



WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 04.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

**C.M.A(MD)No.609 of 2024
and
C.M.P(MD)No.7657 of 2024**

The National Insurance Company,
Third Party Hub,
represented by is Senior Divisional Manager,
No.3, North Veli Street,,
Madurai – 625 001.

...Appellant/Second Respondent

.Vs.

1.Amutha

2.Minor Thenmozhi

3.Minor Sathosh

4.Bose,

5.Kasthuri

6.Minor Dhanushnavi

....Respondents 1 to 6/Petitioners

7.Karuppannan

....7th Respondent/Ist Respondent

1/25



WEB COURT

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award passed in M.C.O.P.No.1155 of 2021, dated 27.11.2023, on the file of Motor Accidents Claims Tribunal, Special District Court, Madurai.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.S.M.Kadhar
1 to 6

JUDGMENT

(Order of the Court was made by **P.VELMURUGAN,J**)

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1155 of 2021, dated 27.11.2023, on the file of Motor Accidents Claims Tribunal, Special District Court, Madurai.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The appellant is the Insurance Company and the second respondent in M.C.O.,P.No.1155 of 2021. The above M.C.O.P was taken with other M.C.O.Ps filed by the other claimants and a common judgment was pronounced on



WEB COPY

27.11.2023. Aggrieved over the same, the second respondent therein filed the present Civil Miscellaneous Appeal.

4.The brief facts of the case of the respondents 1 to 6/claimants is that the deceased was riding a motor cycle bearing Registration No. TN 65 U 4712 and when he was nearing S.P.Kottai, driver of the 7th respondent vehicle came from the opposite direction by riding a two wheeler bearing Registration No. TN 67 BJ 3659 in a rash and negligent manner and dashed against the deceased vehicle. In both the two wheeler, there were pillion riders and due to the accident, in both two wheelers, the riders and pillion riders sustained injury and all of them succumbed to injuries. Subsequently, they were brought to the hospital, where they were declared as dead. A case was also registered in Crime No.148 of 2020 under Section 279 and 304(A) of IPC. Since the seventh respondent two wheeler was insured with the appellant, as an insurer, the appellant is liable to pay compensation to the respondents 1 to 6, who are the legal representatives as well as dependants of the deceased and they claimed a sum of Rs.45 lakhs as compensation on various heads.



WEB COPY

5. The case of the appellant herein/the second respondent therein is that the seventh respondent rode the two wheeler bearing Registration No. TB 67 BJ3659 with moderate speed and by observing the traffic rules and regulations. Only the rider of the opposite vehicle bearing Registration No. TB 65U 4712 rode the vehicle in a rash and negligent manner and dashed against the seventh respondent vehicle and both the vehicles are two wheelers and both the vehicles were driven by the riders along with pillion riders and due to the accident, four persons were thrown away from the vehicle and sustained injuries and succumbed to injuries and hence, the seventh respondent is not responsible for the accident and the accident had not occurred due to the rash and negligent riding of the 7th respondent vehicle and the accident had occurred due to the rash and negligent riding of the opposite vehicle. The vehicle was not insured with the appellant during the relevant point of time and the seventh respondent did not possess valid driving licence to ride the two wheeler. Therefore the appellant is not liable to pay the compensation. Therefore the claim petition filed by the claimants/respondents 1 to 6 are liable to be dismissed.

6. The dependants of the deceased four persons have filed claim petitions



WEB COPY

separately and all the four claim petitions were taken up together and tried together and the Tribunal had passed a common order.

