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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.NO.3057 of 2014 &
M.P.No.1 of 2014

United India Insurance Co. Ltd.,
Rep. By its Divisional Manager,
5th Floor, Janmbhoomi Marg., Fort,
Mumbai - 1, Maharastra

... Appellant/3rd Respondent

Vs

1.Rajamani (Died)
2.Uma
3.Ponnathal @ Ponnammal (Died)
4.K.Surendran
5.Raveendran

... Respondents

(R1 Died. R2 LR of the Deceased R1 viz.,
Rajamani as per the affidavit recorded
dated 03/10/2018 vide court order
dated 03/10/2018 made in CMA.No.
3057 of 2014 and MP.No.1 of 2014
and MP.NO.1 of 2015)

R3-Died vide order of this Court

Dt:08/10/2018 made in CMA.3057/14

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 against the award and Decree dated
28.10.2013 made in MCOP.No.214 of 2010 on the file of the Motor
Accident Claims Tribunal, Sub Court, Udumalpet.

For appellant : Mr.S.Arun Kumar
For Respondent 2: Mr.R.Babu
for Mr.Gunalan
R1-Died
R3-Died
R4-Exparte
R5-Exparte



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JUDGMENT

The instant appeal has been filed by the Insurance company challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (Sub Court, Udumalpet), under the impugned Award dated 28.10.2013 passed in MCOP.No.214 of 2010.

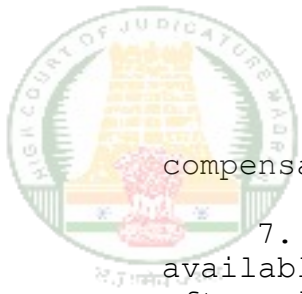
The brief facts leading to the filing of the instant appeal are as follows: 2. One Kaliappan died on 04.10.2010 as a result of an accident that took place on 03.10.2010 caused by a vehicle namely Indica Car bearing registration No.KL09X7243 owned by the fifth respondent and insured with the Appellant. The dependents of the deceased Kaliappan who are the respondents 1 to 3 in the instant appeal, preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.214 of 2010 seeking a compensation of Rs.15,00,000/-. The Motor Accident Claims Tribunal by its Award dated 28.10.2013 in MCOP.No.214 of 2010 directed the Appellant to pay the respondents 1 to 3 a sum of Rs.8,96,770/- as total compensation together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the insurance company.

4. Heard Mr.S.Arun KUMar, learned counsel for the appellant and Mr.R.Babu, learned counsel for the second respondent. Respondents 1 and 3 were dead. Respondents 4 & 5 have remained ex parte both before the Tribunal as well as before this Court.

5. According to the learned counsel for the Appellant, the quantum of compensation awarded by the Tribunal to the respondents 1 to 3 under the impugned Award is excessive. According to the learned counsel for the Appellant, no documentary evidence was produced by the respondents 1 to 3 before the Tribunal to prove that the deceased was earning Rs.12,000/- per month as his monthly income at the time of the accident. But, without any documentary evidence, the Tribunal has erroneously assessed the monthly income of the deceased kaliappan at Rs.12,000/- on notional basis.

6. Per contra, learned counsel for the second respondent Insurance Company submitted that Ex.P10 certificate would reveal that the deceased was owning properties worth Rs.35,00,000/- at the time of the accident and only based on that document, the Tribunal has rightly assessed the monthly income of the deceased at Rs.12,000/-, at the time of the accident. According to the learned counsel for the second respondent, the compensation awarded by the Tribunal under the impugned Award is a just



compensation.

7. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels, observes the following:

a) The Tribunal under the impugned Award has given a categorical finding that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened. No contra evidence has been produced by the Appellant before the Tribunal to disprove the said finding.

b) In the instant appeal, the Appellant has challenged only the quantum of compensation awarded to the respondents 1 to 3 and has not disputed its liability.

