BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **20.02.2024**

CORAM:

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

C.M.A(MD)No.1003 of 2018
and
C.M.P(MD)No.10459 of 2018

The Branch Manager,
The Oriental Insurance Company,
Natarjaja Complex,
Madurai Road,
Virudhunagar. ... Appellant

Vs.

1.Mathavi

Karuppayee (died)

2.Poongavanam

3.Tamilmani

4.Manikandan

5.Marimuthu ... Respondents

(5th respondent remained exparte before the Tribunal)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the Decree and Judgment dated 03.03.2018 made in MCOP No.48 of 2014 on the file of the Motor Accident Claims Tribunal-cum-Additional District Judge, Virudhunagar.

For Appellant : Mr.K.Balasubramanian

For Respondents : Mr.S.M.Mohan Gandhi for R1

: No appearance for R2 to R5

JUDGMENT

[Judgment of the Court was delivered by K.K.RAMAKRISHNAN, J.]

This appeal arises out of the order passed by the Motor Accident Claims Tribunal-cum-Additional District Judge, Virudhunagar in MCOP No.48 of 2014, dated 03.03.2018.

2. Facts of the Case:

The case of the claimants is that on 06.01.2014, at about 01.30 hours, the deceased Mahalingam, Rajavelu, Sonnaimuthu were proceeding to Thiruchendur Murugan Temple along with other pilgrims on *“Pathayathara”* on the left side of Madurai – Thoothukudi national highways road and at that time the appellant insured vehicle bearing registration No. TN-55-W-7475 driven by its driver in a rash and negligent manner, mowed down all the deceased and other pilgrims. In the said accident above mentioned three persons died. All the dependants of the deceased have filed the M.C.O.P.No. 46 of 2014, M.C.O.P.No. 47 of 2014 and M.C.O.P.No. 48 of 2014 claiming compensation. The learned Tribunal Judge allowed all the claim petitions by the common judgment dated 03.03.2018. In the present case deceased was Mahalingam filed M.C.O.P.No. 48 of 2014 and in the petition it is stated that the deceased Mahalingam was working as Office Assistant in the Education Department and earning Rs.25,000/- per months and he was the sole breadwinner of his family. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the van, the claimants filed the petition, claiming compensation of Rs.50,00,000/-.

3. Resisting the claim, the appellant Insurance Company filed their counter, wherein, they have stated that the accident had happened because of the careless act of the deceased person when he crossed the road without noting the oncoming vehicle. The driver of the van did not possess the valid and effective driving license at the time of accident. Hence, the appellant / Insurance Company is not liable to pay any compensation. They have disputed the age, income and occupation of the deceased. It was also contended that the claim is excessive and exorbitant.

4. To substantiate the case, on the side of the claimants, P.Ws.1 to 6 were examined and Exs.P1 to Ex.P.15 were marked. On the side of the appellant/Insurance Company, no one was examined and no document was marked.

5. Finding of the Tribunal:

The Tribunal, after considering the oral and documentary evidence, held that the driver of the Van was responsible for the accident and fixed the liability on the appellant/Insurance Company and awarded compensation of Rs.42,40,000/- to the claimants under the following heads:-

Sl. No.	*Heads*	*Amount in Rupees*
1	Loss of Income	41,69,472/-
2	Loss of Estate	15,000/-
3	Loss of Consortium	40,000/-
4	For Funeral Expenses	15,000/-
	Total	**Rs.42,39,472/- (Rounded off Rs.42,40,000/-)**

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

6. Submission of the learned counsel for the appellant :

The learned counsel appearing for the appellant/Insurance Company would submit that the deceased himself had invited the accident and hence, he is responsible for the accident. He would further submit that at the time of accident, the driver of the offending vehicle did not possess valid and effective driving license and hence, the appellant/Insurance Company is not liable to pay compensation. He would further submit that the award is on the higher side by wrongly fixing excessive monthly income and it requires reduction.

7. Submission of the learned counsel for the Respondents:

Per contra, the learned counsel appearing for the first respondent/first claimant argued that the impugned award awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

8. This Court carefully considered the submissions of the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the first respondent/first claimant and perused the materials available on record.

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

9.1.Whether the contention of the Learned counsel for the insurance company that the Learned Tribunal judge erroneously fixed negligence on the driver of the insured vehicle is acceptable.

9.2.Whether the compensation granted is in accordance with law?

