BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **01.03.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).No.188 of 2022
and
C.M.P.(MD).No.1620 of 2022

M/s. Reliance General Insurance Company Limited,
Thaka Plaza, South Bypass Road,
Vannar Pettai,
Tirunelveli -3. ... Appellant

Vs.

1.Kanimozhi

2.Minor Sathveka

(minor 2nd respondent is represented through her mother, guardian and next friend the first respondent herein)

3.I.V.Prasad

4.Mallayya Panthulu

5.Adhiseshan

6.A.Anandi ... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order dated 18th August 2021 passed in M.C.O.P.No.494 of 2013 on the file of the Motor Accident Claims Tribunal / IV Additional District Judge, Tirunelveli, insofar as liability to pay compensation and the quantum of compensation awarded are concerned.

For Appellant : Mr.V.Sakthivel

For R5 & R6 : Mr.S.Sivathilakar

J U D G M E N T

(Judgment of the Court was delivered by **V.BHAVANI SUBBAROYAN, J.**)

Aggrieved over the award passed by the Motor Accident Claims Tribunal / IV Additional District Judge, Tirunelveli, in M.C.O.P.No.494 of 2013, dated 18.08.2021, the present appeal has been filed by the Insurance Company.

2.Facts of the case:

The deceased namely, Saravanan, was working as a Manager in the Royal Bank of Scotland at Bangalore. On 30.06.2012 he along with his co-worker Arun was travelling in a Santro Car with Registration Number: AP 31-AE-745 which belongs to the 4th respondent and driven by the 3rd respondent herein. The car was proceeding on the Chittoor-Thirupati Road and the 3rd respondent drove the vehicle in a rash and negligent manner and lost control and dashed against a tree on the side of the road. Saravanan was crushed to death on the spot. The deceased Saravanan was an employee of the bank and his annual income was Rs.8,91,164/-. The first respondent is wife of the deceased and 2nd respondent is daughter of the deceased. The 5th and 6th respondents are aged parents of the deceased. The said car in which Saravanan was travelling was insured with the appellant. The accident had happened solely due to the rash and negligent driving of the 3rd respondent and the claimants filed a claim petition in M.C.O.P.No.494 of 2013, on the file of the Motor Accident Claims Tribunal, the IV Additional district Judge, Tirunelveli, seeking compensation of Rs.3,00,00,000/-, for the death of the first respondent's husband viz., Saravanan, in the road accident on 13.06.2012. The Tribunal awarded the compensation of Rs.1,04,54,592/- to the claimants.

3. The claim was resisted by the appellant/Insurance Company contending that the third respondent had no valid driving licence and also disputed the age, occupation and income of the deceased.

4. Before the Tribunal, the first claimant was examined as P.W.1 and marked Exs.P1 to P9. The 5th respondent was examined as R.W.1 and marked Exs.R1 to R11. An official from the appellant/Insurance Company was examined as R.W.2. The Income Tax Statement, which was received from the Income Tax Office, was marked as Ex.C1. The Tribunal, upon considering the oral and documentary evidence, came to the conclusion that the death of

Saravanan had happened only due to the rash and negligent driving of the third respondent.

5.Finding of the Tribunal:

The Tribunal, after considering the oral and documentary evidence, held that at the time of accident, the third respondent was the driver of the car. Further, Chithoor Taluk Police registered a case in Crime No.40 of 2012 against the driver of the car only and the charge sheet has also been filed implicating the third respondent/the driver of the car. Ex.P4 is the M.V.I. Report, which shows that the vehicle was totally damaged. The vehicle in which the deceased travelled did not have any mechanical defect. The Tribunal, on the basis of the evidence produced by the claimants, has totally awarded a sum of Rs.1,04,54,592/- with interest at the rate of 7.5% per annum and the details are as follows:

Sl.No.	***Heads***	***Amount in Rupees***
1	Loss of dependency (Rs.53,826/- X 12 X 16)	1,03,34,592/-
2	Funeral Expenses	25,000/-
3	Loss of love and affection(R5, R6)	30,000/-
4	Loss of consortium	15,000/-
5	Loss of guidance to the minor	50,000/-
	Total	**Rs.1,04,54,592/-**

Aggrieved over the same, the appellant insurance company filed this appeal.

6.Submission of the learned counsel for the appellant:

6.1.The learned counsel for the insurance company submitted that he confined his argument only relating to the liability and the "quantum". It is finding of the learned tribunal judge that the 1st respondent driver of the car has no valid license and hence there is a violation of a policy condition. Therefore, order of the pay and recovery is not legally correct.

6.2. The learned counsel for the insurance company submitted that without any legal evidence the learned tribunal judge fixed the monthly income of the deceased Rs.68,351/- and hence the award amount is liable to be set aside.

7.Submission of the learned counsel for the Respondents:

The Learned Tribunal judge correctly considered the law laid down by the 2018 ACJ 2163 and ordered pay and recovery. The Learned Tribunal judge also correctly relied Ex.P8 the salary certificate of the deceased and income tax returns filed as a court document in Ex.C1 and correctly fixed the monthly income of Rs. 68,351/- and therefore, the learned counsel appearing for the respondents No.5 and 6/ claimants 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. Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the respondents 5 and 6 and perused the materials available on record.