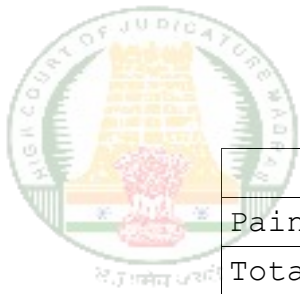
c) The accident happened in the year 2009. In the claim petition, the respondents 1 to 3 have claimed that the deceased was 60 years and was an agriculturist and contractor and was a retired Village Administration Officer (VAO), earning a monthly income of Rs.50,000/- at the time of accident. Based on Ex.P10 certificate, which discloses that the deceased was owning properties worth Rs.35,00,000/-, the Tribunal has assessed the monthly income of the deceased at Rs.12,000/-. Admittedly, in the instant case, the respondents 1 to 3 have not produced any documentary evidence before the Tribunal to establish that the deceased was earning a monthly income of Rs.50,000/- as claimed in their claim petition or Rs.12,000/- as assessed by the Tribunal. Considering the year of the accident and considering the fact that no document was produced by the respondents 1 to 3 to prove that the deceased was earning a monthly income of Rs.12,000/- at the time of the accident, the Tribunal on its own, without any basis has assessed the monthly income of the deceased at Rs.12,000/-.

d) In the considered view of this Court, considering the year of the accident, when there is no documentary evidence, the monthly income of the deceased at the time of the accident will have to be assessed only at Rs.6,500/-.

e) Under the impugned Award, the Tribunal has awarded total compensation of Rs.8,96,770/- to the respondents 1 to 3 in the following manner:

For first respondent

Head	Amount
Loss of Earning (3,000 X 12 X 9)	3,24,000/-
Transport & Funerals Expenses	Rs.20,000/-
Medical Expenses	Rs.18,770/-
Loss of consortium	Rs.5,000/-



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Head	Amount
Pain & Suffering	Rs.10,000/-
Total	Rs.3,77,770/-

For second respondent

Head	Amount
Loss of Earnings (3,000 X12 X 9)	Rs.3,24,000/-
Loss of love and Affection	Rs.10,000/-
Total	Rs.3,34,000/-

For third respondent

Head	Amount
Loss of Earnings (3,000 X 12 X 5)	Rs.1,80,000/-
Loss of love and affection	Rs.5,000/-
Total	Rs.1,85,000/-

f) As seen from the impugned Award, the Tribunal has not awarded any compensation towards loss of consortium, loss of estate and funeral expenses. As per the decision of Pranay Shethi's case rendered by the Constitution Bench Judgment of the Hon'ble Supreme Court reported in 2017 (6) SCC 680, the Tribunal ought to have awarded adequate compensation towards loss of consortium, loss of estate and funeral expenses. In the considered view of this Court, a sum of Rs.40,000/- will have to be awarded towards loss of consortium, Rs.15,000/- will have to be awarded towards loss of estate and Rs.15,000/- will have to be awarded towards Funeral Expenses to the second respondent. R1 and R3 have already died, during the pendency of the Appeal, which was also recorded by this Court by order dated 03.10.2018 and the second respondent was brought on record as the legal heir of the deceased first and third respondent.

8. In the light of the above observations, in the considered view of this Court, the compensation awarded by the Tribunal under the impugned Award has to be modified as detailed below:

Head	Award Amount
Loss of income (6,500 X 12 X 9 X 1/3)	Rs.4,68,000/-
Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-



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Head	Award Amount
Medical Bill	Rs.18,770/-
Loss of love and affection	Rs.20,000/-
Total	Rs.5,76,770/-

9. In the light of the above observations, the appeal is partly allowed and the appellant is directed to deposit the Award amount of Rs.5,76,770/-, after deducting the amount already deposited, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, to the credit of MCOP.No. 214 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the second respondent is permitted to withdraw the amount along with accrued interest lying to the credit of MCOP.No. 214 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet by filing an appropriate application. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Sub Court, Udumalpet

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.69776

+1cc to Mr.S.Gunalan, Advocate, S.R.No.69526

C.M.A.No.3057 of 2014

GJ(CO)
GSP(19/12/2018)