

IN THE JUDICATE OF MADRAS HIGH COURT

DATED : 05.01.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.M.A.No.1794 of 2014

and

M.P.No.1 of 2014

United India Insurance Co. Ltd.,
Sreeji Chambers, Mount Road,
Post Box No.52, Kunoor,
Nilgiris ... Appellant /R4

Vs.

1.Sumithra
2.Minor.Mahendra Prasad
3.Karivaradhan
4.Banumathi ... RR1 to 4/Petitioner
5.Subramaniyan
6.R.Nagaraj
7.H.Ibrahim ...RR5 to 7/RR1 to 3

(minor Rep.by his Mother and Guardian R1)

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 25.10.2013 made in M.C.O.P.No.710 of 2012 on the file of the Motor Accidents Claims Tribunal (III Additional District and Sessions Court), Coimbatore.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mrs.V.S.Usharani (For R1 to R4)

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (III Additional District and Sessions Court), Coimbatore, in and by award dated 25.10.2013 in claim petition in M.C.O.P.No.710 of 2012 which was filed by the respondents 1 to 4 herein/claimants who are the wife, minor son,

father and mother of the deceased Loganathan, the present appeal has been filed by the Insurance Company.

2. Since the present appeal has been filed only questioning the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award.

3. So far as the quantum of compensation is concerned, it is the case of the claimants before the Tribunal that at the time of accident, the deceased Loganathan was aged 37 years and he was earning a sum of Rs.10,000/- per month by working as a Senior Commission Agent in Amway India Enterprises Pvt Ltd. That apart, he was running a Readymade Garment Cloth Shop in the name and style of 'Jeans-Sim Parck'. It is further case of the claimants that the deceased Loganathan was also owing 1/3rd share in a agricultural land measuring to an extent of 4 acres which is a joint family property. In order to prove the income earned by the deceased Loganathan before the Tribunal, on the side of the claimants, Income Tax Returns for the period 2008-2009, 2009-2010 & 2010-2011 were marked as Ex.P.No.7,8 & 9. The Tribunal, by considering the said documents, has fixed a sum of Rs.22,694/- as monthly income of the deceased Loganathan and thereafter, by adding 30% towards future prospects, has arrived at a sum of Rs.29,502/-. The Tribunal, thereafter, by deducting 1/4th amount towards personal expenses and by applying multiplier 16, on the basis of the age of the deceased, who was aged 37 years at the time of accident, has awarded a sum of Rs.42,48,288/- ($29,502 \times 12 \times 16 \times \frac{3}{4}$) as loss of income. That apart, the Tribunal has awarded a sum of Rs.50,000/- towards mental agony, a sum of Rs.5,000/- for damages to the cloths and a sum of Rs.1,000/- for transportation. Thus, the Tribunal has passed an award for a total sum of Rs.43,04,288/-. Aggrieved over the same, the present appeal has been filed by the Insurance Company.

4. It is the submission of the learned counsel appearing for the appellant/Insurance Company that there cannot be any loss of income to the claimants due to the death of the deceased Loganathan since the business which the deceased was said to have been running is a family business and therefore, even after his demise, the claimants can continue the said business. Similarly, there will not be any loss in the agricultural income since the 1/3rd share owned by the deceased in the land measuring to an extent of four acres is a joint family property. Under such circumstances, the Tribunal ought not to have awarded a higher sum of Rs.42,48,288/- as loss of income to the claimants. Therefore, by fixing a lesser amount as monthly income of the deceased, the compensation amount has to be modified.

5.The learned counsel appearing for the claimants made her submissions supporting the award passed by the Tribunal.

6.Keeping in view the submissions made on either side, We have carefully gone through the entire records.

7.From the evidence on record, We find that it is the case of the claimants that the deceased Loganathan was earning from three sources, which are as follows_

i)from textile business in the name and style of 'Jeans-Sim Parck', he was earning a considerable amount per month.

ii)from agricultural operations in his 1/3rd portion of the joint family property

iii)working as Commission Agent in Amway India Enterprises Pvt Ltd. he was earning a sum of Rs.10,000/- per month.

