claim petition in M.C.O.P.No.1854 of 2008. The 7th respondent herein is the 1st respondent in the claim petition.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 1854 of 2008 are adopted hereunder.

5.**The brief facts of the case:**

On 14.04.2008 at about 13.45 hours while the deceased Ramaraj was standing in Checkanoorani bus stand for proceeding to Valandur, at that time, the 1st respondent's bus bearing registration number TN 59 AE 5771 was driven by its driver in a rash and negligent manner dashed against the deceased Ramaraj. Due to impact, the deceased was sustained severe injuries in his both legs and all over the body. The deceased was admitted in Appollo Hospital, Madurai where he took treatment as inpatient from 14.04.2008 to 26.06.2008 and thereafter, he took treatment at City Hospital, Dindigul from 26.06.2008 to 22.07.2008. Despite treatment the deceased died on 22.07.2008 due to accidental injuries. At the time of accident, the deceased Ramaraj was working as head Constable in SB CID and was earning Rs.12,650/- p.m. The petitioners being wife, children and mother of the deceased are depending solely on his income. F.I.R. was registered against the driver of the 1st respondent's bus. The offending bus was owned by the 1st respondent and insured with the 2nd respondent. Hence, the petitioners, who are dependants of the deceased Ramaraj, filed the claim petition seeking compensation of Rs.30,00,000/-.

6. The 1st respondent filed counter statement stating that the bus bearing registration number TN 59 AE 5771 was insured with the 2nd respondent at the time of accident, and hence, the 2nd respondent/Insurance Company is liable to pay compensation.

7. The 2nd respondent/Insurance Company objected that the driver of the 1st respondent bus was not possessing any valid driving licence and thereby, the 1st respondent violated the policy condition. Further, the petitioners have to prove that the 1st respondent's bus was insured with the

2nd respondent. Since there is a policy violation, the 2nd respondent is not liable to pay any compensation.

8. Before the Tribunal both side adduced oral and documentary evidence. Petitioners examined four witnesses as P.W.1 to P.W.4 and marked 14 documents as Ex.P.1 to Ex.P.14. On the side of the respondents, R.W.1 was examined and Ex.R.1 was marked. After hearing both and after considering the evidences, the Tribunal has held that the accident happened due to rash and negligent driving of the driver of the 1st respondent's bus and awarded compensation of Rs.30,00,000/- to the petitioners with interest and cost and directed the 2nd respondent to pay the award amount.

9. Aggrieved by the said award, the 2nd respondent has preferred this Civil Miscellaneous Appeal.

10. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

11. It is the main contention of the counsel for the appellant/ 2nd respondent Insurance Company is that the 1st respondent's driver was not holding valid driving license and the offending vehicle was not insured at the time accident. It is further contended that the deceased was aged 55 years and he would get retirement at 58 years and hence, split multiplier has to be adopted for the persons more than 50 years, but the Tribunal adopted multiplier '11'. Further, the Tribunal erred in adding 15% towards future prospects. In support of his argument, the learned counsel for the 2nd respondent relied on the following citations:

(i) 2011 (1) TNMAC 477 (New India Assurance Co.Ltd., Vellore Vs. Selvarani & Ors.)

(ii) 2010 (1) TNMAC 617 (National Insurance Co. Ltd., Vs. Renuka Saha & Ors.)

(iii) 2010 (1) TNMAC 415 (The Branch Manager, The Oriental Insurance Company Limited Vs. Valliammal & Ors.)

(iv) 2011 (1) TNMAC 169 (The Divisional Manager, The New India Assurance Company Limited, Trichy Vs. M.Raju & Ors.)

(v) 2013 (2) TNMAC 113 (R.Leelavathy Vs. Sheik Dawood & Anr.)

12.Per contra, the learned counsel for the petitioners submitted that as per Ex.R.1, it is clear that the offending vehicle was insured with the 2nd respondent. Further, the deceased was working as Head Constable in the police department and was permanent employee, so, the Tribunal after considering the settled proposition of law in the **Sarla Verma** case fixed the income of the deceased and deducted 1/3 towards his dependency and also adopted the multiplier. Further, the Tribunal added 15% of income towards future prospects considering the age of the deceased in view of citation reported in **(2013) 9 Supreme Court Cases 54 (Rajesh and others /v/ Rajbir Singh and others)**. Hence, this Civil Miscellaneous Appeal may be dismissed.

13. On perusal of records, it is clear that the accident had taken place on 14.04.2008. As rightly argued by the counsel for the petitioner/claimants, as per Ex.R.1, the policy period for the offending vehicle is mentioned as 23.04.2007 to 22.04.2008. So, it is clear that the 1st respondent's vehicle was insured with the 2nd respondent at the time of accident. Though the respondents 1 and 2 stated that the driver of the offending bus did not possess driving license, they did not produce any valid material records to establish the same.

14. On perusal of records, the pay certificate of the deceased was marked as Ex.P.10. It is seen from Ex.P.10 that the deceased was working as Head Constable in SB CID. The petitioners state that the deceased was permanent government employee. The respondent have not placed any contra material against the petitioners' version. Though the petitioners stated that the age of the deceased was 54 at the time of accident, the age of the deceased is mentioned as 55 in Ex.P.3 - Post Mortem report. On perusal of order of the Tribunal, it has correctly fixed the multiplier '11' in view of

the settled proposition of law in the **Sarla Verma case (2009 (2) TNMAC 1 SC)** and there is no need of interference in it.

15. The next contention raised by the appellant/2nd respondent is that the Tribunal ought to have adopted split multiplier and also the Tribunal erred in adding future prospects. Admittedly, the deceased was a permanent government employee and had permanent income with pay enhancement periodically. In view of the settled law in the **Pranay Sethi** case **(2017 (2) TNMAC 609 (SC)**, when a person is in a permanent job, there is always an enhancement due to one reason or the other, and so, there should be an addition of 15% if the deceased is between the age of 50 to 60 years. In this case, the deceased age is 55. Therefore, the Tribunal has correctly added 15% of income of the deceased, there is no reason to interfere with the addition of income. In other respects there is no objection raised by the appellant/2nd respondent Insurance Company in respect of other compensation under various heads awarded by the Tribunal. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.

16. In the result, this Civil Miscellaneous Appeal is dismissed and the Award dated 05.02.2014 passed in M.C.O.P.No.1854 of 2008 by the Motor Accident Claims Tribunal/V Additional District Judge, Madurai is confirmed. No costs. Consequently connected Miscellaneous Petition is closed.

(N.S.S.,J.) **(P.V.M.,J.)**

24.04.2024

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

VSD

To

1.The Motor Accident Claims Tribunal/
5th Additional District and Sessions Judge,
Madurai.

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

N.SESHASAYEE, J.
AND
P.VADAMALAI. J.

VSD

Judgment made in
C.M.A(MD)No.81 of 2019

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