BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **29.02.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

C.M.A(MD)No.482 of 2021
and
C.M.P(MD)No.4272 of 2021

M/s Reliance General Insurance Company,
rep. by its Branch Manager,
Sri Meenakshi Plaza,
1st Floor, Plot No.JOG 55,
80, Feet Road, Anna Nagar,
Madurai – 20` ... Appellant

Vs.

1.Sugapriya

2.Minor Mahathi

(Minor 2nd respondent represented by mother and guardian,Sugapriya)

3.M.Thirumurugan ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 06.03.2020 passed in MCOP No.33 of 2017 on the file of the Special District Judge to deal with Motor Accident Cases of Madurai.

For Appellant	:	Mr.V.Sakthivel
For Respondents	:	Mr.S.Saravanakumar for R1 and R2

JUDGMENT

[Judgment of the Court was delivered **by V.BHAVANI SUBBAROYAN, J.]**

The Insurance Company has come up with this appeal assailing the award passed by the Special District Judge to deal with Motor Accident Cases, Madurai in MCOP No.33 of 2017, dated 06.03.2020.

2. Facts of the Case:

The deceased namely, Subbiah was working as Police Head Constable in the Traffic Wing, Madurai. On 10.04.2016 at 01.45 p.m, when he was on duty at Kamarajar Salai, Kuruvikkaran salai Junction, the third respondent, without following the traffic rules, drove his APE Auto bearing Reg.No.TN-59-AK-0247 in a rash and negligent manner without blowing any horn and hit the deceased and he sustained multiple injuries. Immediately, he was taken to the Reghavendra Hospital and then to Meenakshi Mission Hospital and subsequently, to Govt. Rajaji Hospital, where he died on 21.04.2016. At the time of accident, the deceased was aged about 40 years and he was working as a Head Constable in Traffic Wing of the Madurai City Police and getting salary of Rs.31,537/- per month. The said accident was caused due to the rash and negligent driving of the third respondent herein. The said offending auto was insured with the appellant/Insurance Company. A criminal case has also been registered against the third respondent herein. The first respondent is the wife and the second respondent is the daughter of the deceased. Hence, they laid a claim petition claiming compensation of Rs.70,00,000/-.

3. The Insurance Company filed their counter disputing the age, income and occupation of the deceased and the manner of accident and its liability to pay the compensation. They also took a stand that the deceased suddenly crossed the road and the auto driver immediately stopped the vehicle but he fell down and sustained injuries. Therefore, they seek for dismissal of the petition.

4. To substantiate the case, on the side of the claimants, P.Ws.1 to 5 were examined and Exs.P1 to Ex.P.21 were marked. Apart from that, Ex.X1 to X3 were marked as Court Exhibits. On the side of the appellant/Insurance Company, no one was examined and no document has been produced.

5.Finding of the Tribunal:

The Tribunal, after considering the oral and documentary evidence, held that the third respondent was responsible for the accident. The learned trial Judge considered the evidence of PW.2 and Ex.P.1 FIR and Ex.P.8 Final Report and has fixed the monthly income of the deceased as Rs.31,537/- as per Ex.P.6 and considering the age of the deceased as 41 years, awarded compensation of Rs.42,88,208/- to the claimants under the heads which are as follows:-

Sl.No.	*Heads*	*Amount in Rupees*
1	Loss of dependency and including medical Expenses (Rs.41,04,598/- + Rs.73,610/-)	Rs.41,78,208/-
2	Loss of consortium	Rs. 40,000/-
3	Loss of love and affection (minor 2nd respondent)	Rs. 40,000/-
4	Funeral Expenses	Rs. 15,000/-
5	Transport charges	Rs. 15,000/-
Total		**Rs.42,88,208/-**

Assailing the award, the appellant/Insurance Company has filed the present appeal.

6. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the respondents1 and 2/claimants and perused the materials available on record.

7. This appeal has been filed only challenging the negligence and quantum. Therefore, the points for determination in this appeal are :-

(i) Whether the negligence fixed by the Tribunal on the third respondent is correct or not?

(ii) Whether the liability fixed by the Tribunal on the appellant is correct or not?

(ii) Whether the quantum of compensation awarded by the Tribunal is correct or not?

8. According to the appellant/Insurance Company, the deceased suddenly crossed the road without seeing the on coming auto and hence, he only is responsible for the accident.

