BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	09.10.2023
Pronounced on	05.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A(MD)No530 and 571 of 2019
and
C.M.P.(MD)Nos.3802 and 3804 of 2020 and 6956 of 2019

C.M.A(MD)No.530 of 2019

1.K.Latha
2.K.Sanjgna
3.Minor K.Chandru
[minor represented by the first appellant
his mother and natural guardian]
4.P.Sudha
5.M.Palani ... Appellants / Petitioners

-vs-

1.C.Suthakar
2.J.Rajendran

3.United India Insurance Company Limited,
Branch Office,
Represented by Branch Manager,
111, 19/1 Kalpana Complex,
Birds Road, Cantonment,
Tiruchirapalli-620001

4.United India Insurance Company Limited,
Divisional Office,
Xavier Building, P.W.D Road,
Nagercoil, Kanyakumari District. ... Respondents/Respondents

C.M.A(MD)No.571 of 2019

1.United India Insurance Company Limited,
Branch Office,
Represented by Branch Manager,
111, 19/1 Kalpana Complex,
Birds Road, Cantonment,
Tiruchirapalli-620001

2.United India Insurance Company Limited,
Divisional Office,
Xavier Building, P.W.D Road,
Nagercoil, Kanyakumari District. ... Appellants / Respondents 3 and 4

-vs-

1.K.Latha
2.K.Sanjgna
3.Minor K.Chandru
[minor represented by the first respondent
his mother and natural guardian]
4.P.Sudha
5.M.Palani ... Respondents 1 to 5/Petitioners

6.C.Suthakar

7.J.Rajendran ... Respondents 6 & 7/Respondents 1 & 2

COMMON PRAYER : Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.04.2019 passed in MCOP No.63 of 2019 before the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Kanyakumari.

C.M.A(MD)No.530 of 2019

For Appellants	: Mr.T.Lajapathi Roy Senior Advocate for M/s.Lajapathi Roy Associates
For R1 & R2	: No Appearance
For R3	: Mr.C.Jawahar Ravindran
For R4	: Mr.G.Prabhu Rajadurai

C.M.A(MD)No.571 2019

For Appellants	: Mr.G.Prabhu Rajadurai
For R1, R2, R4 & R5	: Mr.T.Lajapathi Roy Senior Advocate for M/s.Lajapathi Roy Associates
For R3	: Minor
For R6 & R7	: No Appearance

COMMON JUDGMENT

(Judgment of the Court was made by RMT.TEEKAA RAMAN, J.)

C.M.A.(MD)No.530 of 2019 is filed by the claimants seeking enhancement of compensation, whereas, C.M.A.(MD)No.571 of 2019 is filed by the Insurance Company challenging the award on the point of negligence and quantum.

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The claim petitioners have filed M.C.O.P.No.63 of 2019 before the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Kanyakumari seeking compensation for the pecuniary loss sustained by the family due to the death of one Karthick in the road accident on 24.10.2015. Initially, this application has been filed before the learned Special Judge for Forest Offence Cases at Nagercoil in M.C.O.P.No.31 of 2016 and subsequently, it was transferred to the Additional District Court and renumbered as M.C.O.P.No. 63 of 2019.

4.The first claim petitioner is the wife, the claim petitioners 2 and 3 are the children and the claim petitioners 4 and 5 are the parents of the deceased.

5.The case of the claim petitioners is that the deceased Karthick, who is the husband of first claimant was working as a Scientist Engineer in Government of India, Department of space, Liquid Propulsion Systems Centre, Mahendragiri and earned Rs.1,50,594/- per month (for September 2015, the last monthly salary of the deceased). The deceased is a recipient of awards in ISRO. On 24.10.2015 at about 07.50 in the morning, the deceased was riding his motor bike on the left side (northern half) of Parvathipuram Vadasery main road from western direction towards eastern direction and he just passed a turning in Willian Hospital Junction at Krishnankovil. Whileso, a Bolero Maxi Truck bearing Registration No.TN-72-AT-5337 driven by the driver, the first respondent in a rash and negligent manner came from the opposite direction over taking a TATA 407 vehicle near a curve violating the traffic rules and dashed against the deceased and caused his death at the spot. The Tribunal awarded an amount of Rs. 1,18,78,000/- as compensation after deducting 10 percentage for contributory negligence and 30% for income tax in income tax deducted salary.

6.Aggrieved against the quantum of the award, the claim petitioners have filed the above C.M.A(MD)No.530 of 2019 challenging the award on the point of negligence and quantum and the Insurance Company has filed C.M.A(MD)No. 521 of 2019.

7.Mr.T.Lajapathi Roy, learned Senior Counsel appearing on the behalf of appellants in C.M.A(MD)No.530 of 2019, would contend that the deduction of 10% for contributory negligence on the deceased is unwarranted, since he was using helmet and the deduction of 30% of income tax is excessive and there is double income tax deduction and deduction that are permissible under the Motor Vehicles Act are not given due consideration by the Tribunal.

