BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1026 of 2024
and
C.M.P.(MD) No.10702 of 2024

M/s.Future General India Insurance Co. Ltd.,
Trichy. ... Appellant

Vs.

1.Karuppayee
W/o.late Karuppannan

2.Sankar
S.o.late Karuppannan

3.Devakani
S/o.late Karuppannan

4.Palaniammal

5.Sangeetha Priya
D/o.Arumugam

6.Dinesh Kamal
S/o.Arumugam.

7.K.Rajendran
S/o.Kumarasamy ... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the fair and decreetal order dated 20.11.2015 made in M.C.O.P.No.343 of 2014 on the file of the Motor Accident Claims Tribunal (Sub Court), Kulithalai.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R6 : Mr.T.Pradeep
for M/s.B.Saravanan Associates

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the Judgment and Decree dated 20.11.2015 passed by the Motor Accident Claims Tribunal (Sub Court), Kulithalai in M.C.O.P.No.343 of 2014.

2. The first to sixth respondents/claimants had filed a claim petition in M.C.O.P.No.343 of 2014 before the Tribunal stating that on 10.09.2014 at about 10.00 a.m., while the deceased was riding his two-wheeler bearing Registration No.TN-47-AZ-5739, a car bearing Registration No.TN-45-AZ-6669 owned by the seventh respondent and insured with the appellant Insurance Company came in a rash and negligent manner

and dashed against the two-wheeler ridden by the deceased from behind, as a result of which, the deceased sustained grievous injuries and succumbed to the injuries.

3. The seventh respondent, who is the owner of the offending vehicle, had remained *exparte* before the Tribunal. The appellant Insurance Company had filed counter affidavit stating that the driver of the insured vehicle did not have a valid license; that in any case, the accident took place only due to the negligence of the deceased; that the compensation claimed by the first to sixth respondents/claimants was on the higher side, and sought for dismissal of the claim petition.

4. Before the Tribunal, the first to sixth respondents/claimants examined two witnesses as P.W.1 & P.W.2 and marked Exs.P1 to P10. The appellant Insurance Company neither examined any witnesses nor marked any documents.

5. The Tribunal, after taking into consideration of the fact that the deceased Karuppannan was a retired TNEB employee and was drawing a pension of Rs.17,706/- per month, had calculated the loss of income on

that basis and awarded a total compensation of Rs.12,00,100/- to the first to sixth respondent/claimants.

6. The learned counsel for the appellant Insurance Company submitted that the accident took place only due to the negligence of the deceased and the finding of the Tribunal as regards the negligence is erroneous; and that in any case, the Tribunal ought to have deducted the family pension received by the first respondent, wife of the deceased, while calculating the compensation under the head 'loss of income'.

7. The learned counsel for the first to sixth respondents/claimants, per contra, submitted that the negligence on the side of the driver of the insured car has been established by the evidence of P.W1 and P.W.2 and no contra evidence has been let in on the side of the appellant Insurance Company to dispute their version; and that the family pension received by a wife/husband of the deceased cannot be deducted as per the decision of the Division Bench of this Court in C.M.A.No.1713 of 2020, in the case of **Bajaj Allianz General Insurance Co. Ltd.** Vs. **Venkatesh Ramanathan and others**, dated 15.03.2024.

8. This Court has carefully considered the rival submissions made by the learned counsel for the appellant Insurance Company and the learned counsel for the first to sixth respondents/claimants.

9. The questions involved in the instant appeal are as follows:-

i. Whether the Tribunal was right in holding that the accident took place only due to the negligence of the driver of the insured vehicle?
ii. Whether the Tribunal has awarded a just and reasonable compensation to the first to sixth respondents/claimants?

10. As regards the first question, it is seen that on the side of the first to sixth respondents/claimants, two witnesses have been examined. Both witnesses have stated as to how the accident took place, i.e. the accident took place only due to the negligence of the driver of the insured vehicle. The manner of the accident which has been established by the evidence of P.W.1 & P.W.2 and the FIR (Ex.P1) shows that the driver of the insured vehicle had come from behind in a rash and negligent manner and collided with the two-wheeler ridden by the deceased. Therefore, this

Court is of the view that the finding of the Tribunal cannot be faulted with.

11. As regards the quantum of compensation, it is seen that the Tribunal had taken into consideration of the pension received by the deceased who was a retired TNEB employee. The only ground raised by the appellant Insurance Company is that pursuant to the death of the deceased, the first respondent, wife of the deceased, is receiving the family pension and that ought to have been deducted while calculating the compensation.

12. The very same question came up for consideration before the Division Bench of this Court in C.M.A.No.1713 of 2020, in the case of **Bajaj Allianz General Insurance Co. Ltd.** Vs. **Venkatesh Ramanathan and others**. The Division Bench of this Court by the order dated 15.03.2024 had held as follows:-

> "*9.The facts in the case on hand are completely different. Here a pensioner had died. He was getting a pension of Rs.27,413/- that was paid to him as a pensioner therefore, on his death, the family losses that amount, which amounts to loss of dependency.*

> *The Hon'ble Supreme Court has also pointed out that the family pension drawn by the wife cannot be deducted while computing the loss of dependency for the death of the husband. This also justifies our conclusions that the pension drawn by the deceased can form the basis for determination of compensation for loss of dependency.*"

13. The above observation is squarely applicable to the facts of the present case. Hence, the submission of the learned counsel for the appellant Insurance Company that the family pension has to be deducted while calculating the compensation, cannot be accepted.

14. In the facts of the case, this Court is of the view that the award of the Tribunal is just and reasonable. Therefore, the award of the Tribunal is confirmed. This Civil Miscellaneous Appeal is liable to be dismissed.

15. The appellant Insurance Company is directed to deposit the compensation amount awarded by the Tribunal together with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order.

16. On such deposit, the first to sixth respondents/claimants are permitted to withdraw the compensation, interest and costs, in the same proportion ordered by the Tribunal, less the amount already withdrawn, if any, by filing appropriate application.

17. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

09.08.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Copy To:

The Sub Judge,
Motor Accident Claims Tribunal,
Kulithalai,
Krishnagiri District.

SUNDER MOHAN, J.

JEN

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