BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)No.1112 of 2021
and
C.M.P(MD)No.10644 of 2021

1.The Branch Manager,
M/s.United India Insurance Co., Ltd.,
Marthandam Branch,
No.2/60/1 P.P.K.Building, Main Road,
Marthandam,
(Insurer of the Lorry T.N.74-A-8700
Policy No.0919003115 P.10619022)
Kanyakumari District. ...Appellant/3rd Respondent

2.The Branch Manager,
M/s.United India Insurance Co., Ltd.,
Marthandam Branch,
No.2/60/1 P.P.K.Building, Main Road,
Marthandam,
(Insurer of the Tata Sumo Car
KL-01 N-7444
Policy No.0919003115 P.105251561)
Kanyakumari District. ... Appellant/5th Respondent

Vs.

1.Mrs.R.Thankam

2.Mr.S.Sivakumar

3.Ms.S.Nisha

4.Minor.S.Ajith

5.Mrs.Maria Rethnam @ Rethnam ...Respondents/Claimants

6.Mr.M.Sivakumar ...Respondent/1st Respondent

7.Mrs.D.Induja ...Respondent/2nd Respondent

8.Mr.Arun Dhas ...Respondent/4th Respondent

(Notice to the respondents 6 & 7 is given up as no relief is claimed against them)

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against Fair and Decreetal order dated 22.03.2021 made in M.C.O.P.No.37 of 2017 on the file of the Motor Accident Claims Tribunal (Subordinate Cout, Kuzhithurai).

For Appellants : Mr.B.Rajesh Saravanan

For R1, R3 to R5 : Mr.C.Suresh Kannan

For R6 & R7 : Given up

JUDGMENT

[Judgment of the Court was made by **K.K. RAMAKRISHNAN.J.]**

Being aggrieved over the award passed by the Motor Accident Claims Tribunal-cum-Subordinate Court, Kuzhithurai in M.C.O.P.No.37 of 2017, dated 22.03.2021, the Insurance Company has filed this appeal.

2. The learned counsel appearing for the Insurance Company confines the arguments to the "negligence aspect alone" and there was "no challenge on the quantum".

3.The claimants filed a claim petition in M.C.O.P.No.37 of 2017, on the file of the Motor Accident Claims Tribunal-Subordinate Court, Kuzhithurai claiming a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) for the death of one C.Selvaraj in the accident that occurred on 07.05.2016. By the order, dated 22.03.2021, the Tribunal awarded a sum of Rs.21,22,656/- *(Rupees Twenty One Lakhs Twenty Two Thousand Six Hundred and Fifty six only)* as compensation.

4.Facts of the Case:-

According to the claimants, on 07.05.2016 at about 02.00 a.m., while the deceased was driving the vehicle TATA SUMO bearing Registration No.KL-01-N-7444 along with 12 others from Nagercoil to Marthandam it had suddenly crossed the middle line and dashed on the opposite side vehicle namely lorry bearing Registration No.TN-74-8700 and due to which, the deceased Selvaraj succumbed to his injuries and other persons travelled in the TATA Sumo were also injured. The 6th respondent is the driver of the lorry, the 7th respondent is the owner of the lorry, the first appellant is the insurer of the lorry, the 8th respondent is the owner of the TATA sumo and the second appellant is the insurer of TATA sumo. Based on the complaint given by the 6th respondent, case was registered in Cr.No.329 of 2016 by the Eraniel Police.

5.The 7th respondent, who is the owner of the lorry, filed the counter and denied all the averments made in the claim petition and contended that due to the negligence of the deceased, the accident occurred and the police has also registered the case against the deceased. The appellants/insurance company in their counter has stated that it is the deceased without following the traffic rules suddenly crossed to the wrong side of the road and thereby caused the accident due to his rash and negligent driving. The claim is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, to prove the case of the claimants, P.W.1 to P.W.3 were examined and marked Ex.P1 to Ex.P20. On the side of the respondents R.W.1 was examined and Ex.R1 & Ex.R2 were marked.

7.**Finding of the Tribunal:**

The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to the rash and negligent driving of the sixth respondent and directed the first appellant /insurance company to pay a sum of Rs.21,22,656/-*(Rupees Twenty One Lakhs Twentytwo Thousand Six hundred and six only)* as compensation to the claimants under the following heads:

Sl. No.	***Heads***	***Amount awarded by the Tribunal (in Rupees)***
1	Loss of Dependency	19,72,656/-
2	Loss of Consortium	40,000/-
3	Loss of Love and affection for minor claimant	40,000/-
4	Filial Consortium (mother)	40,000/-
5	Loss of Estate	15,000/-
6	Funeral Expenses	15,000/-
Total		**Rs.21,22,656/-**

8.Submission of the learned counsel for the appellants:

The learned counsel for the appellants / Insurance company would submit that even as per the case of the claimants, the deceased had driven his vehicle from the east-west and the appellant vehicle proceeded from west-east and the accident took place in the extreme northern side of the road and there is a contributory negligence on the part of the deceased. The evidence of P.W.2 and Ex.P8 are sufficient to fix the contributory negligence on the part of the deceased. Hence, the appellants seeks for allowing the appeal.

