BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.07.2024

DELIVERED ON : 04.09.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGOVAN

C.M.A.(MD).No.839 of 2021

1.Tajeen
2.Khaja Mohaideen Ajmal
3.Minor Fathimafarkhana
4.Minor Mohaideen Abdulkhadar
(Minors 3 & 4 appellants through their Mother and next guardian 1st appellant herein)
5.Khaja Mohaideen
6.Fathumuthu ... Appellants/Claimants

Vs.

1.Vetrivendhan

2.United India Insurance Co.Ltd.,
Rep. by its Branch Manager,
221, L.M.Anguvilas Building,
Main Road, Puliyangudi,
Tenkasi District. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to call for the records relating to the judgment and decree dated 03.12.2018 made in M.C.O.P.No.1312 of 2017, on the file of the Motor Accidents Claims Tribunal / Principal District Judge, Tirunelveli and to set aside the same, consequently, enhance the compensation.

For Appellant : Mr.V.Sasikumar

For Respondents : Mr.I.Suthakaran for R2
R1 – No Appearance

JUDGMENT

This appeal has been filed against the judgment and decree dated 03.12.2018 made in M.C.O.P.No.1312 of 2017, on the file of the Motor Accidents Claims Tribunal / Principal District Judge, Tirunelveli and seeking enhancement of the compensation.

2.The facts in brief:

On 19.06.2017 at about 11.00 a.m., the deceased Abdul Mazood, was riding two wheeler bearing Registration No.TN 76 R 2590 with a pillion rider Fathima Barkana on the Tenkasi to Madurai Road. When they were nearing Viyasa Arts College, behind them the vehicle bearing Registration No.TN 79 B 0101 was driven by its driver in rash and negligent manner and hit the motor cycle behind. As a result, Abdul Mazood sustained grievous injuries, taken to Vadamalayan Hospital, Madurai and later to the Government Rajaji Medical College Hospital, Madurai. But, died on 23.06.2017, without responding to the treatment. A case in Crime No.281 of 2017 was registered against the first respondent's vehicle driver for the accident.

3.He was aged about 50 at the time of occurrence and working as Personal Resource Officer in Zensar Technologist Limited at United Arab Emirates and earning Rs.2,41,000/- per month. Claiming compensation amount of Rs.3 Crores, the claim petition was filed.

4.That was resisted by the Insurance Company by filing counter stating that the occurrence took place because of rash and negligent driving on the part of the deceased himself. Because he tried to suddenly cross the road without making any indication. Moreover, it is also stated that the owner of the two wheeler permitted the deceased to drive the vehicle without proper driving licence. There was no insurance also. Apart from that it is also contended that driver of the first respondent's vehicle did not have proper driving licence.

5.This petition was tried along with M.C.O.P.No.1346 of 2017 filed by the minor Fathima Barkana for the injury sustained by her in the very same accident. Since she is pillion rider, both cases were tried together. Regarding the first aspect of negligence, the Tribunal recorded a finding that because of rash and negligent driving on the part of the first respondent's vehicle's driver, the occurrence took place. Regarding the compensation amount for the deceased Abdul Mazood, his age was fixed as 51, the monthly income of the deceased was fixed at Rs.25,000/-. Future prospects of 15% was added. Monthly income was fixed as Rs.28,250/-. $1/4^{th}$ was deducted towards personal and living expenses. Loss of dependency was fixed as Rs.21,562/- per month. Multiplier 11 was adopted. Total loss of dependency was calculated as Rs.28,46,250/-. To that the customary amounts were added and finally Rs.32,56,750/- was awarded as compensation. Dissatisfying over the same, the appeal is preferred by the claimants.

6.The learned counsel for the appellant would submit that at the time of occurrence, the deceased was working as Service Manager in a private Company in Abudabi. Proper particulars as to the appointment orders, salary slips were produced. In spite of the above said production of relevant documents, the Tribunal recorded a finding that his monthly income must be assessed only as Rs.25,000/-, which according to the appellants is not proper.

