BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.03.2024**

CORAM

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

C.M.A.(MD).No.781 of 2019
and
C.M.P.(MD).No.10119 of 2019

The New India Assurance Company Limited,
11-19, 20 Government Arts College Road,
Coimbatore. ... Appellant/3rd Respondent

Vs.

1.Jinsy

2.Minor Iwin Nowell

3.Minor Vivin Marshal

(Minor respondents 2 and 3 are represented through their mother, the1st respondent herein)

4.Rani

5.Ganesan ... Respondents 1 to 5/Petitioners

6.M/s.Mahindra & Mahindra Limited,
Automotive Sector,
91- Anna Salai,
Madras – 600 002. ... 6th Respondent/1st Respondent

7. The Coimbatore Auto Industries Limited,
1547-A, Avanashi Road,
Coimbatore – 641 018. ... 7th Respondent/2nd Respondent

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.09.2017 in M.C.O.P.No.1232 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court (MCOP), Tiruchirappalli, dated 08.09.2017.

For Appellant	: Mr.J.S.Murali
For R1 to R5	: Mr.N.Sudhagar Nagaraj
For R6	: Mr.S.Srinivasa Raghavan
For R7	: Mr.K.C.Maniyarasu

JUDGMENT

(Judgment of the Court was made by **K.K.RAMAKRISHNAN, J.**)

Challenging the liability and quantum of compensation awarded by the Motor Accident Claims Tribunal, Special District Court (MCOP), Tiruchirappalli in M.C.O.P.No.1232 of 2013, dated 08.09.2017, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

2. Facts of the Case:

On 05.06.2002, the deceased was travelling in a new Mahendra Tempo Van bearing Registration No.23 C 15136 along with goods and was proceeding from Madras to Coimbatore on Mecheri to Mettur Main road near Kanthalur Samathuvapuram and at that time, the said vehicle belonging to the 6th respondent and sold to the 7th respondent and insured with the 8th respondent was driven by its driver in a rash and negligent manner with high speed without honking the horn or showing any signal and went to the extremely right side of the road and hit the road side tree. Due to the accident the deceased and driver also sustained multiple grievous injuries and died on the spot. The deceased was the only bread winner of the family. His family has no other source of income. Due to the negligent act of the driver of the sixth respondent, the accident happened. Hence, the claimants/respondents 1to 5, filed the claim petition in M.C.O.P.No.1232/2013, before the Motor Accident Claims Tribunal seeking compensation of Rs.7,50,000/-, stating that at the time of accident, the deceased was aged about 32 years and he was working as a Driver and earned more than Rs.4,500/- per month. The Tribunal awarded the compensation of Rs. 14,79,000/-, to the claimants.

3. The Insurance Company/appellant filed a counter denying the age, income and occupation of the deceased and specifically took a plea that the vehicle was temporarily registered vehicle and the transit policy was not covered to the deceased. In the counter, it is further pleaded that the deceased was a gratuitous passenger and hence, he is not entitled to claim compensation.

4. To prove the claim of the claimants/respondents 1 to 5, before the Tribunal, on the side of the respondents, P.Ws.1 and 2 were examined and Exs.P1 to P6 were marked and on the side of the respondents 6 & 7 and appellant, R.Ws.1 and 2 were examined and Ex.R1 was marked and Exs.X1 and X1 were marked.

5. Finding of the Tribunal:

The Tribunal, considering the policy condition, held that the plea of the Insurance Company that there was a violation in the condition of the policy is not substantiated by any documents. Further, the plea of the Insurance Company that the deceased was a gratuitous passenger is not substantiated with any evidence. Ex.P.5 is the licence copy of the deceased namely it is a xerox copy. PW 1 has stated that original was lost during the accident and hence he has filed the xerox copy of the licence. The insurance company have not disputed Ex.P.5. As per Ex.P.5 the deceased is a driver. Since, no contra evidence was put forth to prove that the deceased travelled as an unauthorized passenger, the Tribunal was convinced to hold that the deceased travelled as a co-driver because R6 and R7's vehicle policy was alive and so the appellant is liable to pay the compensation. In the result, the Tribunal has awarded a sum of Rs.14,79,000/- as compensation and fixed the liability on the Insurance Company. The Tribunal awarded the compensation under the heads enumerated hereunder:

Sl.No.	***Heads***	***Amount in Rupees***
1	Loss of Dependency	Rs. 8,64,000/-
2	Funeral and Transportation Expenses	Rs. 15,000/-
3	Love and Affection for the claimants	Rs. 5,00,000/-
4	Consortium	Rs. 1,00,000/-
	Total	**Rs.14,79,000/-**

6. Submission of the learned counsel for the appellant:

While granting compensation, the Tribunal has awarded a sum of Rs.5,00,000/- for love and affection and Rs.1,00,000/- for consortium. The learned counsel appearing for the Insurance Company disputed that the same is against the judgment of the Hon’ble Supreme Court in the case of ***Pranay Sethi***.

7. Submission of the learned counsel for the Respondents:

Per contra, the learned counsel appearing for the respondents/claimants would submit that the policy is 'B' policy viz., the commercial vehicle policy. Further, the true copy of policy is marked as Ex.R1 and no evidence on the side of the Insurance Company was let in to prove that the deceased was a gratuitous passenger. Hence, the Tribunal has correctly fixed the liability on the Insurance Company. In the said circumstances, he seeks for dismissal of the appeal.

8.So far as the contention of the learned counsel appearing for the appellant/Insurance Company relating to the amount awarded towards love and affection and consortium, the Tribunal has not followed the case of ***Pranay Sethi***. He admitted that no amount was awarded towards future prospects.

9. This Court has carefully considered the rival submissions and perused the materials available on record and also perused the award passed by the Tribunal.

10. Since the appellant insurance company filed this appeal only relating to the liability to pay compensation and quantum, this Court does not go into

the merits on the negligence and other aspects.

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

11.1.Whether the tribunal is correct in fixing the liability, wholly on the appellant insurance company, since vehicle was insured, is correct or not?

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

12. Discussion on Liability to pay compensation:

On 05.06.2002, the deceased namely Stephen was travelling in a new Mahendra Tempo Van bearing Registration No.23 C 15136 along with goods which was proceeding from Chennai to Coimbatore on Mecheri to Mettur Main road near Kanthalur Samathuvapuram and the driver of the Mahendra tempo van drove the vehicle rash and negligently in a high speed without honking horn or showing any signal and went to the extremely right side of the road and hit a tree. Due to the accident the deceased and the driver died on the spot. The vehicle involved in the accident belonged to the sixth respondent and the sixth respondent sold the vehicle to the seventh respondent and delivery note was given but Registration Certificate was not transferred in the name of the 7^{th} respondent and the appellant is the insurer. Due to the negligent act of the driver of the sixth respondent, the accident has happened.

12.1. The learned counsel appearing for the appellant pleaded that the deceased was a gratuitous passenger. As per FIR, the deceased driver took the passengers un-authorisedly and the deceased Stephen in this case also is said to be an unauthorized passenger in the vehicle. In the FIR apart from the deceased there are some more persons name mentioned said to have travelled in the vehicle and those persons were not examined to prove that they all travelled as unauthorized passengers. This policy is a Transit Policy and proper premium also received. In view of the condition whether the policy covers for another driver has to be looked into. The Tribunal, is not liable to find out policy coverage for another driver. RW1 stated that the conditions attached with the policy were not marked along with Ex.R.1, which is admittedly 'B' policy with the heading of commercial vehicle policy. Hence, the liability is fixed upon the Insurance Company.

12.2. Further, Ex.P.5 is the licence copy of the deceased and it is a Xerox copy. PW 1 has stated that original was lost during the accident and so he has filed the Xerox copy of the licence. The insurance company have not disputed Ex.P.5. As per Ex.P.5 the deceased is a driver. Since, no contra evidence was put forth to prove that the deceased travelled as an unauthorized passenger, the Tribunal was convinced to hold that the deceased travelled as a co-driver because R6 and R7 vehicle policy was alive and so the appellant is liable to pay the compensation. Hence, the Tribunal fixed the liability on the appellant Insurance Company.

12.3. Hence, this Court finds no merit in the contention of the learned counsel for the appellant/Insurance Company. This Court finds no reason to interfere with the said finding of the Tribunal. Therefore, this Court concurs with the finding of the learned trial Judge that the driver of the vehicle of the appellant insurance company is responsible for the accident. The appellant insurance company is liable to pay the compensation. Therefore, the first point is answered accordingly.