9.Submission of the learned counsel for the claimants:

The learned counsel for the claimants submitted that, the submission of the learned counsel for the appellant to fix the contributory negligence on the deceased is not acceptable since the learned Tribunal has given a finding based on the evidence of P.W.2 and other documents. Even though FIR has been registered against the deceased, FIR is not an encyclopedia to fix the negligence on the deceased.

10.We have heard the learned Counsel appearing for the appellants and the learned counsel appearing for the respondents and also perused all the materials available on record.

11. The following points arise for consideration of this appeal:

11.1.Whether the entire negligence fixed on the sixth respondent is right?

<u>12.Discussion on the negligence:</u>

According to the claimants, on 07.06.2016 early morning at about 2.00 am., the deceased Selvaraj was returning to his house after attending a marriage function at Nagercoil by driving his TATA SUMO Car bearing registration No.KL-01 N-7444, through the Nagercoil Thiruvananthapuram road, in a normal speed and by keeping the road rules from east to west, with his cousin brother one Stalin and 3 other relatives and when they reached at Karavilai in Villukury, the 6th respondent, who is the driver of the lorry bearing registration No.TN74A8700, who was coming in the opposite direction of the lorry hit the TATA SUMO car.

12.1. The accident occurred on 07.05.2016 at about 2.00 am. The copy of FIR for the accident is marked as Ex.P.1. The FIR was registered in Crime No.329/2016, against the deceased Selvaraj stating the he was rash and negligent and caused the accident. The FIR was filed after 15 hours of the accident and the police station is situated just 8 kms away from the place of the occurrence. The contention of the appellants/ insurance company stated that, after investigation, the charge sheet was filed against the deceased Selvaraj and it was closed as abated. But the copy of the said charge sheet has not been marked by either side. The contention of the appellants is that, the deceased squarely came in the wrong direction and dashed on the lorry. If it is so, the entire front side of the lorry both on the left and right side would be damaged. But in this case, only the right side of the lorry got damaged as per the Ex.P.4, Motor Vehicle Inspector Report. Hence, the deceased vehicle had not come on the wrong side.

12.2.This Court perused the sketch and it is clear that the deceased was proceeding from East-West and caused the accident in the extreme northen side. In the said circumstances, we feel that deceased also was responsible for the accident. In the said circumstances, this Court is fixing 15% contributory negligence on the deceased. Hence, the question answered accordingly by fixing the 15% negligence on the driver of the TATA Sumo and 85% on the driver of the lorry. Apart from that, in this case, this appeal has been filed on behalf of both the vehicles fro the reason that both the vehicles are insured by the same insurance company. Therefore, both the appellants are one and the same, the first appellant is directed to deposit 85% of award amount.

13. Since the appellants/ insurance company filed this appeal only relating to the *“negligence aspect alone”* and there was *“no challenge on the quantum*', this Court does not go into the quantum and other aspects.

14.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined as follows:-

Sl. No.	*Heads*	*Amount awarded by the Tribunal (in Rupees)*
1	Loss of Dependency	19,72,656/-
2	Loss of Consortium	40,000/-
3	Loss of Love and affection for minor claimant	40,000/-
4	Filial Consortium (mother)	40,000/-
5	Loss of Estate	15,000/-
6	Funeral Expenses	15,000/-
Total compensation amount awarded by the Tribunal		Rs.21,22,656/-
Less: 15% negligence on the deceased		Rs. 3,18,398/-
Total compensation amount modified by this Court		**Rs.18,04,258/-**

15. In view of the above, this Civil Miscellaneous Appeal is allowed only on the negligence alone. The compensation awarded in M.C.O.P.No.37 of 2017, on the file of the Motor Accident Claims Tribunal (Subordinate Court), Kuzhithurai, dated 22.03.2021, is hereby modified from Rs.21,22,656/- to Rs.18,04,258/-. Therefore, the claimants are entitled to a sum of **Rs.18,04,258/-** with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization. The first appellant is directed to deposit the award amount, 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 being made, the major claimants are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs. Further, the Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalised Bank in a fixed deposit under cumulative deposit scheme, till he attain majority. The first respondent/first claimant, who is the mother and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the Bank only for the welfare of the minor. The minor claimant on attaining majority is permitted to withdraw his share.

The insurance company is permitted to withdraw the remaining amount. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.,) (K.K.R.K.J.,)
19.03.2024

Index :Yes/No
Internet :Yes/No
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To

1.The Motor Accident Claims Tribunal
Subordinate Court,
Kuzhithurai.

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

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

am/*sbn*

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