8.Per contra, Mr.G.Prabhu Rajadurai, learned counsel on behalf of the Insurance Company/respondents 3 and 4 in C.M.A(MD)No.530 of 2019 (appellants in C.MA.(MD)No.571 of 2019) would contend that due to the rash and negligent driving of the deceased, the accident has been taken place and the sketch demonstrated that it is in the middle of the road and therefore, the contributory negligence at the rate of 10% fixed by the Tribunal has to be enhanced at the rate of 50% and also challenged the quantum.

9.Heard both sides. Perused the records.

10.Before the Tribunal, on behalf of the claim petitioners, P.W.1 to P.W.4 were examined and Ex.P.1 to Ex.P.35 were marked. On behalf of the respondents, R.W.1 to R.W.5 were examined and Ex.R.1 to Ex.R.3 were marked and also marked Ex.X.1 to Ex.X.4.

11.Based upon the oral and documentary evidence, the Tribunal has come to the conclusion that the deceased was not wearing helmet at the time of the accident and the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle (R.W.5) and hence, fixed the contributory negligence at the rate of 90% : 10% and calculated the average income of the deceased based upon Ex.P.13 and Ex.P.34 and arrived at the average monthly income at Rs.1,23,300/- and deducted 30% towards income tax and also added 30% towards future prospects and deducted ¼ and awarded Rs.1,31,28,000/- towards loss of income.

12.Perusing the occurrence witness-P.W.3, we find that the version of P.W.3 in the witness box appears to be acceptable and reasonable. On a perusal of Ex.P. 2-rough sketch, Ex.P.4-M.V.I. report and Ex.P.7-charge sheet filed by the Investigation Officer, the place of occurrence has been marked by the police between the center line and the northern edge of the northern half of the road on which, the deceased was riding his motorcycle from west to east direction. Admittedly, the offending vehicle truck was coming from the opposite direction, the place of occurrence also seen that the truck driver was on the wrong side, due to the impact of the accident, as could be seen from Ex.P.4-M.V.I. report, the left side front bumper of the offending vehicle was damaged. So also, from Ex.P.7-charge sheet, we find that the deceased was riding his motor bike bearing Registration No.TN-74-AT-5337 in a rash and negligent manner and without making sound horn, from the eastern direction towards western direction, on the same road, overtook a vehicle that went before him and dashed against the motor bike and caused injuries and death of the deceased.

13.Yet another point is that Ex.P.25 is the C.D obtained from the police under the Right to Information Act also supports the case of the oral evidence of P.W.3-occurrence witness and hence, we find that the version of P.W.1 is clear and cogent and duly corroborated by the documentary evidence from the police as well as from the photographs demonstrated before this Court and thus, we find that the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle.

14.The learned counsel for the Insurance Company drew our attention to the evidence of the driver of the offending vehicle (R.W.5), at the instance of the Insurance Company, he was called upon to depose in support of the Insurance Company. Though he was arrayed as a party as the first respondent before the Tribunal, he has chosen to remain *ex parte* without filing the written statement. However, he has come forward to enter into the witness box and would depose that at the time of the accident, the deceased Karthick was not wearing any helmet. However, during the cross examination, he stated that he had put the helmet in hanging position in the two wheeler handle bar.

15.Per contra, learned Senior Counsel drew our attention to the police photographs to show that the helmet was present and hence, we find that the evidence of R.W.5-driver is only a self serving statement so as to save his skin at the instance of the Insurance Company. Furthermore, we find that there is a dent in the helmet also and hence, we find that the version of R.W.5 is tainted with *malafide* and has to be discorded as a self serving statement.

16.In view of the clear and cogent evidence of P.W.3-occurrence witness, which was duly corroborated by documentary evidence, as stated supra, we are inclined to hold that the version of P.W.3 is more probable and found to have been sustainable in law. Accordingly, we hold that the total liability of negligence is fixed by the Tribunal on the offending vehicle and deduction of 10% as a contributory negligence on the part of the deceased is totally unwarranted and the finding to that effect by the Tribunal and deduction of 10% in the quantum by the Tribunal are hereby stands vacated. Consequently, 10% of deduction made in the award is also set aside and this point is answered accordingly.

17.On the point of quantum of compensation, we have heard the rival submissions.

18.On a perusal of Ex.P.13 and Ex.P.34, we find that the date of the accident is 24.10.2015 and as per the service records, the date of birth of the deceased is 16.06.1966. Hence, on the date of the accident, the deceased had completed 49 years and therefore, multiplier of '12' has been adopted as per the ***Sarla Verma's case*** and future prospects, 30% has been included as per the ***Pranay Sethi's case*** and deduction of 1/4 has been included since there are five dependents.

