IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 18 / 11 / 2024

JUDGMENT DELIVERED ON: 19 / 02 / 2025

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NO.1202 OF 2023
AND
CMP NO.11774 OF 2023

Reliance General Insurance Co. Ltd.,
Reliance House, 6th Floor,
No.6, Haddows Road,
Nungambakkam, Chennai – 6. ... Appellant / 2nd Respondent

Vs.

1.Geethanjali
W/o. Bharath

2.Minor Mithran
S/o. Bharath
Represented by mother & next friend
Geethanjali

3.Padma
W/o. Seshadrisreenivasan

4.Seshadrisreenivasan
S/o. Nambirajan ... Respondents 1-4 / Petitioners

5.M/s.Kalai Agency
No.4, D Block, D1,
Triplicane Police Quarters, Triplicane,
Chennai – 600 005. ... 5th Respondent / 1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated March 25, 2022 made in M.C.O.P. No.2413 of 2019 on the file of Motor Accidents Claims Tribunal (Chief Court of Small Causes), Chennai.

For Appellant	:	Mr.R.Sunilkumar
For Respondents 1 to 4	:	Mr.K.Varadhakamaraj

JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated March 25, 2022 passed in M.C.O.P. No.2413 of 2019 on the file of the 'Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai' ['Tribunal' for short], the second respondent therein / Insurance Company has preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties will hereinafter be referred to as per their rank in the Motor Accident Claims Original Petition.

PETITIONERS' CASE

3. The first petitioner is the wife of the deceased – Bharath. Second petitioner is his minor son while 3rd and 4th petitioners are his parents. On March 17, 2019 at about 07.00 a.m., while the deceased was riding his motorcycle bearing Registration No.TN-22-BJ-2212 in South to North direction on Anna Salai, Teynampet, along with 4th petitioner in another two wheeler, a Tata Super Ace bearing Registration No.TN-31-BB-8038 driven in a rash and negligent manner coming from the opposite lane, suddenly crossed the center median and dashed against the motorcycle ridden by the deceased and due to the impact, the deceased sustained multiple injuries all over his body. Immediately, he was taken to Government Royapettah Hospital, Chennai where he was declared as 'brought dead'. At the time of accident, the deceased was aged about 31 years. He was working as Member Technical Staff, Zoho Corporation Pvt. Ltd., and was earning a sum of Rs.1,00,000/- (Rupees One Lakh only) per month. The 1st respondent is the owner and the 2nd respondent is the insurer of the said Tata Super Ace bearing Registration No.TN-31-BB-8038. Hence, the petitioners filed the Original Petition claiming compensation of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) from the respondents.

FIRST RESPONDENT'S CASE

4. The first respondent – Company is the owner of the said Tata Super Ace bearing Registration No.TN-31-BB-8038. They did not appear before the Tribunal and contest the Original Petition. Hence, they were set *ex-parte* by the Tribunal.

SECOND RESPONDENT'S CASE

5. The second respondent – Insurance Company filed a counter merely denying all the petition averments. The age, income and occupation of the deceased were denied. It was further denied that the 1st respondent's Driver had a valid driving license and the vehicle was insured with the 2nd respondent at the time of accident. Further, the claim of the petitioners was stoutly opposed as excessive. It was contended that the petition is bad for non-joinder of necessary parties. In short, the Counter is nothing more than a formal denial, seeking for dismissal of the Claim Petition.

TRIBUNAL

6. Before the Tribunal, the 1st petitioner was examined as P.W.1, 4th petitioner, ocular witness to the accident, was examined as P.W.2, one Guru Prasad, Human Resource Manager at Zoho Corporation Pvt. Ltd., was examined as P.W.3 and Ex-P.1 to Ex-P.27 were marked on the side of the petitioners. Neither any witness was examined nor any document was marked on the side of the second respondent.

7. The Tribunal, upon hearing either side and perusing the evidence available on record, relied on Ex-P.1 – First Information Report (FIR), Ex-P.23 - Charge Sheet and the evidence of P.W.1 as well as P.W.2, who is an ocular witness to the accident, to conclude that the accident occurred due to the rash and negligent driving of the driver of the Tata Super Ace bearing Registration No.TN-31-BB-8038. Since the first respondent's Tata Super Ace was insured with the second respondent –

Insurance Company and the insurance policy was in force on the date of accident, the Tribunal held that the second respondent is liable to pay compensation to the petitioners and accordingly, awarded compensation of Rs.1,30,72,400/- (Rupees One Crore Thirty Lakhs Seventy-Two Thousand and Four Hundred only). The split up figure is as follows:

S.No.	***Head***	***Amount***
1)	Loss of income / Dependency	Rs.1,29,02,400.00
2)	Loss of Estate	Rs.15,000.00
3)	Loss of Consortium (Wife and Son)	Rs.80,000.00
4)	Loss of Consortium (Parents)	Rs.60,000.00
5)	Funeral Expenses	Rs.15,000.00
Total		**Rs.1,30,72,400.00**

8. Challenging the quantum of compensation arrived at by the Tribunal, the second respondent – Insurance Company has filed the present Civil Miscellaneous Appeal.

ARGUMENTS:

9. Mr.R.Sunilkumar, learned Counsel for the appellant / second respondent / Insurance Company has submitted that the Tribunal erred in fastening responsibility on the 1st respondent in spite of the fact that the accident had occurred due to the negligence of the deceased. The deceased at the time of accident was not wearing Helmet and hence, in any case, the Tribunal ought to have applied the principles of contributory negligence and apportioned negligence to both parties. The Tribunal erred in fixing Rs.80,000/- as salary of the deceased when the net pay for the preceding month of accident viz., February 2019 was only Rs.59,861/-. The Tribunal ought to have noticed that Ex-P.27 – Form 16 for the assessment year 2019-2020 is a document filed three months after the accident. Accordingly, the learned counsel has prayed to allow this Civil Miscellaneous Appeal and set aside the Award passed by the Tribunal.

