IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 10.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.342 of 2006

The New India Assurance Company
Limited, Divisional Office,
No. 389, 391 Cross cut Road,
Coimbatore 641 012. .. Appellant

Versus

1. Nageena Nadeem @ Radheemunnissa

2.Syed Esac Buhari (minor)
S/o. Late B.Nadeem @ B.syed Ahamed

3. Syed Umar Farook (minor)
S/o. Late B.Nadeem @ B.syed Ahamed

minors 2 and 3 represented by their
mother and natural guardian
Nageena Nadeem @ Radheemunnissa

4. S.M.Basha

5. Mahaboobunisha

6. K.Balakrishnan.

7. B.Saleem

8. K.Khasan Mohammed

9. United India Insurance Company
Limited, Udumalaipet. .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 29.12.2004 and made in MCOP.No.297 of 2000 on the file of the Motor Accident Claims Tribunal, Coimbatore, (Additional District and Sessions Court, Coimbatore) Fast Track Court, No.II, Coimbatore.

For Appellant : Mr.P.G.Padmanaban

For Respondents : Mr.N.E.A.Dinesh for R1 to R5
R6 to R8 exparte

JUDGMENT

This appeal has been preferred by the third respondent insurance company / appellant herein, against the award passed in MCOP No.297 of 2007 on the file of the Motor Accident Claims Tribunal, Coimbatore, (Additional District and Sessions Court, Coimbatore) Fast Track Court, No.II, Coimbatore.

2. The brief facts leading to the claim application is that on 06.08.1999, the deceas ed Nadeem was travelling in the Maruthi Van bearing Registration No.TCW 6591, which was driven by the first respondent. When the said vehicle was proceeding from Coimbatore to Palani, near the 4 road junction point, all of a sudden, cyclist came in the opposite direction and tried to cross the road, due to which the car dashed against the cyclist and thereafter dashed against a lorry, which was parked on the southern side of the road. The Maruti van was driven by its driver in a rash and negligent manner due to which the occupant of the van, viz., the deceased, Nadeem, died and several others were injured. The claimants, as the legal heirs of the deceased Nadeem, claimed a sum of Rs.40,00,000/- as compensation.

3. The owner of the Maruti van denied the rash and negligent driving by the driver and pleaded that the Maruti van is insured with the appellant herein. Hence, the appellant insurance company is liable to pay the compensation.

4. The insurance company, filing a counter statement, denied its liability to pay the compensation claiming negligence on the part of the driver of the van and also contested the claim as made by the claimants under various heads.

5. The Tribunal after analyzing the evidence and documents placed before it, awarded a sum of Rs.8,85,000/-, the break-up of which is as hereunder :-

Loss of Income	:	Rs.6,80,000/-
Loss of Consortium	:	Rs.1,00,000/-
Loss of love and affection	:	Rs.1,00,000/-
Loss of funeral expenses	:	5,000/-
		Rs.8,85,000/-

6. Aggrieved by the compensation awarded, the appellant is before this Court by filing the present appeal.

7. It is contended on behalf of the appellant that the Tribunal has awarded an exorbitant amount as compensation. It is the contention of the appellant that the terms of the policy limits the liability of the insurer to the occupants, who are not third parties. It is the further contention of the appellant that the monthly income fixed at Rs.5,000/- for assessing the loss of income is highly excessive. It is submitted by the appellant that Ex. P22, relating to income tax return, is only for

the year 1998 – 1999 and the claimants have not proved that the deceased was drawing the above amount every year. It is further contended that the amount awarded under the head loss of consortium, loss of love and affection are also excessive and requires to be reduced.

8. A perusal of the order passed by the Tribunal reveals that though the claimants have claimed the monthly income of the deceased at Rs.3,000/-, the Tribunal, has fixed the monthly income at Rs.5,000/- and has calculated the loss of income. When a lesser amount is claimed by the claimants, it is not open to the Tribunal to fix an amount higher than the amount claimed by the claimants. It is borne out by record in the form of Ex.P-12 that the deceased, as one of the sharer in a business venture from 5.3.1993 and was earning a monthly income of Rs.3,000/- .

9. In view of the documents filed by the claimants and the income claimed to be earned by the deceased, this Court is of the considered view that fixing a sum of Rs.3,000/- per month towards the monthly earnings of the deceased, would be just and reasonable. Accordingly, fixing the income at Rs.3,000/- per month and deducting 1/3rd towards the personal expenses of the deceased, the total monthly loss of income is fixed at Rs.2,000/-. Adding 40% towards future prospects and adopting the multiplier of 17, the loss of income to the family can be safely quantified at Rs.5,71,200/- (Rs.2,000 + 40% X 12 X 17).

10. Insofar as the contention of the appellant that the terms of the policy covers compensation only for third parties, in the absence of the policy document being placed before the Court, the said contention is not acceptable. Accordingly, this Court feels that the insurance company is liable to pay compensation.

11. Further, with regard to the contention that the compensation awarded under the head loss of 'love and affection' and 'loss of consortium' is concerned, considering the age of the deceased as well as the age of the 1st claimant and the minor children, this Court is of the considered opinion that the quantum awarded under those heads are proper but the amount with regard to loss of love and affection is diverted to loss of care and guidance. Therefore, this Court is of the considered view that no interference is called for with the compensation awarded under those heads.

12. Accordingly, the amounts quantified by this Court, under the various heads are as hereunder :-

Heads	Amount awarded by the Tribunal Rs.	*Amount awarded by this Court* *Rs.*
Loss of Income	6,80,000/-	Rs.5,71,200/-
Loss of Consortium	1,00,000/-	Rs.1,00,000/-
Loss of care and guidance	1,00,000/-	Rs.1,00,000/-
Loss of funeral expenses	5,000/-	5,000/-
	8,85,000/-	Rs.7,76,200/-

13. In the result, this appeal is allowed in part reducing the compensation awarded from Rs.8,85,000/- to Rs.7,76,200/-. No costs.

14. The appellant / Insurance Company is directed to deposit the entire amount of compensation, as quantified by this Court, less the amount, if any, already deposited, along with interest @ 7.5% from the date of petition till the date of deposit to the credit of MCOP No.310 of 2000 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the share of the major claimants to their respective Bank Accounts, through RTGS within a period of two weeks thereafter. Insofar as the share of the minor claimants is concerned, the same shall be deposited in fixed deposit in any one of the Nationalized Banks, till they attain majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimants once in three months, directly from the Bank.

10.10.2018

Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

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To
1. The Motor Accident Claims Tribunal, Coimbatore,
Additional District and Sessions Court,
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2. United India Insurance Company
Limited, Udumalaipet.

S.RAMATHILAGAM, J.

vsi2

3.The Section Officer, VR Section,
High Court, Madras.

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