7. During enquiry, on the side of the respondents, claimants in all the cases together, five witnesses were examined as P.W.1 to P.W.5 and 48 documents were marked as Ex.P1 to Ex.P48 and on the side of the appellants, two witnesses were examined as R.W.1 and R.W.2 and four documents were marked as Ex.R1 to Ex.R4 besides one document was marked through witness as Ex.X1. After completion of examination of the witnesses and conclusion of the enquiry, hearing the arguments advanced on either side, the Tribunal found that the accident had occurred only due to the rash and negligent riding of the rider of the two wheeler bearing Registration No. TN 67 BJ 3659 namely, the rider of the seventh respondent herein and however, at the time of accident, the rider of the seventh respondent did not possess valid driving licence and however, admitted that the said vehicle was insured with the appellant. Therefore the Tribunal ordered to recover the award passed by the Tribunal from the owner of the offending vehicle. The Tribunal directed to pay award amount of Rs.69,27,800/- and challenging the same, the appellant Insurance Company has filed the present



WEB COPY

8.The case of the appellant is that the accident would occur due to the rash and negligent driving of the rider of the 7th respondent vehicle and the accident had occurred only due to the rider of the two wheeler bearing Registration No.TN 65 U 4712 and the said vehicle was not insured with the appellant and the rider of the offending vehicle did not possess valid driving licence at the time of accident. Further, at the time of accident, the deceased in this appeal was not employed and therefore, the tribunal wrongly fixed Rs. 33,000/- and since at the time of accident he was not earning any income and the Tribunal also wrongly given the benefit of 40% future prospects and the documents produced by the respondents/claimants are not during the relevant point of time of the accident. Further the claimants in this appeal claimed only Rs.45 lakhs, but the Tribunal has awarded a sum of Rs.69,27,800/- over and above the claim of the claimants. Therefore the award passed by the Tribunal is liable to be set aside.Further, the rider of the offending vehicle did not possess valid driving licence and the seventh respondent allowed the person having no valid driving licence to drive the vehicle.Therefore the seventh respondent alone



WEB COPY

is responsible to pay the compensation and the Tribunal has wrongly ordered to pay the compensation by the appellants and since the seventh respondent has violated the policy condition and so the appellant is not liable to pay the compensation even assuming that the award passed by the tribunal is exorbitant and does not reflect the just compensation. Therefore the award passed by the Tribunal is liable to be set aside. Further the learned counsel for the appellant would submit that the award is over and above the income tax ceilings and the Tribunal has not ordered reduction of income tax and therefore 20% of the award amount has to be deducted towards income tax.

9. None appeared on behalf of the seventh respondent-insured.

10. The learned counsel for the claimants/respondents 1 to 6 would submit that the claimants have clearly proved by leading oral and documentary evidence and a case was also registered only against the rider of the 7th respondent vehicle, since the rider also died, the case was closed and further there is no contra evidence lead in either by the appellant or by the 7th respondent stating that the accident had occurred only due to the rash and negligent riding of



WEB COPY

the rider of the opposite vehicle namely, the deceased and also the vehicle is insured and the appellant also not denied the coverage of insurance policy. It is well settled that if there is any violation of policy condition, then the insurer has to pay the compensation at the first instance and then to recover the same from the owner of the vehicle and the Tribunal has also considered the same and rightly gave a direction that the appellant is liable to pay the compensation at the first instance and liberty is given to the appellant to recover the same from the owner of the vehicle, ie, from the seventh respondent. Further he would submit that at the time of accident, the deceased was working in Jiddah Ksa, an United Arab Emirate country as Fork Lift Driver and earned a sum 1500 riyas which is equivalent to Rs.33,000/- p.m and the claimants have also obtained certificate from the competent authority and also produced the certificate in which, it is clearly stated that the deceased was working as Fork Lift Driver and was earning 1500 Riyas which is equivalent to Rs.33,366/-Indian Rupees.and therefore, it is clear that he was employed in a private concern and the deceased was aged 31 years at the time of accident and the Tribunal also considering the same, added 40% of the monthly income towards future prospects and applied multiplier of '16' and also granted a sum of Rs.40,000/- to the first



WEB COPY

respondent /wife towards loss of consortium and Rs.40,000/- each to the respondents 2 to 6 towards loss of love and affection totalling to Rs.2,40,000/- and for transport expenses a sum of Rs.5000/- and for funeral expenses at Rs. 15,000/- and for loss of estate at Rs.15,000/- totalling to Rs.69,27,800/-.The Tribunal appreciated the oral and documentary evidence and rightly fixed the liability on the appellant and also pay and recovery was ordered and the compensation awarded by the tribunal is just and fair compensation and there is no merit in the appeal and the same is liable to be dismissed.