10. Mr.K.Varadhakamaraj, learned Counsel for the respondents 1 to 4 / petitioners has submitted that 4th petitioner / P.W.2 is an eye witness to the accident at whose instance the First Information Report (FIR) was registered against the first respondent's driver. The Charge Sheet was also laid against the first respondent's driver. Evidence of P.W.1 and P.W.2 would clearly prove that the accident occurred due to the rash and negligence on the part of first respondent's driver. The

Tribunal rightly held the first respondent's driver negligent, and the second respondent liable to pay compensation. As regards the quantum of compensation, the deceased was a Technical Support Engineer at Zoho Pvt. Ltd. earning about Rs.90,000/- per month, whereas the Tribunal has fixed his monthly income at Rs.80,000/-, which is on the lower side. The Civil Miscellaneous Appeal is devoid of merits and accordingly, he has prayed to dismiss it.

DISCUSSION

11. This Court has considered the submissions made on either side and perused the materials available on record.

12. On perusal of the records, it is seen that Ex-P.1 - FIR was preferred against the first respondent's driver by the 4th petitioner / deceased – Bharath's father / P.W.2, who was riding along with the deceased at the time of accident but in a different motorcycle. He had witnessed the accident and deposed that the accident occurred due to the rash and negligence of the first respondent's driver in coming from the opposite lane and suddenly crossing the centre median. The Police after investigation laid Ex-P.23 - Charge Sheet against the first respondent's driver. In these circumstances, the petitioners have discharged their initial burden. Now the onus is upon the second respondent. The second respondent ought to have examined the first respondent's driver or any other competent witness to prove its version that the accident occurred due to the negligence of the deceased - Bharath and that the deceased was not wearing helmet at the time of accident. However, the second respondent has miserably failed to do so. Mere pleading does not amount to proof. The second respondent has not examined any witness on its side, nor marked any document to substantiate its case. In these circumstances, this Court is of the view that the Tribunal was right in its conclusion that the accident occurred solely due to the rash and negligence on the part of the first respondent's driver. Further, admittedly, first respondent's vehicle was insured with second respondent / Insurance Company and hence, the Tribunal was right in holding the second respondent liable to pay compensation to the petitioners.

13. As regards quantum of compensation, the deceased - Bharath was a Technical Support Engineer at Zoho Pvt. Ltd. By relying on Ex-P.26 – Pay Slips the Tribunal has taken Rs.80,000/- as monthly income of the deceased – Bharath. Perusal of Ex-P.26 would show that the deceased drew a gross salary of Rs.88,870/- in the preceding month of accident *i.e.,* in February 2019. As per the Pay Slip for January 2019 in Ex-P.26, if the leave encashment is not considered, the deceased would have drawn a sum of Rs.88,870/-. As regards Ex-P.27 – Form 16, though it was lastly updated in June 2019 while the accident occurred on March 17, 2019, it pertains to the assessment period starting from April 1, 2018 to March 31, 2019 and hence, there may not be concern with it. In these circumstances, this Court is of the view that the monthly income fixed by the Tribunal by relying on Ex-P.26 is not on the higher side. The Tribunal has made tax deduction at flat rate of 20% which is justifiable.

14. Considering the fact that the 4th petitioner / father of the deceased was 61 years old at the time of accident [Ex-P.16 – Aadhar Card of 4th Petitioner], his earning capacity is likely to have diminished. He has crossed the general retirement age of 60 years. Though he has deposed that he was working as a manager in a conventional hall nearby his house, given his advancing age, his earning capacity would dimnish further over the years and his dependency on the deceased would have increased. The same has been made more plausible by the fact that he has deposed on August 23, 2021 that he was not working anywhere at that time. Hence, in the facts and circumstances of this case, he can also be considered as a dependent of the deceased along with petitioners 1 to 3, who are the deceased's wife, minor child and mother. The multiplier of 16 and the personal deduction of $1/4^{th}$ amount made by the Tribunal are in tune with the Judgements of Hon'ble Supreme Court in ***National Insurance Company Limited -vs- Pranay Sethi*** reported in ***(2017) 16 SCC 680*** and ***Sarla Verma -vs- Delhi Transport Corporation*** reported in ***(2009) 6 SCC 121***.

15. As regards the conventional heads, the compensation awarded by the Tribunal are on the lower side. The Tribunal has failed to provide 10% increase on the conventional heads that has to be made every three years as per ***Pranay Sethi's Case*** (cited *supra*). Even otherwise, the Tribunal erred in awarding only Rs.30,000/- each towards filial consortium to petitioners 3 and 4, which is on the lower side. However, the petitioners have not preferred any appeal over the Award. In these circumstances, this Court is of the view that the appellant / 2^{nd} respondent / Insurance Company would not have any grievance over the quantum of compensation. Therefore, the Civil Miscellaneous Appeal is liable to be dismissed as devoid of merits.

RESULT

16. Resultantly, the Civil Miscellaneous Appeal stands dismissed as devoid of merits. In view of the facts and circumstances of this case, the parties shall bear their own costs. Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J.] **[R.S.V., J.]**

19 / 02 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

To
The Motor Accidents Claims Tribunal
(Chief Court of Small Causes, Chennai)
Chennai.

J. NISHA BANU, J.

AND

R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN CMA NO.1202 OF 2023

19 / 02 / 2025