BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2024

CORAM:

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

C.M.A(MD)No.171 of 2024
and
C.M.P(MD)No.2076 of 2024

The Reliance General Insurance Company Ltd.,
Service Officer No.141/3,
1st floor, New Bye Pass Road,
M.P.Sarathi Nagar,
Volkjwagen Cars Showroom Next,
Velur District,
Tamil Nadu- 632 012 ... Appellant

Vs.

1.Suganya

2.Minor Gowtham

3.Minor Gowshik

4.Minor Lithikashri

5.R.Muthukumar

6.R.Somambikai

7.V.S.Jeyaprakash

8.Nallammal ...Respondents

(Minor respondent Nos.2 to 4 represented by their mother and guardian 1st respondent Suganya)

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree, passed in M.C.O.P.No.565 of 2021 on the file of the Motor Accident Claims Tribunal (Principal District Judge) Pudukottai dated 15.03.2023.

For Appellant : Mr.K.R.Shivashankari

For Respondents : Mr.K.G.Arunkumar

JUDGMENT

[Judgment of the Court was made **by Mrs.V.BHAVANI SUBBAROYAN.J.]**

The appellant Insurance Company, aggrieved by the award passed by the learned Principal District Judge/Motor Accident Claims Tribunal, Pudukottai in M.C.O.P.No.565 of 2021, dated 15.03.2023, has preferred this appeal, questioning the negligence fixed on the appellant.

2. The appellant Insurance Company is the fourth respondent in M.C.O.P.No.565 of 2021, on the file of the Motor Accident Claims Tribunal (Principal District Judge), Pudukottai. The respondents 1 to 4 are the claimants and the six and seventh respondents are the owner of the Nissan Datsun bearing registration No.TN-10-BE-8373 and the eigth respondent is the mother of the deceased. The respondents 1 to 4 filed the claim petition in M.C.O.P.No.565 of 2021, claiming a sum of Rs.2,00,00,000/-(Rupees two crores only) as compensation for the death of Balakumar, who is the husband of the first respondent and father of the respondent Nos.2 to 4, for the accident that occurred on 24.07.2021. By the award, dated 15.03.2023, the Tribunal awarded a sum of Rs.31,34,000/- as compensation.

3.Facts of the Case:-

According to the respondent Nos.1 to 4, on 24.07.2021 at about 07.00 p.m., the deceased was returning to his home by picking up his daughter Lithikasri from his father-in-law's house in his Hero Honda CD 100 two wheeler bearing registration No.TN-49-F-8868 from East to West direction in Pudukkottai to Thanjavur Bypass road crossing

Vaiyapuri Mukkam and when he crossed the road from left to right in the North direction near his house, the Nissan Datsun four wheeler bearing registration No.TN-10-BE-8373 which came behind the two wheeler of the deceased, driven by the fifth respondent in a rash and negligent manner and dashed against the deceased and he sustained blood injuries on his head. Then he was taken to Pudukkottai Government Medical College Hospital through a Tata Ace Vehicle which came on the way and then he was referred to Trichy Neuro One Hospital for further treatment and on 25.07.2021 at about 09.29 am he passed away. Therefore, the Ganesh Nagar Police have registered a criminal case against the fifth respondent herein in Crime No.720 of 2021 for the offences under Section 279, 337 and 304 (A) of IPC.

3.1.The deceased was aged about 35 years and he was working as a building contractor in Geonamics (S) Pte. Ltd., at Singapore and earned a sum of Rs.53,000/- as monthly income. Therefore, the respondent Nos.1 and 4 filed a petition in M.C.O.P.No.565 of 2021 claiming a sum of Rs. 2,00,00,000/- as compensation.

4.Resisting the claim petition, the appellant filed a counter and has taken the plea that the rider of two-wheeler rode his two wheeler in a rash and negligent manner and invited the accident and he was not having any valid driving licence at the time of accident and he was not wearing the helmet as per Section 129 of the Motor Vehicles Act and hence, contributory negligence has to be fixed on the rider of the two-wheeler.

5. Before the Tribunal, on the side of the claimants P.W.1 was examined and Ex.P1 to Ex.P30 were marked. On the side of the respondents, no witness was examined and Ex.R1 and Ex.R2 were marked and Ex.C1 also was marked.