9. Since the appellant insurance company filed this appeal only relating to the liability to pay compensation and the quantum, this Court does not go into the merits on the negligence and other aspects.

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

(i) Whether the tribunal is correct in apply the principle of pay and recovery in this case on account of non- possessing of valid driving licence of the driver of the appellant insured vehicle?.

(ii) Whether the quantum of compensation awarded by the Tribunal is correct or not?.

11.Discussion on negligence:

It is not disputed that the 3rd respondent was the driver of the car at the time of accident. FIR was registered against the driver of the insured vehicle under Ex.P.1, by Chithoor Taluk Police in Crime No.40/2012 and also final report filed against the driver of the insured vehicle. Even though he was arrayed as a 3rd respondent, he has not appeared and disputed the same. It is also clear from the Motor Vehicle Inspection Report marked under Ex.P4, there was no failure of break system. Therefore, the 3rd respondent drove the car in a rash and negligent manner and hit against a tree on the side of the road. Hence, the learned Tribunal judge has correctly concluded that the death of Saravanan had happened only due to the rash and negligent driving of the 3rd respondent. This court finds no circumstances to interfere in the said finding.

11.1.Discussion on pay and recovery :-

The contention of the learned counsel for the insurance company is that the driver of the insured vehicle has not possessed the valid driving license and hence he seeks to exonerate from the liability. This Court is unable to accept the said contention. The law laid down by the Hon'ble Supreme Court in the following cases:

(i) In the case of ***Shamanna and another Vs. The Divisional Manager, Oriental Insurance Company Limited and others*** reported in ***2018 ACJ 2163: CDJ 2018 SC 816***;

(ii) In the case of ***Parminder Singh Vs. New India Assurance Company Limited*** reported in ***AIR 2019 SC 3128: CDJ 2019 SC 747;***

and all the other cases has held that in the absence of the valid driving licenses, the insurance company is liable to pay the amount to the victim and they would have to recover the same from the owner of the vehicle. Therefore, the learned tribunal judge correctly ordered pay and recovery. Hence, there is no ground to interfere with said finding.

12.Discussion on quantum:

The deceased Saravanan was aged about 32 years. He was working as a manager in the Royal Bank of Scotland at Bangalore. To prove his income, monthly salary certificate was marked as Ex.P8. The income tax returns for the year 2010- 2011, 2011-2012 were marked as Court document under Ex.C1. There is no dispute over the said document. There was no contra evidence adduced to disprove the same. Therefore, the Learned Tribunal Judge relied the same and fixed the monthly income of the deceased and awarded the compensation of Rs.1,04,54,592/- with interest of 7.5% by calculating the same as follows:

12.1.Calculation of the amount:

Monthly income of the deceased	= Rs.68,351/-
Add: 50% future prospects	
Rs.68,351/- + Rs.34,175/- (50/100)	= Rs.1,02,526/-
Less: 30% Income Tax deduction	
Rs.1,02,526/- (-) Rs.30,758/-	= Rs.71,768/-
Less: ¼ personal expenses	
Rs.71,768/- - Rs.17,942/-	= Rs.53,826/-
Rs.53,826/- X 12 X 16 (Multiplier)	= Rs.1,03,34,592/-
Loss of dependency	**= Rs.1,03,34,592/-**

12.2. Further, the Tribunal taking into consideration the fact that the 1st Respondent (wife) was not living with her husband (deceased) for number of months, though the period is not specific, under the head consortium ordered Rs.15,000/-. Under the heads loss of love and affection Rs.30,000/- is ordered. Thereafter, under the head loss of guidance to the minor 2nd respondent Rs.50,000/- is ordered.

13.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants under various heads are enumerated hereunder:

Sl.No.	*Heads*	*Amount awarded by the Tribunal (in Rupees)*
1	Loss of dependency (Rs.53,826/- X 12 X 16)	1,03,34,592/-
2	Funeral Expenses	25,000/-
3	Loss of love and affection (R5, R6)	30,000/-
4	Loss of consortium	15,000/-
5	Loss of guidance to the minor	50,000/-
	Total	**Rs.1,04,54,592/-**

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, and this Court finds no merit in the contentions of the learned counsel appearing for the appellant insurance company.

14. Accordingly, this Civil Miscellaneous Appeal is dismissed. The compensation awarded in M.C.O.P.No.494 of 2013, on the file of the Motor Accident Claims Tribunal/The IV Additional District Judge, Tirunelveli, dated 18.08.2021, is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs within a period of four weeks from the date of receipt of a copy of this order, if not already deposited. The appellant/insurance company is entitled to recover the awarded compensation amount from the owner of the vehicle/4th 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. 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 she attains majority. The first respondent, 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 for the welfare of the minor. The minor claimant on attaining majority is permitted to withdraw her share. No Costs. Consequently, the connected Miscellaneous Petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]
01.03.2024

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

To

1.The Motor Accident Claims Tribunal /
IV Additional District Judge,
Tirunelveli.

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

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

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