7.Per contra, the learned counsel for the second respondent would submit that the appointment order was not validly certified by the responsible and Authorised Officer. So the document produced by the appellants herein to show the monthly income, was rightly rejected by the Tribunal, which requires no interference.

8.As stated in the preamble portion, there is no issue with regard to the age of the deceased. It was fixed at 51 on the basis of the records produced. Regarding the first aspect of negligence also no argument was advanced on both sides. So that portion of the order of the Tribunal is confirmed.

9.Since only the quantum is under dispute, now let us straight away go to the evidence available on record. The Tribunal by discarding the documentary evidence, assessed the notional income as Rs.25,000/-. Ex.P4 is the employment contract document. Ex.P6 is the Passport. Ex.P4, is a terms of employment of contract, which limited for two years. The date of agreement is 07.03.2016. The monthly wages was fixed at 16,430 AED, which according to the learned counsel for the appellant is equivalent to Rs.2,41,000/-. He was working as Service Manager. As mentioned above, the contract period was two years. The date of accident is 19.06.2017. So it is seen that on the date of accident, he was in service. This document was disputed by the respondent stating that it was not properly proved due to the Lack of attestation by the authorised Officer.

10.The learned counsel for the second respondent draw the attention of this Court to the ***United India Insurance Company Limited Vs. Satinder Karur and others*** reported in ***MANU/SC/0500/2020*** wherein, a similar situation arose. The contract of employment was produced by the claimants in that case. The claimants filed photo copy of the employment contract certificate by Indian Embassy at Dhoha. But, it was not attested by the Indian Embassy at Dhoha. He would referring to the following observation.

> *"We have perused the said letter, and are inclined to accept the submission made on behalf of the Insurance Company, that the said document was not attested by the Indian Embassy of Doha, as per the Diplomatic & Consular Offices Qaths and Fees Act, 1948."*

11.In the light of the above said examining, the document under Ex.P4, which is original document, wherein, we find a seal affixed by the Ministry of Foreign Affairs, United Arab Emirates signed by the competent authority namely Office of the Ministry of Foreign Affairs and International cooperation – Dubai. As mentioned above, it is the contention on the part of the respondent, that it is not attested by the officials of Indian Embassy in Dhoha. But we find seal of Ministry of foreign affairs of United Arab Emirates. So the genuineness of the document cannot be disputed. We can take that the claimant was working as Service Engineer in a private company in United Arab Emirates.

12.The tribunal relied upon the judgment of the Honourable Supreme Court reported in ***Chandari Devi and others Vs. Jaspaulsingh***

and others reported in 2015-2-TNMAC 16 SC and other some other judgments and drawn the inference that the dictum laid down that in respect of the persons getting salary in abroad should not be a Bananza. But, it must be reasonable.

13.He also relied upon the judgment of the Honourable Apex Court in the case of M.K.Gopinathan Vs. Jeyakrishna reported in 2014-3-TAC 369 SC, wherein, the person who was working in Malaysia as a Technical person income was fixed at Rs.5,000/-.

14.Per contra the learned counsel for the appellants relied upon the judgment of the Honourable Division Bench of this Court made in the case of ***Tamil Nadu State Transport Corporation (Madurai Division V) Limited through its Managing Director Vs. M.Thinagar reported in 2024 (1) TNMAC 577 (DB)***. The Division Bench after going through the entire case law on that point and finally by referring the judgment of the Honourable Division Bench in ***P.Shanmugharaj Vs. Subramaniam reported in 2005 (3) L.W 375***, the following observation was made.