11.Heard both sides and perused the records.

12.The points that arose for consideration in this appeal is as follows:

- 1.Whether the liability fixed by the Tribunal on the appellant is correct?
- 2.Whether the quantum fixed by the Tribunal reflects just and fair compensation?
- 3.Whether the appellant is entitled to deduct 20% in the total income towards income tax?



WEB COPY **Point No.1**

13. Though the appellant Insurance Company took a stand before the Tribunal that the accident had occurred only due to the rash and negligent riding of the rider of the opposite vehicle and not on the part of the rider of the 7th respondent vehicle and the offending vehicle was not insured with the appellant-Insurance Company and also the rider of the 7th respondent vehicle did not possess valid driving licence, from the oral and documentary evidence, the Tribunal finds that the said vehicle was insured with the appellant and the accident had occurred only due to the rash and negligent riding of the rider of the seventh respondent vehicle and a case was registered against the rider of the 7th respondent vehicle. However, the Tribunal held that the accident had occurred only due to the rash and negligent riding of the seventh respondent vehicle and the same was insured with the appellant and further the rider of the seventh respondent vehicle did not possess valid driving licence and therefore, as an insurer, the appellant is liable to pay the compensation at the first instance and has given liberty to the appellant to recover the same from the 7th respondent. Further the appellant has not taken any ground that the Tribunal has erroneously held that the accident had occurred only due to the rash and negligent riding of



the first respondent. Regarding the liability, they have taken the ground that the rider of the seventh respondent vehicle did not possess valid driving licence. Therefore the tribunal has rightly awarded to pay and recover. Therefore as far as the liability is concerned, the claimants have proved that the accident had occurred only due to the rash and negligent riding of the rider of the seventh respondent and the same is insured with the appellant and therefore, as an insurer, the appellant is liable to pay the compensation. Since the driver of the seventh respondent does not possess valid driving licence, the appellant is liable to pay the said award at the first instance and for non possessing of driving licence by the rider of the offending vehicle, the appellant is at liberty to revoke the same from the owner of the offending vehicle namely, the seventh respondent. The first point is answered accordingly and therefore, this Court does not find any reason to interfere with the finding given by the Tribunal in this regard.

14.Point No.2:

According to the appellant, the deceased was not employed and was not earning any income and there is no material to prove that at the time of accident,



WEB COPY

the deceased was employed and earning Rs.33,000/- and though the document produced by the claimants Ex.A10 Passport and Ex.A9 Salary certificate are not during the relevant period, the Tribunal has erroneously taken the monthly income at Rs.33,000/- and the Tribunal has failed to take note of the fact that Ex.A9 has not covered the accident period.

15.The case of the respondents- claimants is that the deceased was working in United Arab Emirates as Fork Lift driver and was earning a sum of 1500 Riyas which is equivalent to Rs.33,366/- in Indian Rupees. The deceased has been travelling to Arabia from 2007 and he was working there till the accident and used to come occasionally to India and go back to Arabia and he was continuously working there. The entry made in Ex.P10 will prove the same. In the month of January 2000, the deceased came to India ie., on 1.1.2020 as per the entry made in Ex.P10 and thereafter due to Corona and also ban in force, he could not go back immediately while he was in India and at the point of time, met with an accident on 24.8.2020 and had the accident not happened, he could have gone to United Arab Emirates after lifting ban period and he could have continued to be in service there. Therefore the tribunal considered the fact and



