IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2018

Coram

The Hon'ble Mr.Justice R.Subbiah
and
The Hon'ble Mr. Justice P.D.Audikesavalu

C.M.A.No.2428 of 2014

M/s. Iffco Tokio General Insurance Co. Ltd.,
KSCMF Building,
3rd Floor, 3rd Block,
No.8, Cunningham Road,
Bangalore. ...Appellant

Vs.

1. V. Chinnakutty
2. M. Vinayagamurthy
3. Miss. V.Hemalatha
4. S. Selvam
(R-4 remained ex parte before the Tribunal) ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 07.12.2013 made in MCOP No.264 of 2011, on the file of the Motor Accident Claims Tribunal (VI Court of Small Causes) Chennai.

For Appellant : Mr.N.Vijayaraghavan
For Respondents 1 to 3 : Mr. K.Suryanarayanan

J U D G M E N T

(Judgement of the Court was delivered by R.Subbiah,J.)

This Civil Miscellaneous Appeal is filed by the Insurance Company, questioning the quantum of compensation awarded by the VI Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai, (henceforth, referred to 'the Tribunal', for brevity) in and by the award, dated 07.12.2013 made in M.C.O.P.No.264 of 2011. Since the present Appeal is filed only questioning the quantum of compensation awarded by the Tribunal, we are not traversing into the other aspects of the award passed by the Tribunal.

2. The respondents 1 to 3 herein, who are the petitioners/claimants before the Tribunal are mother, father and sister of the deceased V.Mohankumar. It is the case of the claimants that on 13.11.2010 at about 5.30 hours, when the said Mohankumar was proceeding on his motorcycle, bearing

Registration No.TN-05-V-3141 at K.H. Road and Medavakka Tank Road Junction, Chennai, another Motorcycle, bearing Regn No.TN-1-T-1534, driven by the 4th respondent herein/owner came from opposite direction in a rash and negligent manner and dashed against the motorcycle, as a result of which, the said Mohankumar sustained multiple injuries. Immediately, he was taken to the Government General Hospital, where, he was treated for 10 days; but, in spite of treatment, he died on 23.11.2010. Hence, the claimants filed a Claim Petition against the insured as well as the insurer, claiming a sum of Rs.15,00,000/- as compensation.

3. The owner of the offending Vehicle, viz., the 4th respondent herein the Insured remained ex parte before the Tribunal.

4. The Insurance Company resisted the Claim Petition by filing a Counter Statement, denying all the averments set out in the Claim Petition.

5. Before the Tribunal, in order to prove the claim, first claimant examined herself as P.W.1, besides examining one other witness as P.W.2 and marked nine documents as Exs.P.1 to P.9. On behalf of the Insurance Company, neither any witness was examined nor any document was marked.

6. The Tribunal, on evaluation of both oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent act of the rider of the Motorcycle, bearing Regn No.TN-1-T-1534. By coming to such a conclusion, the Tribunal made the calculation under different heads and passed an award for a total sum of Rs.18,30,000/- as compensation. The break up details of the compensation amount awarded by the Tribunal are as follows_

i)	Loss of Dependency	:	Rs.17,01,000
ii)	Funeral Expenses	:	Rs. 25,000
iii)	Loss of Love and Affection Mental Agony	:	Rs. 1,00,000
iv)	Loss of Estate	:	Rs. 4,000
	Total	:	Rs.18,30,000/-

The said sum of Rs.18,30,000/- was directed to be paid together with interest at 7.5% per annum from the date of petition till the date of deposit.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the present Appeal is filed by the Insurance Company as stated above.

8. The learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal, while determining the compensation under the head of Loss of Dependency, has taken a sum of Rs.15,000/- as monthly income of the deceased and by deducting 10% towards the expenses for his studies and by adding 50% towards his future prospects, awarded a sum of Rs.17,01,000/- under the head of Loss of Dependency, which is on the higher side. It is further contended that, it is not in dispute that at the time of the accident, the deceased was only a student, pursuing MBA Course II Year at Meenakshi College, Chennai, and he was not earning any income and that there is no tangible evidence to show that the deceased was earning Rs.15,000/- per month. While that being so, the Tribunal ought not to have taken such a sum of Rs.15,000/- as monthly income, which resulted in awarding an exorbitant amount of Rs.17,01,000/- towards Loss of Dependency. That apart, there is no reason recorded by the Tribunal for fixing Rs.15,000/- as monthly income of the deceased. Like the same, the compensation awarded towards Funeral Expenses is also high and the same requires reduction. Thus, the learned counsel for the appellant/Insurance Company prays for modification of the award of the Tribunal under the aforesaid grounds.