19.On coming to the quantum of compensation, the Tribunal has rightly appreciated the salary certificate and pay slip given by the claim petitioners in support of their claim to show and demonstrate that the salary of the deceased is of the previous year. The accident has taken place on 24.10.2015 and therefore, the Tribunal has rightly taken the average six months salary preceding the date of the accident, which reads as under:

> “ம.சா.ஆ.34 மற்றும் ம.சா.ஆ.13 ஆகியவற்றில் இணைக்கப்பட்டுள்ள அக்டோபர் 2014 முதல் செப்டம்பர் 2015 வரை உள்ள pay slip-லிருந்து அக்டோபர் 2014 முதல் மார்ச் 2015 வரை உள்ள pay slip-களை எடுத்துவிட்டு ஏப்ரல் 2015 முதல் செப்டம்பர் 2015 வரையிலான 6 மாத காலத்தில் அவர் பெற்ற மாத வருவாயை அடிப்படையாகக் கொண்டு அவரது மாத வருவாயை நிர்ணயிக்கலாம் என்று இந்நீதிமன்றம் கருதுகிறது. இந்த விபத்தினால் 2015 அக்டோபரில் இறப்பதற்கு

முன்பாக இந்த விபத்தில் இறந்துபோன கார்த்திக் கடைசி 6 மாதங்களில் கீழ்க்கண்டவாறு மாத வருவாயை பெற்றிருக்கிறார்.

ஏப்ரல் 2015 .. 1,77,243 -[21,187 + 423 + 211 + 156] = 1,55,266

மே 2015 .. 1,35,698 -[21,187 + 423 + 212 + 156] = 1,13,720

ஜுன் 2015 .. 1,35,698 -[21,188 + 424 + 212 + 156] = 1,13,718

ஜுலை 2015 .. 1,39,512 -[22,829 + 457 + 228 + 156] = 1,15,842

ஆகஸ்ட் 2015 .. 1,39,512 -[22,829 + 447 + 228 + 156] = 1,14,842"

Hence, the average monthly salary of Rs.1,23,298 has rounded of as Rs. 1,23,300/-, as calculated by the Tribunal. This amount is prior to deduction of income tax. It is settled law that in respect of calculating the compensation, the actual income of the deceased, less the income tax has to be taken into account. The provident fund and pension and the insurance amount from the accident and the quantum for calculating the compensation to be taken, the Tribunal has rightly adopted the same and awarded Rs.1,31,28,000/- towards loss of income; Rs.40,000/- towards consortium for the wife; Rs.15,000/- towards loss of estate; and Rs.15,000/- towards funeral expenses. In respect of the minors and parents, this Court has refixed it as Rs.1,00,000/- each towards loss of love and affection for the minors and Rs.50,000/- each towards loss of love and affection for parents and also awarded Rs.15,000/- towards transportation charges.

20.In view of the above discussion, the compensation is reworked in the manner hereunder:

Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	**Rs.1,31,28,000 /-**	**Rs.1,31,28,000/-**	**Confirmed**
2.Loss of Consortium for the wife	**Rs. 40,000/-**	**Rs.40,000/-**	**Confirmed**
3.Loss of love and affection for the minors	**................**	**Rs.2,00,000/- Each Rs.1,00,000/-**	**Awarded**
4.Loss of love and affection for the parents	**..................**	**Rs.1,00,000/- Each Rs.50,000/-**	**Awarded**
5.Loss of estate	**Rs. 15,000/-**	**Rs. 15,000/-**	**Confirmed**
4.Funeral expenses	**Rs. 15,000/--**	**Rs. 15,000/-**	**Confirmed**
5.Transport expenses	**................**	**Rs. 15,000/-**	**Awarded**
Total Compensation	**Rs. 1,31,98,000/-**	**Rs.1,35,13,000/-**	**Enhanced**

Since the Tribunal has fixed the contributory negligence at 10% on the deceased, this Court has rejected the same and hence, the claimants are entitled to get Rs.1,35,13,000/-

21.In fine, C.M.A(MD)No.530 of 2019 filed by the claimants is partly allowed to the extent indicated above and the compensation awarded by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Nagercoil in M.C.O.P.No.63 of 2019, dated 04.04.2019 is modified from Rs.1,31,98,000/- to Rs.1,35,13,000/- with interest at the rate of 7.5% p.a from the date of claim petition till the date of realization.

22.C.M.A(MD)No.571 of 2019 filed by the Insurance Company is hereby dismissed.

23. The Insurance company is directed to deposit the modified award amount with accrued interest and costs, less the award amount already deposited, if any, within a period of eights weeks from the date of receipt of a copy of this order. The apportionment of the amount shall be as stated by the Tribunal. On such deposit being made, the respondents 1, 2, 4 and 5 are entitled to withdraw their respective share amount along with proportionate accrued interest and cost, less the amount already withdrawn, if any. The Tribunal shall deposit the share of the third claimant, who is the minor claimant, in a Fixed Deposit in any one of the Nationalised Bank, which shall be renewed periodically, till he attains majority.

The first claimant-mother of the minor is permitted to withdraw the interest from the share of the minor child, viz, the third claimant, once in three months from the bank directly. No costs. Consequently, connected miscellaneous petition is closed.

[T.K.R., J.] [P.B.B., J.]

05.01.2024

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

To
1. The Motor Accident Claims Tribunal
Chief Judicial Magistrate, Kanyakumari.

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

RMT.TEEKAA RAMAN, J.
and
P.B.BALAJI, J.

sji

C.M.A(MD)No530 and 571 of 2019
and
C.M.P.(MD)Nos.3802 and 3804 of 2020 and 6956 of 2019

05.01.2024