13. Discussion on quantum:

At the time of accident, the deceased was aged about 32 years and he worked as a driver and earned Rs.4,500/- per month. The Tribunal fixed the monthly notional income of the deceased Rs.6,000/-. This Court finds no reason to differ with the said amount as a monthly income. So far as the quantum of compensation is concerned, this Court concurs with the submission of the learned counsel for the appellant/Insurance Company. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of love and affection to each claimant, against the ratio laid down by the Hon'ble Supreme Court in the case ***Pranay Sethi.*** The learned counsel for the appellant fairly admitted that the Tribunal has not awarded any amount towards future prospects.

13.1. As per the postmortem report the age of the deceased is 32 years. As per the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Co.Ltd., Vs.Pranay Sethi,*** reported in ***2017(2) TNMAC 609(SC),*** 40% towards future is to be taken, but the Tribunal has not taken the future prospects, therefore, the claimants are entitled 40% for future prospects. The Tribunal, fixed the deduction of the personal expenses of the deceased as 1/4, since there are five dependants. Considering that the age of deceased is 32 years, taken 16 as multiplier. In the above aspects, calculated the loss of income as follows:

13.2.Calculation of the amount:

(i) monthly notional income of the deceased	= Rs. 6,000/-
(ii) **Add:** 40% future prospects	
(Rs.6,000/- + Rs.2,400/-)	= Rs. 8,400/-
(iii) Annual income	
(Rs.8,400/- X 12)	= Rs. 1,00,800/-
(iv) **Less :** 1/4 Personal Expenses	
Rs.1,00,800/- (-) Rs.25,200/-	= Rs. 75,600/-
(v) Multiplier 16	
Rs.75,600/- X 16	= Rs.12,09,600/-
(vi) **Loss of Dependency**	**= Rs.12,09,600/-**

13.3. The learned Tribunal Judge also awarded the compensation to the non pecuniary damages, Rs.5,00,000/- towards the love and affection and Consortium to the wife Rs.1,00,000/- and Rs.15,000/- towards Funeral Expenses and Transport Expenses as against the guidelines of the Hon'ble Supreme Court in the case of ***Pranay Sethi***. Hence this Court modifies the said amount as follows:

Heads	***Amount awarded by the Tribunal***	***Re-quantified amount by this Court***
Loss of love and affection (each Rs.40,000/-)	Rs.5,00,000/-	Rs.1,60,000/-
Loss of consortium to the wife	Rs.1,00,000/-	Rs. 40,000/-
Funeral and Transport Expenses	Rs. 15,000/-	Rs. 30,000/-

Therefore, the second point is answered accordingly.

14. Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined as follows:-

Sl. No.	***Heads***	***Amount awarded by the Tribunal***	***Re-quantified amount by this Court***	***Status***
1	Loss of dependency	Rs.8,64,000/-	Rs.12,09,600/-	Enhanced
2	Funeral and Transport Expenses	Rs. 15,000/-	Rs. 30,000/-	Enhanced
3	Loss of love and affection (each Rs.40,000/-)	Rs.5,00,000/-	Rs. 1,60,000/-	Reduced
4	Loss of consortium to the wife	Rs.1,00,000/-	Rs. 40,000/-	Reduced
	Total	**Rs.14,79,000/-**	**Rs.14,39,600/-**	**Reduced (Rs.39,400/-)**

15. In the result, this Civil Miscellaneous Appeal is partly allowed. The compensation awarded in M.C.O.P.No.1232 of 2013, on the file of the Motor Accident Claims Tribunal, Special District Judge(MCOP), (Full Additional Charge), Tiruchirappalli, dated 08.09.2017, is hereby **reduced from Rs.14,79,000/- to Rs.14,39,600/-**. 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. 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 Bank in a fixed deposit under cumulative deposit scheme, till they 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 insurance company is permitted to withdraw the remaining amount. No Costs. Consequently, connected miscellaneous petition is closed.

[V.B.S.,J.] & [K.K.R.K.,J.]
21.03.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The Motor Accident Claims Tribunal,
Special District Court (MCOP),
Tiruchirappalli District.

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

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

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