8.In order to prove the income earned by the deceased Loganathan from these three businesses, no documentary proof was produced on the side of the claimants before the Tribunal. However, from the Income Tax Returns marked as Ex.Ps.7 to 9, We find that he earned a sum of Rs.2,48,932/- during the 2009-2010, a sum of Rs.3,86,751/- during the year 2010-2011 and a sum of Rs.5,15,243/- during the year 2010-2011. By considering these documents, the Tribunal has fixed a sum of Rs.2,72,330/- as annual income and thereafter, arrived at a sum of Rs.22,694/- as monthly income of the deceased Loganathan. Thereafter, by adding 30% towards future prospects, by applying 16 and by deducting 1/3rd amount towards personal expenses, the Tribunal has passed an award for a sum of Rs.42,48,288/- under the head of total loss of income.

9.But, as contended by the learned counsel appearing for the appellant/Insurance Company, there cannot be any loss for the claimants in respect of the income earned from the family business and agricultural operations. Under such circumstances, We are of the opinion that the sum of Rs.22,694/- fixed by the Tribunal as monthly income of the deceased appears to be on the higher side.

10.Further, at the same time, We are of the opinion that the documents marked as Ex.P.7 to 9, Income Tax Returns filed by the deceased, would show that the deceased was making some considerable income. Hence, We are of the opinion that it would be appropriate to fix the monthly income of the deceased at Rs.20,000/- to arrive at a just and proper compensation. If Rs.20,000/- is fixed as monthly income of the deceased, 40% of the amount has to be added towards future prospects as per the latest decision of a Larger Bench of the Hon'ble Supreme

reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others] and if added so, the total comes to Rs.28,000/-, which sum could be taken as monthly loss of income. Then, the annual loss of income works out to Rs.3,36,000/- (28,000 x 12). If 1/3rd amount is deducted towards personal expenses, the balance amount comes to Rs.2,24,000/- (3,36,000 - 1,12,000), which shall be taken as actual annual loss of income. Considering the age of the deceased who was aged 37 years at the time of accident, the correct multiplier that has to be applied in this case is 16. If multiplier 16 is applied, the the total comes to Rs.35,84,000/- (2,24,000 x 16), which shall be the just and proper compensation under the head of loss of income.

11.Further, as per the decision of the Hon'ble Supreme Court in National Insurance Co Ltd (cited supra), the 1st respondent/wife of the deceased is entitled to Rs.40,000/- towards loss of consortium. Further, the claimants are entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Consequently, a sum of Rs.50,000/- towards mental agony, Rs.1,000/- for transportation and a sum of Rs.5,000/- towards damages to the cloth awarded by the Tribunal are hereby set aside.

12.For the foregoing reasons, the total compensation amount of Rs.43,04,288/- awarded by the Tribunal is hereby modified and reduced to Rs.36,54,000/-. The break up details of the modified compensation amount are as follows_

Loss of income	= Rs.35,84,000/-
Loss of Consortium	= Rs. 40,000/-
Funeral Expenses	= Rs. 15,000/-
Loss of Estate	= Rs. 15,000/-

Total Rs.36,54,000/-

In fine, the appeal is partly allowed and the compensation amount of Rs.43,04,288/- (Rupees Forty Three Lakhs Four Thousand and Two Hundred and Eighty Eight Only) awarded by the Tribunal is hereby modified and reduced to Rs.36,54,000/- (Rupees Thirty Six Lakh and Fifty Four Thousand Only). The Appellant/Insurance Company is directed to deposit the entire compensation amount, after deducting the amount if any already deposited, with interest at the rate of 7.5% from the date of claim petition till the date of deposit. On such deposit being made, the 1st respondent/wife is entitled to Rs.20 lakhs, the 2nd respondent/son is entitled to Rs.10 lakhs and the balance amount shall be equally apportioned by the parents of the deceased/respondents 3 & 4, with respective proportionate interests. The respondents 1, 3 & 4 are entitled to withdraw

their respective shares by making necessary application before the Tribunal. The share amount of the minor (2nd respondent/son) is directed to be deposited in any one of the nationalised banks till he attains majority and the 1st respondent, mother of the minor, is permitted to withdraw the interest accrued thereon, once in three months. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

To,

1. The Motor Accidents Claims Tribunal
(III Additional District and Sessions Court),
Coimbatore.

2 The Record Keeper,
VR Section, High Court,
Madras.

+1cc to Mr.V.S.Usharani, Advocate SR.No.835

+1cc to Mr.S.Arun Kumar, Advocate SR.No.978

C.M.A.No.1794 of 2014
and
M.P.No.1 of 2014

EV (CO)
GN (09/02/2018)

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