WEB COPY

also the entry made in Ex.P10 which shows that the deceased used to go to Arabia and coming to India and in a short period he would go back to Arabia. Further the claimants obtained the salary certificate from the employee which was marked as Ex.P9 which shows that he was in Arabia and working as Fork Lift Driver, for which, a monthly salary of 1500 Riyas which is equivalent to Rs. 33,366/- Indian Rupees was paid and also considering the fact that the age of the deceased at the time of accident is 31 years proper multiplier was applied and also since the deceased was employed in a private concern was earning a fixed salary, future prospects was added and proper multiplier was adopted and correctly awarded the compensation under the head of loss of dependancy and also awarded other heads which are only just and reasonable and there is no perversity in the order of the Tribunal.

16.A reading of the materials show that the deceased died due to the accident and that fact has not been deined by the appellant and since the deceased died due to the accident at the age of 31 years, in order to prove the income one of the claimants was examined as a witness and he has clearly spoken about the emploment and income of the deceased and one of the



WEB COPY

document which is marked as Ex.P10 passport of the deceased and a perusal of the same would show that the deceased travelled from India to United Arab Emirates from 2007 almost every year and there are entries that the deceased came to India just six months prior to the accident due to Covid there was a ban for travel and within a short period he would go back which would further strengthen Ex.P10. The claimants have also marked Ex.P9 Salary Certificate which shows that prior to the accident and while the deceased was in Arabia he was working as Fork Lift Driver and getting a monthly salary of 1500 Riyas which is equivalent to Rs.33,366/- in Indian rupees. Though the accident occurred on 24.8.2020 in India, the main contention of the learned counsel for the appellant is that at the time of accident, the deceased was not employed and the document produced by the claimants did not cover the accident period. However a perusal of Ex.P10-Passport of the deceased shows that there are several entries for travelling from India to United Arab Emirates and from United Arab Emirates to India. Therefore the deceased had gone on several occasions which support the case of the claimants and further Ex.P9 clearly shows that the deceased was getting salary of 1500 Riyas which is equivalent to Rs.33,366/- in Indian Rupees. Though the appellant put a suggestion that they have not proved



WEB COPY

contra to the effect that the deceased never gone to southy Arabia and never worked there and never earned salry as alleged, in the absence orf any contra evidence, the Tribunal rightly considered Ex.A9 andEx.A10 and fixed the monthly salary at Rs.33,000/-. Further this Court also, as an appellate Court, on re-appreciating the evidence, did not find any erroneous in the finding of the Tribunal. However, on independently re-appreiating the documents Ex.P9 and Ex.P10 and in the absence of any contra evidence from the appellant, this Court finds that prior to accident, the deceased was working at Southy Arabia as Fork Lift Driver and was earning 1500 Riyas. The last entry made in Ex.P10 Passport is on 15.1.2020, whereas, the accident occurred only on 24.8.2020 Though the appellant contended that for the past 8 months, the deceased was in India and there is no proof that he was working in southy Arabia at the relevant point of time, the true fact is that during the relevant point of time the entire world suffered with pandemic Covid 19 and there was ban for travelling from one country to another country. Since the last entry ie, 15.1.2020 covered Covid 19 pandemic which shows that the deceased came to India on 15.1.2020 and the accident occurred only on 24.8.2020 and from the other entries in Ex.P10 earlier to 2020, he made several visits and upon a reading of Ex.P9 salary certificate



WEB COPY

issued by the employer to the deceased, this Court does not take a different stand that the deceased was unemployed at the time of accident .Therefore considering the documents Ex.P9 and Ex.P10 and in the absence of any contra evidence for the purpose of calculating the loss of dependency, considering the break in the employment, this Court fixed the monthly income at Rs.30,000/- and by adding 40% of the monthly income towards future prospects, the monthly income comes to Rs.42,000/- and by deducting $\frac{1}{4}^{\text{th}}$ of the monthly income towards personal expenses, the monthly salary comes to Rs.(Rs.42,000/- -Rs.10,500/- =Rs. 31,500/-).Therefore the loss of dependancy is Rs.31,500 x 12 x 16 = Rs. 60,48,000/-.