> *"Looking to the Indian economy, fiscal and financial situation, the amount is certainly a*

fabulous amount though in the background of American conditions it may not be so. Therefore, where there is so much of disparity in the economic conditions an affluence of the two places viz., the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Looking by the Indian standards they may not be much too overcompensated and similarly not very much under compensated as well, in the background of the country where most of the dependent beneficiaries reside"

"In the light of the discussion and conclusion of the Supreme Court, in the above referred case, and in view of the fact that the Indian economy, fiscal and financial situation and the background of UK conditions, it cannot be claimed that the standard of living and other expenses are similar in both the places. Undoubtedly, there is much of disparity in the economic conditions and affluent of two places that it is the place to which the victim belongs and the place where the compensation is to be paid. If we consider these aspects and of the fact that in foreign country, particularly UK the extent for

own maintenance and for education of their children etc., compared to our country is on the higher side and by applying principles laid down in the Supreme Court's case, we hold that the Tribunal is fully justified in scaling down 50 per cent of her earnings. (emphasis supplied)"

15.Finally in para 19 it observes as follows:

"19. Thus, in respect of employment in UK, the Division Bench has taken note of the various judgment of the Hon'ble Supreme Court and held that there should be a scaling down by 50 per cent of the earnings of the deceased, we clarify the position, for the purpose of income tax, 30 percent is already deducted as we discussed in the preceding paragraphs and therefore, considering the nature of the employment in the country where the foreign employment is taken note of, another deduction of 10 to 15 per cent can be reasonable and accordingly, we hold that to arrive at the salary or the monthly income in addition to 30 per cent of the tax, 10 to 15 per cent may be deducted, considering the economical disparity between two countries and the affluent of two places, i.e., the place to which the victim belongs and the place

where the compensation is to be paid and we answer the point accordingly. In the facts and circumstances of the case, we deem it appropriate to deduct another 10%.”

16.So scaling down of 50% of the earning was held proper. Another 30% was deducted towards Income tax. Apart from that another 10% was deducted considering the Economic disparity between the two countries.

17.Now coming back to the monthly income. The salary amount of Rs.2,41,000/- is scaled down to 50%, which comes at Rs.1,20,500/-. From that less 30% towards income tax (Rs.1,20,500/- - Rs.36,150/- = Rs.84,350/-). Then the amount will be Rs.84,350/-. From that after deducting 10% for Economic Disparity. (Rs.84,350/- - Rs.12,050/- = Rs. 72,300/-), it will be Rs.72,300/-. From that amount 1/3rd must be deducted for personal living expenses. (Rs.72,300/- - Rs.24,100/- = Rs. 48,200/-). So the monthly income is arrived at Rs.48,200/-. But the Tribunal has taken Rs.25,000/- as monthly income. But, in recalculation it comes to Rs.48,200/-. Multiplier 11 is adopted. Rs.48,200 x 11 x 12 =

Rs.63,62,400/-. So the total loss of dependency fixed at Rs.63,62,400/-. Total compensation is arrived as follows:

1.Loss of dependency	Rs.63,62,400/-.
2.Funeral Expenses	Rs. 15,000/-
3.Transport charges	Rs. 10,000/-
4.Medical Expenses	Rs. 1,45,000/-
5.Loss of Consortium for all the claimants	Rs. 2,40,000/-
Total Compensation	Rs.67,72,400/-

18.Accordingly, this civil miscellaneous appeal stands partly allowed. No costs.

(i)The quantum of compensation awarded by the Tribunal is enhanced to Rs.67,72,400/- (Sixty Seven Lakhs Seventy Two Thousand and Four Hundred 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.67,72,400/- (Sixty Seven Lakhs Seventy Two Thousand and Four Hundred 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 Tribunal, 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 appellants 1, 2, 5 & 6 are entitled to withdraw their respective share after following the due process of law, less any amount already received by them. On such deposit being made by the insurance company, the same shall be deposited before any Nationalized Bank in respect of the shares of the appellants 3 and 4. The appellants 3 and 4 are entitled for their respect share amounts, which is ordered to be deposited in any one of the nationalized bank until she attain majority and their mother next guardian the 1st appellant, is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

04.09.2024

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

To

1.The Principal District Judge, Motor Accidents Claims Tribunal,
Tirunelveli.

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).No.839 of 2021

04.09.2024