6. **Finding of the Tribunal**

The Tribunal after considering the oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the Nissan Datsun and hence, fixed the liability on the driver of the car and awarded compensation of Rs.31,34,000/- along with interest at the rate of 7.25% p.a., and directed the appellant to pay the compensation. The details of the compensation of the Tribunal are as follows:

Sl. No.	***Heads***	***Amount in Rupees***
1	Loss of Income	30,24,000/-
2	Loss of Estate	15,000/-
3	Funeral expenses	15,000/-
4	Filial Consortium	40,000/-
5	Loss of Consortium	40,000/-
Total		***31,34,000/-***

Aggrieved against the said award, dated 15.03.2023, the appellant-Insurance Company has filed the present appeal challenging the liability only.

7. <u>Submission of the learned counsel for the appellant</u>

(i) The learned counsel for the appellant submitted that the Tribunal, without properly considering the evidence adduced before the Court, fixed the liability against the appellant when the involvement of the insured vehicle itself is not proved by the claimants.

(ii) The learned counsel further submitted that the Tribunal awarded exorbitant amount of ***Rs.31,34,000/-***without following the guidelines issued by the Hon'ble Supreme Court.

8. Submission of the learned counsel for the respondents/claimants:

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

9. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondent Nos.1 to 4 and also perused all the materials available on record.

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

10.1.Whether the Court below is correct in holding that the appellant insured Nissan Datsun bearing registration No.TN-10-BE-8373 is involved in the accident that happened on 24.07.2021 and its driver drove the said vehicle in a rash and negligent manner and hit the deceased?;

10.2.Whether the learned Tribunal Judge correctly quantified the compensation in accordance with law?

11.**Discussion on negligence:**

The appellant disputed the involvement of the vehicle. But, neither the owner of the vehicle nor the driver of the vehicle were examined to prove the non involvement of the vehicle. Apart from that, FIR was registered against the driver of the appellant insured vehicle. P.W.1 clearly deposed about the accident and the involvement of the vehicle. Even though there is some dispute relating to the ownership of the vehicle, the policy was in force. On the basis of the evidence of Ex.P1 and in the absence of the contra evidence, the learned Tribunal Judge has correctly arrived the finding that the appellant insured vehicle was involved in the accident and in view of the fact that policy was in force, the appellant insurance was correctly directed to pay the compensation. Therefore, this Court finds no merit in the contention of the learned counsel appearing for the appellant that the vehicle was not involved.

12.It is well settled in the motor accident claims, the standard of proof is by way of preponderance of the probabilities, rather than beyond reasonable doubt. The Hon'ble Three Judges Bench of the Supreme Court in the case of the ***United India Insurance Co.Ltd. v. Shila Datta***, reported in ***(2011) 10 SCC 509 at page 517*** has held as follows:-

Nature of a claim petition under the Motor Vehicles Act, 1988

10. *A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependent family members) before the Motor Accidents Claims Tribunal constituted under Section 165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It is a proceedings in terms of and regulated by the provisions of Chapter XII of the Act which is a complete code in itself. We may in this context refer to the following significant aspects in regard to the Tribunals and determination of compensation by the Tribunals:*

> *(i) Proceedings for award of compensation in regard to a motor accident before the Tribunal can be initiated either on an application for compensation made by the persons aggrieved (the claimants) under Section 166(1) or Section 163-A of the Act or suo motu by the Tribunal, by treating any report of accident (forwarded to the Tribunal under Section 158(6) of the Act as an application for compensation under Section 166(4) of the Act).*
>
> *(ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is*

no pleading where the proceedings are suo motu initiated by the Tribunal.

(iii) In a proceedings initiated suo motu by the Tribunal, the owner and driver are the respondents. The insurer is not a respondent, but a noticee under Section 149(2) of the Act. Where a claim petition is filed by the injured or by the legal representatives of a person dying in a motor accident, the driver and owner have to be impleaded as respondents. The claimants need not implead the insurer as a party. But they have the choice of impleading the insurer also as a party-respondent. When it is not impleaded as a party, the Tribunal is required to issue a notice under Section 149(2) of the Act. If the insurer is impleaded as a party, it is issued as a regular notice of the proceedings.

(iv) The words "receipt of an application for compensation" in Section 168 refer not only to an application filed by the claimants claiming compensation but also to a suo motu registration of an application for compensation under Section 166(4) of the Act on the basis of a report of an accident under Section 158(6) of the Act.

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. On receipt of an application (either from the applicant or suo motu registration), the Tribunal gives notice to the insurer under Section 149(2) of the Act, gives an opportunity of being heard to the parties to the claim petition as also the insurer, holds an inquiry into the claim and makes an award determining the amount of compensation which appears to it to be just. (Vide Section 168 of the Act.)

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry. (Vide Section 169 of the Act.)