17.Though the claimants claim only Rs.45 lakhs as compensation, there is settled proposition of law and further development in law that even if the claimants are claiming lesser claim, based on materials, if the tribunal found that the claimants are entitled to more than that of the amount claimed which reflects just and fair compensation, there is no impediment to the Tribunal to award more than the amount which was claimed in the claim petition. Admittedly, in this case, the deceased was at the time of accident 31 years and he was working in United



WEB COPY

Arab Emirates as Fork Lift Driver and earning a sum of 1500 Riyas, this Court fixed the monthly salary at Rs.30,000/- as monthly income and computed the loss of Dependency at Rs.60,48,000/- as cited supra. Further the award of the Tribunal for loss of consortium at Rs.40,000/- to the first claimant-wife and for loss of love and affection to the claimants 2 to 6 each at Rs.40,000/-(totalling to Rs.2,40,000/-), for transport expenses at Rs.5,000/-, for funeral expenses at Rs.15,000/-, for loss of estate at Rs.15,000/- seems to be just and reasonable and the same stands confirmed In all the claimants/respondents 1 to 6 are entitled to a sum of Rs.63,23,000/- towards compensation for the death of the deceased which is tabulated as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of dependency	Rs. 66,52,800/-	Rs. 60,48,000/-	reduced
2	For loss of consortium to the first claimant wife	Rs.40,000/-	Rs.40,000/-	same
3	For loss of love and affection to the respondents 2 to 6	Rs.2,00,000/-	Rs.2,00,000/-	same
4	For transport charges	Rs.5,000/-	Rs.5,000/-	Same



WEB COPY

5.	For funeral expenses	Rs.15,000/-	Rs.15,000/-	same
6	For loss of estate	Rs.15,000/-	Rs.15,000/-	Same
7	Total	Rs. 69,27,800/-	Rs. 63,23,000/-	reduced

18.Point No.3

The learned counsel for the claimant opposed to deduct the income tax and he specifically submitted that the compensation is awarded to recompense for the death caused due to the “act of tortfeasor”. Therefore, he submitted that the present practice of deducting the income tax from deceased income while calculating the compensation is against the law as laid down by the Hon'ble Supreme Court and the various Division Bench of the various High Courts. He elaborated the above argument on the basis of the following judgment:

18.1.In the case of *All India Reporter Ltd. v. Ramchandra D. Datar*, reported in AIR 1961 SC 943.

The Hon'ble Three Member Bench of the Supreme Court has not accepted the contention that there should



WEB COPY

be a deduction of the income tax while calculating the compensation payable to an employee by an employer for wrongful termination of the employment in the following

3. We are not concerned to decide in this appeal whether in the hands of the respondent the amount due to him under the decree, when paid, will be liable to tax; that question does not fall to be determined in this appeal. The question to be determined is whether as between the appellant company and the respondent the amount decreed is due as salary payment of which attracts the statutory liability imposed by Section 18. The claim decreed by the civil court was for compensation, for wrongful termination of employment, arrears of salary, salary due for the period of notice and interest and costs, less withdrawals on salary account. The amount for which execution was sought to be levied was the amount decreed against which was set off the claim under the cross-decree. A substantial part of the claim decreed represented compensation for wrongful termination of employment and it would be difficult to predicate of the claim sought to be enforced what part thereof if any represented salary due. Granting that compensation payable to an employee by an employer for wrongful termination of employment be regarded as in the nature of salary, when the claim is merged in the decree of the court,