10. Discussion on the negligence:

PW4 is independent witness. He deposed that when the deceased Mahalingam and other pilgrims were proceeding in the Madurai - Thoothukudi Highways Road on the left side of the road, as "Pathaiyathara" the appellant insured vehicle mowed them down in rash and negligent manner. There was no contra evidence adduced. The FIR was registered against the said insured vehicle driver. The final report also filed against the insured vehicle driver. Apart from that the insurance company appeal filed against the common finding relating to the negligence in M.C.O.P.No. 46 of 2014, M.C.O.P.No. 47 of 2014 and M.C.O.P.No. 48 of 2014 and the same were confirmed in C.M.A.No. 904 of 2018 and C.M.A.No. 905 of 2018 by this Court. Though the learned counsel for the appellant/Insurance Company contended that the deceased himself invited his death by his own carelessness and negligence, there is no evidence on the side of the appellant/Insurance Company to prove the same. Hence, the contention of the Learned Counsel for the appellant insurance company that the accident did not happen due to the negligent driving of the appellant insured vehicle can not be accepted. In result, the plea of the contributory negligence has no legs to stand. Therefore, we are of the view that the Tribunal has correctly found that there is no contributory negligence and fixed the negligence solely on the part of the driver of the van.

11. Discussion on Liability to pay compensation:

Insofar as the liability is concerned, the learned counsel for the appellant/ Insurance Company contended that the driver of the insured vehicle did not possess valid and effective driving license at the time of accident. The insurance company has not produced any evidence to prove that the insured vehicle's driver drove the vehicle without valid license. No document also was produced as per the law. Mere pleadings without evidence to substantiate the case cannot be accepted. We are of the view that since the appellant/Insurance Company has not produced any evidence and documents in this regard, the Tribunal has correctly rejected the contention of the appellant/Insurance Company in this regard. Apart from that in the connected C.M.A.No. 904 of 2018, C.M.A.No. 905 of 2018, a similar plea was rejected by this court. Hence there is no need to interfere with.

12. Discussion on quantum:

Insofar as the quantum is concerned, the age of the deceased was 35 years at the time of accident and he was earning a monthly income of Rs.25,000/- as an Office Assistant in Education Department. The Tribunal fixed the age of the deceased as 35 years as per evidence of PW6 and Ex.P.15. The learned counsel appearing for the appellant/Insurance Company has contended that the award is on the higher side and it requires reduction. However, on perusal of the records, we find that the Tribunal, by considering the salary certificates (Exs.P.13 and 14) and evidence of PW5 and service register's extract of the deceased (Ex.P.15), and by the following Judgments of the Honourable Supreme Court in the case of ***National Insurance Company Ltd., vs. Pranay Sethi and others*** reported in ***2017(2) TNMAC 609 (SC)*** and in the case of ***Sarala Verma and others vs. Delhi Transport Corporation and another*** reported in ***2009(2) TNMAC 1 (SC)*** has fixed the monthly income of the deceased as Rs.18,613/-, adding 50% future prospects, since age of the deceased as 35 years and deduction of 1/3 personal expenses of the deceased and adopting correct multiplier (16), calculated the loss of dependency, and the same are as follows:-

12.1.Calculation of the amount:

[Rs.18,613/- + 9,307/- *(50/100)* – Rs.6,204/-(1/3)]	= Rs. 21,716/-
Annual Income [Rs.21,716/- X 12]	= Rs. 2,60,592/-
Rs.2,60,592/- X 16 multiplier	= Rs.41,69,472/-
Loss of Dependency	**= Rs.41,69,472/-**

12.2. The non pecuniary damages as per the ***Pranay Sethi*** case is calculated as follows:-

Head	***Amount***
Loss of Estate	Rs.15,000/-
Loss of Consortium	Rs.40,000/-
For Funeral Expenses	Rs.15,000/-

13.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants under the heads areenumerated hereunder:

Sl. No.	***Heads***	***Amount awarded by the Tribunal (in Rupees)***
1	Loss of Income	41,69,472/-
2	Loss of Estate	15,000/-
3	Loss of Consortium	40,000/-
4	For Funeral Expenses	15,000/-
	Total	**Rs.42,39,472/-**
	Rounded off	**Rs.42,40,000/-**

13.1. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference. 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.

14. Accordingly, this Civil Miscellaneous Appeal is dismissed as devoid of merits. The compensation awarded in M.C.O.P.No.48 of 2014 on the file of the Motor Accident Claims Tribunal-cum-Additional District Judge, Virudhunagar, dated 03.03.2018 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 major claimants are permitted to withdraw the award amount, as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]
20.02.2024

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

To

1.The Motor Accident Claims Tribunal-cum-
Additional District Judge,
Virudhunagar.

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

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

skn/sbn

JUDGMENT MADE IN
C.M.A(MD)No.1003 of 2018
and
C.M.P(MD)No.10459 of 2018

Dated:20.02.2024