9. The learned counsel appearing for the respondents 1 to 3/claimants made his submission supporting the award passed by the Tribunal.

10. Keeping the submissions made by the learned counsel for both sides, we have perused the materials placed on record. As rightly pointed out by the learned counsel appearing for the appellant/Insurance Company, the Tribunal ought not to have fixed such an exorbitant sum of Rs.15,000/- as monthly income of the deceased and arrived at a sum of Rs.17,01,000/- under the head of Loss of Dependency. However, considering the present cost of living and the fact that the deceased was a Bachelor, aged about 23 years, we feel that a sum of Rs.10,000/- could be taken as monthly income of the deceased, to arrive at a just and proper compensation. Further, the Tribunal has added 50% amount towards future prospects, which is on the higher side and they same is reduced to 40%. Since the deceased was a

bachelor, 50% amount has to be deducted towards his personal expenses. Further, the Tribunal by taking into consideration the age of the mother of the deceased has fixed the multiplier 14, which is incorrect. As per the decision of the Hon'ble Supreme Court in the case of Sarala Verma Vs. Delhi Transport Corporation reported in [(2009) 5 LW 561], the age of the deceased alone should be taken inconsideration for fixing the multiplier. In the instant case, at the time of accident, the deceased was aged 23 years. Hence, the correct multiplier that has to be applied is 18. If the monthly income of the deceased is taken as Rs.10,000/-, then 40% amount has to be added towards future prospects and if so added, the total comes to Rs.14,000/-. If 50% amount is deducted towards personal expenses, the monthly loss of dependency comes to Rs.7,000/-. Then, the total loss of dependency works out to Rs.15,12,000/- (7,000 x 12 x 18). Hence, the compensation amount of Rs.17,01,000/- awarded by the Tribunal under the head of loss of dependency is hereby modified and reduced to Rs.15,12,000/-.

11. That apart, it is seen that the Tribunal has awarded a sum of Rs.25,000/- for Funeral Expenses, which is on the higher side. Hence, the same is hereby reduced to Rs.15,000/-. However, as the sum of Rs.4,000/- awarded by the Tribunal for loss of estate appears to be very meager, the said amount is hereby enhanced to Rs.15,000/-. Similarly, considering the fact that the claimants1 and 2/parents have lost their only son in the accident at the young age, we feel that the compensation of Rs.1,00,000/- awarded by the Tribunal under the head of Loss of Love and Affection is inadequate; hence, the same is hereby enhanced to Rs.1,20,000/-. Consequently, the total compensation amount of Rs.18,30,000/- awarded by the Tribunal is hereby modified and reduced to Rs.16,62,000/-. The break up details of the modified compensation amount are as follows:-

i) Loss of Dependency	:	Rs.15,12 000
ii) Funeral Expenses	:	Rs. 15,000
iii) Loss of Love and Affection Mental Agony	:	Rs. 1,20,000
iv) Loss of Estate	:	Rs. 15,000
Total	:	Rs.16,62,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.18,30,000/- awarded by the tribunal is hereby modified and reduced to

Rs.16,62,000/-. Since it is submitted by the learned counsel appearing for the appellant/Insurance Company that they have already deposited the entire compensation, the claimants are permitted to withdraw their respective share amounts with accrued interest thereon by making necessary application before the Tribunal. The Insurance Company is permitted to withdraw the excess amount deposited by them. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
Motor Accident Claims Tribunal/
VI Court of Small Causes, Chennai.

Copy to:

The Section Officer, VR Section,
High Court, Madras. (2 copies)

+1cc to Mr.M.B.GOPALAN, Advocate, S.R.No. 17474
+1cc to Mr.K.SURYANARAYANAN, Advocate, S.R.No.17005

C.M.A.No.2428 of 2014

RJI(CO)
TR(05/06/2018)