WEB COPY

the claim assumes the character of a judgment-debt and to judgment-debts Section 18 has not been made applicable. The decree passed by the civil court must be executed subject to the deductions and adjustments permissible under the Code of Civil Procedure. The judgment-debtor may, if he has a cross-decree for money, claim to set off the amount due thereunder. If there be any adjustment of the decree, the decree may be executed for the amount due as a result of the adjustment. A third person who has obtained a decree against the judgment-creditor may apply for attachment of the decree and such decree may be executed subject to the claim of the third person : but the judgment-debtor cannot claim to satisfy, in the absence of a direction in the decree to that effect the claim of a third person against the judgment-creditor, and pay only the balance. The rule that the decree must be executed according to its tenor may be modified by a statutory provision. But there is nothing in the Income Tax Act which supports the plea that in respect of the amount payable under a judgment-debt of the nature sought to be enforced, the debtor is entitled to deduct income tax which may become due and payable by the judgment-creditor on the plea that the cause of action on which the decree was passed was the contract of employment and a part of the claim decreed represented



WEB COPY

amount due to the employee as salary or damages in lieu of salary.

18.2.The Hon'ble Division Bench of the Allahabad in **[2012] 211 TAXMAN 369(AII)** in the case of ***Commissioner of Income tax Vs. The Oriental Insurance Co. Ltd.***, has held that the amount of compensation under the Motor Vehicle Act do not come within the definition of income and has held as follows in Paragraph No.40:

40. To our opinion, the award of compensation under motor accidents claims cannot be regarded as income. The award is in the form of compensation to the legal heirs for the loss of life of their bread earner.

18.3.The Hon'ble Thiru. Justice J.B.Padriwala, (as he then was) leading the Division Bench of Gujarat High Court, after eloquent discussion has held as follows:

73.The upshot of the aforesaid discussion is that the compensation received under the Motor Vehicle act is either on account of loss of earning capacity on account of death or



WEB COPY

injury or on account of pain and suffering and such receipt is not by way of earning or profit. The award of compensation is on the principle of restitution to place the claimant in the same position in which he would have been as the loss of life or injury would not have been suffered.

18.4.From the above discussion, this Court accepts the argument of the learned counsel for the claimant and declines to deduct 10% of the amount as claimed by the learned counsel appearing for the insurance company and holds that the claimant is entitled to receive the entire compensation without any income tax deduction. This point is answered accordingly.

19.In fine, the Civil Miscellaneous Appeal is partly allowed and the award amount is reduced from Rs.69,27,800/- to Rs.63,23,000/- with interest at the rate of 7.5% pa from the date of claim petition till the date of realisation. The appellant Insurance Company is directed to pay the compensation to the claimants/Respondents 1 to 6 at the first instance and then to recover the same from the 7th respondent, the owner of the offending vehicle. The appellant Insurance Company is directed to deposit the above said award amount with



WEB COPY

accrued interest and costs, less the award amount, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first claimant wife is entitled to Rs.30,00,000/- and claimants 2,3 and 6, who are minors, are each entitled to Rs.10 lakhs and fourth claimant is entitled to Rs.1 lakh and 5th respondent is entitled to Rs.2,23,000/- with proportionate interest and costs. The major claimants 1,4, and 5 are permitted to withdraw their share in the award amount by filing necessary application before the Tribunal. The Tribunal is directed to deposit the share of the minor claimants 2,3 and 6/respondents 2,3 and 6 in any one of the nationalised bank, in an interest bearing fixed deposit, initially for a period of three years, renewable thereafter, till they attain majority. The first respondent/mother and guardian of the claimants 2,3 and 6 is permitted to withdraw interest from the deposits made in the name of minor claimants 2,3 and 6 once in three months, directly from the Bank and utilize the same for the welfare of the children. No costs. Consequently, connected Miscellaneous is closed.

(P.V.,J.) (K.K.R.K.,J.)
04.09.2024



WEB COPY

NCS : Yes/No

Index : Yes / No

Internet : Yes / No

vsn

To

The Motor Accidents Claims Tribunal
(Special District Court)
Madurai.

Copy to

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



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

vsn

JUDGMENT MADE IN
C.M.A(MD)No.609 of 2024
and
C.M.P(MD)No.7657 of 2024

04.09.2024