BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2024

CORAM:

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

C.M.A(MD)No.1119 of 2021
and
C.M.P(MD)No.10771 of 2021

IFFCO TOKIO General Insurance Company Ltd.,
4-BA-12/4-BA-13, Mangal Mal, Mani Nagar,
Palayamkottai Road,
Thoothukudi-3. : Appellant/Respondent No.2

Vs.

1.C.Isakkiammal

2.Minor C.Tamilselvan

3.Minor C.Pethanakshi

4.S.Muthalalichamy :Respondents Nos.1 to 4/ Petitioners

(Minor respondents No.2 & 3 are represented through their mother,next friend the first respondent)

5.M.Ramesh

6.Poolpandi : Respondents Nos.5 & 6/ Respondents Nos.1 & 3

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 09.10.2020 passed in M.C.O.P.No.64 of 2018, on the file of the Motor Accident Claims Tribunal/I Additional District Judge, Thoothukudi insofar as liability to pay compensation and the quantum of compensation awarded.

For Appellant	: Mr.V.Sakthivel
For R1 to R3	: Mr.S.Siva Thilakar
For R6	: No appearance

JUDGMENT

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

Being aggrieved over the award passed by the Motor Accident Claims Tribunal/I Additional District Judge, Thoothukudi in M.C.O.P.No. 64 of 2018, dated 09.10.2020, the Insurance Company has filed the present appeal.

2. The appellant Insurance Company is the second respondent in M.C.O.P.No.64 of 2018, on the file of the Motor Accident Claims Tribunal/I Additional District Judge, Thoothukudi. The respondents 1 to 4 are the claimants, fifth respondent is the owner of the vehicle. The respondents 1 to 4 filed a claim petition in M.C.O.P.No.64 of 2018, claiming a sum of Rs.70,00,000/-*(Rupees Seventy Lakhs only)* as compensation for the death of one Chinnadurai in the accident that occurred on 23.02.2018. By the order, dated 09.10.2020, the Tribunal awarded a sum of Rs.22,06,000/- *(Rupees Twenty two Lakhs Six Thousand only)* as compensation.

3.Facts of the Case:-

According to the claimants, on 23.02.2018 at about 19.45 hours, the driver of the fifth respondent was riding auto bearing registration No.TN-69-AJ-1202 in Thoothukudi - Rameshwaram ECR road along with his family members on the left side facing east side. When the deceased and his family members travelled in the auto. Near Vaippar bus stand, the driver of the fifth respondent drove the vehicle in a rash and negligent manner, without following the traffic rules and the auto capsized. Due to the accident, the deceased and his family members were thrown away from the auto and the deceased sustained head injury and he succumbed to the injury. The accident happened only due to the rash and negligent driving by the driver of the fifth respondent, in respect of which, a case has been registered against the driver of the fifth respondent in Cr.No.10 of 2018 under Section 304(A) IPC by Kulathoor Police Station. The deceased was aged about 35 years at the time of accident and he was working as coolie under *Thoothukudi Selvanayagapuram Alleluya Water Service Centre* and earning a sum of Rs.20,000/- per month. Therefore, the respondents 1 to 4 herein filed the claim petition, claiming a sum of Rs.70,00,000/- (Rupees Seventy Lakhs only) as compensation.

4. The respondents 1 & 2 in the claim petition filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the first respondent. The deceased was sitting along with driver of the auto in his seat consuming alcohol and caused disturbance to the driver and hence the accident happened. Hence, respondents 1 & 2 are not liable to pay any compensation and prayed for dismissal of the claim petition.

5. Before the Tribunal, on the side of the claimants, the first claimant, who is the wife of the deceased, was examined as P.W.1 and marked 15 documents as Ex.P1 to Ex.P15. On the side of the appellant, two witnesses were examined as R.W.1 and R.W.2 and 4 documents were marked as Ex.R1 to Ex.R4.

6.Finding of the Tribunal:

The Tribunal, considering the pleadings, evidence of R.W.1, R.W.2 Ex.R2, Ex.P4, held that the driver of the fifth respondent without any valid driving licence drove the vehicle in a rash and negligent manner and caused the accident. Therefore, the appellant insurance company is liable to pay a sum of Rs.22,06,000/- *(Rupees Twenty Two Lakhs Six Thousand only)* as compensation and the appellant/insurance company is entitled to recover the awarded amount from the owner of the vehicle/ 5th respondent. The Tribunal awarded the compensation under the heads enumerated hereunder:

Sl. No.	*Heads*	*Amount in Rupees*
1	Loss of Income	20,16,000/-
2	Loss of consortium(1st respondent)	40,000/-
3	Loss of Parental consortium (each Rs.40,000/- to the 2nd and 3rd respondents)	80,000/-
4	Loss of filial consortium (4th respondent)	40,000/-
5	Loss of Estate	15,000/-
6	Funeral Expenses	15,000/-
	Total	**Rs.22,06,000/-**

Challenging the same, the appellant Insurance Company has filed the present appeal on the negligence and quantum.

7.**Submission of the learned counsel for the appellant:**

The learned counsel for the appellant/Insurance Company would submit that as per the FIR, the deceased was under the influence of Alcohol and sitting along with the driver of the auto and even though no one was examined on the side of the appellant, records produced by the appellant himself proved the contributory negligence on the part of the deceased.

8.Submission of the learned counsel for the respondent:

The learned counsel for the respondents 1 to 4/claimants submitted that the Tribunal had correctly fixed the negligence on the first respondent. He would further submit that the income of the deceased was properly assessed by the tribunal and the compensation awarded is just and reasonable. The FIR and final report also were filed against the driver. He has not disputed the above filing of the final report and the involvement of the vehicle in question. Hence, he seeks for confirmation of the finding of the Tribunal on negligence.

