BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.526 of 2018
and
C.M.P(MD) No.6199 of 2018

M/s.Iffco -Tokio General Insurance Company Limited,
Represented through its Branch Manager,
Door No.82, Ground Floor & First Floor,
Preetham Plaza,
Chandragandhi Nagar,
Ponmeni,
Madurai District. ... Appellant/2nd Respondent

-vs-

1. C.Pandiselvi

2. C.Vigneshwaran

3. C.Deivapriya ... Respondents 1 to 3/Petitioners

4. S.Somasundara Bharathi

5. The Managing Director,
Tamil Nadu State Transport Corporation,
Byepass Road,
Madurai. ... Respondents 4 and 5/
Respondents 1 and 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.03.2017 made in M.C.O.P.No.1632 of 2014, on the file of the Motor Accident Claims

Tribunal, VI Additional District Court, Madurai in so far as liability and quantum of compensation is concerned.

For Appellant : Mr.V.Sakthivel

For R1 to R3 : Mr.R.Balakrishnan
For R4 and R5 : No appearance

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award passed in M.C.O.P.No.1632 of 2014, dated 20.03.2017, on the file of the Motor Accident Claims Tribunal, VI Additional District Court, Madurai on various grounds.

2. According to the claimants, the deceased was 20 years old, two Wheeler Mechanic and he was earning a sum of Rs.20,000/- per month. On 18.01.2014, at about 05.00 p.m, when he was a passenger in an Auto owned by the first respondent and insured with the second respondent, the said Auto was driven in a rash and negligent manner and dashed against the Transport Corporation Bus owned by the third respondent in the claim petition. The deceased had sustained grievous injuries and he died on the spot and they have prayed for a compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only).

3. The insurer of the Auto had filed a counter contending that the accident has taken place only due to the negligence on the part of the driver of the Transport Corporation. They have further contended that in violation of permit conditions, the Auto was being operated outside jurisdiction. They have further contended that the driver of the Auto was not having a badge at the relevant point of time.

4. The Transport Corporation has filed a counter contending that the accident has taken place only due to the negligence on the part of the driver of the Auto and therefore, they are not liable to pay any compensation.

5. The Tribunal, after considering the oral and documentary evidence, has arrived at a finding that the driver of both the vehicles have contributed to the accident and proceeded to fix the liability upon the driver of the Auto at 80% and the driver of the Transport Corporation at 20%. The Tribunal has taken the notional income at Rs.6,000/- and has added 50% towards future prospects and deducted 50% towards personal expenses. The Tribunal has applied the multiplier of "18" and has arrived at a compensation of Rs.9,72,000/- under the head of Loss of Income. The Tribunal has awarded a sum of Rs.75,000/- towards loss of Love and Affection, a sum of Rs.10,000/-

towards Funeral Expenses, a sum of Rs.10,000/- towards Transport charges and a sum of Rs.1,000/- towards loss of estate. In total a sum of Rs. 10,68,000/-. Challenging the same, the present appeal has been filed by the Insurance Company.

6. According to the learned counsel appearing for the appellant, the Tribunal has not properly appreciated the oral evidence and has mulcted 80% of liability upon the driver of the Auto. He had further contended that in view of violation of policy conditions, the Tribunal ought to have awarded pay and recovery. He further contended that the Tribunal was not right in adding 50% towards future prospects as the deceased was only a self employed person. He further questioned the award of Rs.75,000/- towards loss of love and affection. Hence, he prayed for allowing the appeal.

7. Per contra, the learned counsel appearing for the respondents 1 to 3/ claimants had contended that the award of the Tribunal is reasonable and the same may not be interfered with.

8. I have carefully considered the submissions made by the learned counsel on either side and perused the materials on record.

9. The Tribunal has considered the oral evidence of P.W2, R.W.2 and R.W.4 and has arrived at a finding that the accident has taken place only due to the negligence on the part of the Auto driver as well as the driver of the Transport Corporation. The Tribunal has further found that the Auto Driver has contributed more to the accident and has fixed the liability of 80% upon the driver of the Auto and 20% upon the driver of the Transport Corporation. This Court does not find any reason to interfere in the apportionment of this liability. As far as the plea of the insurer that the Auto was operated in violation of the permit condition is concerned, the same cannot be considered to be a fundamental breach. When there is no fundamental breach of policy conditions, the finding of the Tribunal does not call for any interference.

10. Admittedly the victim is a self employed person, the Tribunal has chosen to add 50% towards future prospects which is in violation of the judgment of the Hon'ble Supreme Court reported in ***2017 (16) SCC 680 (Insurance Company Limited Vs. Pranay Sethi and others)***.

11. Considering the fact that the deceased was 20 years old, only 40% could be added towards future prospectus and after adding 40% notional income would be at Rs.8,400/-. Since the petitioner is a bachelor, 50% should be deducted towards personal expenses. On such deduction, the notional monthly income would be at Rs.4,200/-. After applying multiplier of "18" the loss of income would be at Rs.9,07,200/- (Rupees Nine Lakhs Seven Hundred and Two Hundred only).

12. In view of the above said discussions, the award of the Tribunal is reassessed as follows:

Loss of Income	: Rs.9,07,200/-
Loss of love and affection to the first claimant	: Rs. 40,000/-
Loss of Funeral Expenses	: Rs. 15,000/-
Transportation Charges	: Rs. 10,000/-
Loss of Estate	: Rs. 15,000/-
Total	**: Rs. 9,87,200/-**

13. The award of the Tribunal is reduced from Rs.10,68,000/- to Rs.9,87,200/- (Rupees Nine Lakhs Eighty Seven Thousand and Two Hundred only). The appellant/ Insurance company is liable to pay the 80% of the award amount and the balance amount of 20% shall be borne by the third respondent

in the claim petition. On such deposit being made, the first claimant is entitled to 70% of the award amount, the other two claimants are entitled to each 15% of the award amount. The balance award amount shall be deposited by the appellant/ Insurance Company within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw their respective shares by filing necessary petition before the Tribunal.

14. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

30.07.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To
1. The Motor Accident Claims Tribunal,
VI Additional District Court, Madurai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

ebsi

C.M.A(MD)No.526 of 2018

30.07.2024