(vii) The award of the Tribunal should specify the person(s) to whom compensation should be paid. It should also specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them. (Vide Section 168 of the Act.)

(viii) The Tribunal should deliver copies of the award to the parties concerned within 15 days from

> *the date of the award. (Vide Section 168(2) of the Act.)*
>
> *We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute.*

13.The Hon'ble Supreme Court in Paragraph No.15 of the ***Bimla Devi v. Himachal RTC***, reported in ***(2009) 13 SCC 530 at page 534*** while deciding the similar question whether the vehicle was involved in the accident or not directed the Court to take holistic view:

> ***15.*** *In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.*

14.The said principle also reiterated in the case of ***Parmeshwari v. Amir Chand,*** reported in ***(2011) 11 SCC 635 at page 638***

13. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2010) 1 SCC (Cri) 1101 : (2009) 5 SCC (Civ) 189] are very pertinent: (SCC p. 534, para 15)

> *"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."*

15.In view of the above discussion, the learned Tribunal Judge correctly decided the involvement of the appellant insured vehicle in the accident happened on 24.07.2021 and the driver of the said insured vehicle dashed the deceased in a rash and negligent manner and this Court finds no perversity in the said findings and therefore affirms the said finding.

16. **Discussion on quantum**

On the point of quantum of compensation, it is seen that the deceased was working as building contractor in Singapore and aged about 35 years and his salary certificate was marked as Ex.P8. As per Ex.P8 his salary was Rs.53,000/-. The deceased was working in unorganized sector but in this case it was established that the deceased was working in foreign country and the amount received by the wife and the mother and also through his personal account have been marked and hence, considering the age of the deceased as 35 years as Per Ex.P5, Tribunal fixed Rs.15,000/- as monthly income and there was no contrary evidence adduced to disbelieve the above monthly income. Hence, this Court fixes the monthly income of the deceased as Rs.15,000/-.

(i) As per the 2***017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi], 4***0% for future prospect is to be taken, which is calculated as follows: 15,000/- X 40/100 = 6,000/- and hence, his total monthly income comes around Rs.21,000/-.

(ii) His yearly income comes around Rs.21,000 X 12 = 2,52,000/-.

(iii) As per the case reported in ***2009(2) TN MAC 1 (SC) (Smt. Sarla Verma and Others Vs. Delhi Transport corporation and another)*** the proper multiplier is 16 and proper deduction for his personal expenditure is 3/4. Hence, the loss of income is calculated as follows**:**

Rs.2,52,000/- x 3/4 x 16 = Rs.30,24,000/-

In view of the above discussion, the tribunal correctly calculated the loss of income.

16.1.Further, the Tribunal has rightly awarded a sum of Rs.1,10,000/- as general damages and the conventional under the following heads:

Loss of consortium	=Rs.40,000/-
Filial Consortium	= Rs.40,000/-
Funeral expenses	= Rs.15,000/-

Loss of Estate = Rs.15,000/-

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

17. Conclusion

In the light of the above said discussion, claiments would be entitled to claim the following amounts as compensation under the various heads enumerated hereunder:

S. No	*Description*	*Amount awarded by the Tribunal (Rs)*	*Amount Awarded by this Court (Rs)*	*Award Confirmed or enhanced or granted*
1	Loss of Income	30,24,000/-	30,24,000/-	Confirmed
2	Loss of Estate	15,000/-	15,000/-	Confirmed
3	Funeral Expenses	15,000/-	15,000/-	Confirmed
4	Loss of Consortium	40,000/-	40,000/-	Confirmed
5	Filial Consortium	40,000/-	40,000/-	Confirmed
Total		***31,34,000/-***	***31,34,000/-***	***Confirmed***

18. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the learned Principal District Judge/

Motor Accident Claims Tribunal, Pudukkottai in M.C.O.P.No.565 of 2021 dated 15.03.2023 is confirmed. The appellant is directed to deposit the award amount with proportionate accrued interest and costs, less the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent is entitled to withdraw her share amount as per order and apportionment made by the Tribunal by filing necessary application before the tribunal. Further, the Tribunal is directed to deposit the share of the minor claimants 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 claimants, is permitted to withdraw the accrued interest once in three months directly from the Bank only for the welfare of the minors. The minor claimant on attaining majority is permitted to withdraw his share. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.,) (K.K.R.K.J.,)
20.02.2024

Index :Yes/No
Internet :Yes/No
sbn

To

1.The Principal District Judge/
Motor Accident Claims Tribunal
Pudukkottai.

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

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

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