9.Aggrieved against the said award, dated 09.10.2020, the appellant-Insurance Company has filed the present appeal.

10.We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 3 and also perused all the materials available on record.

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

11.1.Whether the negligence is correctly fixed on the driver of the Auto of the 5th respondent, insured with the appellant?

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

12.Discussion on the negligence:

On 23.02.2018 at about 19.45 hours, namely Marimuthu, the driver of the fifth respondent was riding auto bearing registration No.TN-69-AJ-1202 in Thoothukudi - Rameshwaram ECR road along with the deceased and his family members and the deceased was sitting along with the auto driver on the left side of his seat and near Vaippar bus stand, the driver of the fifth respondent drove the vehicle in a rash and negligent manner, without following the traffic rules and hence the auto capsized. Due to the accident, the deceased and his family members were thrown away from the auto and the deceased sustained head injury and he succumbed to the injury. The accident happened only due to the rash and negligent driving by the driver of the fifth respondent. Hence a case has been registered against the driver of the fifth respondent in

Cr.No.10/2018 under Section 304(A) by Kulathoor Police. After the investigation, final report was filed against the driver of the fifth respondent. The wife of the deceased family member of the deceased gave the evidence before the court narrating the abvoe events and her evidence is cogent and trusthworthy. The case of the insurance company is that deceased had consumed alcohol and caused disturbance to the driver of the auto therefore the accident was happened. To substantiate the said contention there was no adequate evidence addued by the insurance company. But the learned tribunal Judge on apprecaiton of the fact held that the auto driver had consumed alchol and caused the accident. In the said circumstances contention of the insurance company that the deceased was responsible for the accident cannot be accepted.

12.1. According to P.W.1 the driver of the auto had not possessed the valid driving licence and he has not produced the licence. To that effect, R.W.12, who was working as Junior Assistant in the Thoothukudi Transport Corporation was examined. R.W.12 in his evidence has deposed that as per the office records, there is no particulars were found that Marimuthu has possessed the driving licence. Therefore, the learned trial judge correctly ordered pay and recovery as per law. Hence, there is no reason to interfere the said direction of the Learned Tribunal judge to pay and recovery.

13.Discussion on quantum:

The deceased worked in the *Thoothukudi Selvanayakapuram Alleluya Water Service Centre* and earned Rs.20,000/- as a monthly income but no evidence was produced. Therefore, the Learned Tribunal judge correctly taken the monthly notional income of the deceased as Rs.10,000/- and applied the correct multiplier and calculated the amount as per the law laid down by the Hon'ble Supreme Court in ***2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi],*** by adding 40% future prospects and also fixed age 35 on the basis of the postmortem certificate and applied 1/4th deduction for personal expenses and applied the multiplier of "16" and calculated the loss of income which comes around as follows:

13.1. Calculation of the amount:

(i) Monthly income of the deceased = Rs.10,000/-

(ii) **Add:** 40% future prospects

Rs.10,000 + Rs.4,000/- *(40/100)* = Rs.14,000/-

(iii) Annual income

Rs.14,000/- X 12 = Rs.1,68,000/-

(iv) **Less:** ¼ personal expenses

Rs.1,68,000/- (-) Rs.42,000/- = Rs.1,26,000/-

(v) Multiplier 16
Rs.1,26,000/- X 16 = Rs.20,16,000/-

Loss of dependency = Rs.20,16,000/-

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

Sl. No.	***Heads***	***Amount***
1	Loss of consortium (1st respondent)	Rs.40,000/-
2	Loss of Parental consortium (each Rs.40,000/- to the 2nd and 3rd respondents)	Rs.80,000/-
3	Loss of filial consortium (4th respondent)	Rs.40,000/-
4	Loss of Estate	Rs.15,000/-
5	Funeral Expenses	Rs.15,000/-

13.3. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference. Hence, the second point is answered accordingly.

14.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is enumerated hereunder:

Sl. No.	***Heads***	***Amount awarded by the Tribunal (in Rupees)***
1	Loss of Income	20,16,000/-
2	Loss of consortium (1st respondent)	40,000/-
3	Loss of Parental consortium (each Rs.40,000/- to the 2nd and 3rd respondents)	80,000/-
4	Loss of filial consortium (4th respondent)	40,000/-
5	Loss of Estate	15,000/-
6	Funeral Expenses	15,000/-
	Total	**Rs.22,06,000/-**

In view of the above, this Court finds no merit in the contentions of the learned counsel appearing for the appellant/ insurance company.

15. Accordingly, this Civil Miscellaneous Appeal is dismissed by confirming the judgment and decree, dated 09.10.2020 passed in M.C.O.P.No.64 of 2018, on the file of the Motor Accident Claims Tribunal/I Additional District Judge, Thoothukudi. The appellant Insurance Company is directed to deposit the award amount with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of four weeks from the date of receipt of a copy of this order. The appellant/insurance company is entitled to recover the awarded amount of compensation from the owner of the vehicle/ 5th respondent. 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 claimants in any one of the nationalised banks, as fixed deposit under the cumulative deposit scheme, till the minors attains majority and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the bank. The minor claimants on attaining majority are permitted to

withdraw their share. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.,) (K.K.R.K.J.,)
04.03.2024

Index :Yes/No
Internet :Yes/No
am/sbn

To

1.The Motor Accident Claims Tribunal
I Additional District Judge, Thoothukudi.

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

C.M.A(MD)No.1119 of 2021
and
C.M.P(MD)No.10771 of 2021

Dated:04.03.2024