9. Discussion on the negligence:

On 10.04.2016 at 01.45 p.m, when the deceased namely, Subbiah who was working as a Head Constable in the Traffic Wing was on duty at Kamarajar Salai, Kuruvikkaran salai Junction, the third respondent, without following the traffic rules, drove his APE Auto bearing Reg.No.TN-59-AK-0247 in a rash and negligent manner without blowing any horn hit the deceased and hence, the deceased sustained multiple injuries. P.W.2 also clearly deposed that the appellant insured auto driver drove his auto in a rash manner and hit the deceased. There was no contra evidence adduced on the side of the appellant insurance company. The FIR was also registered against the auto driver and final report also filed against the said auto driver. Therefore, the learned Tribunal Judge has correctly fixed the negligence on the part of the driver of the third respondent insured with the appellant insurance company. We are of the view that the negligence fixed on the third respondent herein by the Tribunal is correct. Therefore, the first point is answered accordingly.

10. Discussion on the quantum:

Insofar as quantum is concerned, it is seen that the deceased was working as a Head Constable in Traffic Wing of the Madurai City Police. To prove the same, I.D card of the deceased has been marked as Ex.P.3. Ex.P.5 is the copy of post mortem report in which age of the deceased is mentioned as 40 years. Ex.X2 is xerox copy of the deceased Service Book first page, where the deceased date of birth is mentioned as 12.06.1975. The date of accident was on 10.04.2016 and as per the ocular evidence of PW4 the date of birth is as follows:-

"எங்கள் அலுவலக பதிவேட்டின்படி 12.06.1975 என்றால் சரி"

hence 10.04.2016 – 12.06.1975 = 41 years. Therefore, deceased age is taken as 41 years on the date of accident by the Tribunal. As per Ex.P.6 Salary Certificate, in which, salary of the deceased is mentioned as Rs.31,537/- per month. The Tribunal by considering the above said exhibits, has correctly fixed the monthly income of the deceased as Rs.31,537/-. We are of the view that the Tribunal, by following the Judgment of the Honourable Supreme Court in the case of ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in

2009(2) TNMAC 1 (SC) has fixed the monthly income and by adding 30% future prospects and deducting 1/3 for personal expenses and applying correct multiplier at 14 and deduction 10% of income tax, awarded a just and reasonable compensation.

10.1.Calculation of the amount:

31537 + 9461(30%)	= Rs. 40,998/-
40998 – 13666 (1/3)	= Rs. 27,332/-
27332 X 12 X 14	= Rs.45,91,776/-
4591776 – 459178(10%)	= Rs.41,32,598/-
Less: Professional Tax	
4132598 – 28000 (14 X 2000)	= Rs.41,04,598/-
Loss of Income	**= Rs.41,04,598/-**

10.2. In addition to that the claimants are entitled to a sum of Rs.73,610/- towards medical expenses incurred during the life time of the deceased and pecuniary loss/ dependency is arrived as Rs.41,04,598+ 73,610 = Rs.41,78,208/-. Further, the customary quantum of compensation under remaining heads were fixed by the Tribunal by following the above said Judgment. Non pecuniary damages compensation awarded by Tribunal is as follows:-

Heads	Amount in Rupees
Loss of consortium	Rs. 40,000/-
Loss of love and affection (minor 2nd respondent)	Rs. 40,000/-
Funeral Expenses	Rs. 15,000/-
Transport charges	Rs. 15,000/-

10.3. We find no reason to interfere with the conclusion reached by the Tribunal. This appeal has no merit. Hence, this appeal is liable to be dismissed. Therefore, the compensation awarded by the Tribunal and the rate of interest fixed by the Tribunal are confirmed. Hence, the third point is answered accordingly.

11.Conclusion:

For the foregoing reason, the compensation awarded by the Tribunal to the claimants under various heads are enumerated hereunder:-

Sl.No.	Heads	Amount awarded by the Tribunal
1	Loss of dependency and including medical Expenses (Rs.41,04,598/- + Rs.73,610/-)	Rs.41,78,208/-
2	Loss of consortium	Rs. 40,000/-
3	Loss of love and affection (minor 2nd respondent)	Rs. 40,000/-
4	Funeral Expenses	Rs. 15,000/-
5	Transport charges	Rs. 15,000/-
Total		**Rs.42,88,208/-**

In view of the above, the claim made by the appellant insurance company is rejected.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed as devoid of merits. The compensation awarded in M.C.O.P.No.33 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Judge to deal with Motor Accident Cases, Madurai, dated 06.03.2020 is hereby confirmed. The appellant/ Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of

eight weeks from the date of receipt of a copy of this order. On such deposit, the first claimant/wife is permitted to withdraw her share amount as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs. Further, the Tribunal is directed to deposit the share of the minor claimant in any one of the nationalised banks, as fixed deposit under the Cumulative Deposit Scheme, till the minor attains majority and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the Bank. The minor claimant on attaining majority is permitted to withdraw her share. No costs. Consequently, connected miscellaneous petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]
29.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes
skn/sbn

To

1.The Special District Judge to deal with
Motor Accident Cases of Madurai.

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

V.BHAVANI SUBBAROYAN, J.
and
K.K.RAMAKRISHNAN, J.

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