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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.NO.1346 OF 2016

AND

C.M.P.NO.10403 OF 2016

The Branch Manager,
United India Insurance Co. Ltd.,
Office situated at Fashion Tower,
Kaltex Junction, Kannur,
Kerala - 2.

... Appellant

Vs.

1.Latha
2.Varadaraj
3.Malliga
4.D.Sahad

... Petitioner

...1st Respondent/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 31.03.2015 made in M.C.O.P.No.654 of 2013, on the file of Motor Accident Claims Tribunal, Special District Judge, Krishnagiri.

For Appellant : Mr.S.Arunkumar

For R1 to R3 : Mr.S.Murugan

For R4 : Ex-parte

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 31.03.2015 made in M.C.O.P.No.654 of 2013, on the file of Motor Accident Claims Tribunal, Special District Judge, Krishnagiri.

2. The brief facts relating to the claim application are as follows:

On 26.07.2012 at about 06.15 hours, when the petitioner was



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driving Toyoto Etios GD car bearing Registration No.KA-412-A-4374 from Karumariamman Temple at Manimangalam, Kanchipuram District, at the time a lorry bearing Registration No.TN-KA-01-AA-3807 which was proceeding in the Chennai to Krishnagiri N.H Road opposite to Sundampatti Church, the driver driven the lorry in a rash and negligent manner with high speed without following traffic rules and dashed against the car. As a result of the accident, the petitioner sustained greivous injuries on his vital organs and died on the spot. Immediately the other petitioners was admitted at Government Head Quarters Hospital, at Krishnagiri and the accident occurred only due to rash and negligent act of the driver of the lorry. Hence, the petitioners have filed a claim petition in M.C.O.P.No.654 of 2013 claiming a sum of Rs.15,59,000/- as compensation for the death of the deceased. The Tribunal after analyzing the document and evidence has concluded that the accident had occurred due to rash and negligence on the part of the driver of the lorry and being the insurer of the said vehicle, directed to Insurance Company is as per the compensation of Rs.15,59,000/- to the claimants. Aggrieved by the same the Insurance Company has preferred this appeal.

3.For the gruonds of an appeal, the Insurance Company herein appellant contended that the sum awarded by the Tribunal at Rs.15,59,000/- is huge compensation without any basis. Further, the Tribunal also awarded a sum that the legal heirs would have succeeded to the ownership of the car for a compensation of Rs.72,000/- is unsustainable. The sum awarded for loss of love and affection at Rs.2,00,000/- is highly excessive.

4.Heard Mr.S.Arunkumar, the learned Counsel appearing for the appellant and Mr.S.Murugan, the learned Counsel appearing for the respondent and perused all the materials available on record.

5.On hearing both sides, it is observed that the findings of the Tribunal has assessed by verifying the age of the deceased as 29 years by verifying driving license of the deceased Ex. P.W.8 and also the postmortem certificate was taken at the age as 28 years. The appellant has also contended in the absence of any reliable proof regarding the exact income received by the deceased. The tribunal had taken a monthly income of Rs.9,000/- without any basis in reliable evidence. Further, the sum awarded under the heads of love and affection and consortium at Rs.2,00,000/- and 1,00,000/- is highly excessive without any basis. Further, the assessment of the Tribunal for future income by taking monthly income is also highly excessive and on the sum awarded by the Tribunal is as compensation of Rs.15,59,000/- is highly excessive.



6. It is seen from the records that the deceased in this case is a man of 28 years old. Considering the arguments of the appellant that in the absence of any proof the monthly income of the deceased is fixed at Rs.6,000/-. It is seen that the Tribunal has not considered the future prospect of the deceased hence by adding 25% towards future prospects the monthly income by taking at Rs.7,500/- (6000+1500). Further by adopting proper multiplier the sum awarded to loss of income is modified at Rs.10,20,000/- (7,500X12X11X2/3).

7. While verifying the sum awarded under the head of consortium and love and affection to the 1st respondent and the 3rd respondent at Rs.1,00,000/- and 2,00,000/- is very much on the higher side. Hence that has to be properly modified by awarded a sum of Rs.40,000/- to the 1st petitioner for loss of consortium and further the 2nd and 3rd respondents are parents who lost their son, definitely entitled for his love and affection and hence modified to Rs.40,000/-. It is also observed that the Tribunal has not awarded any sum for loss of estate and, hence a sum of Rs.15,000 is granted under the head of Loss of estate. Since, the sum awarded for transport and funeral expenses are proper, the same are confirmed. Thus, the sum awarded by the Tribunal is modified as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	12,24,000	10,20,000	Reduced
2.	Loss of Consortium	1,00,000	40,000	Reduced
3.	Loss of Love and Affection	2,00,000	40,000	Reduced
4.	Transportation	10,000	10,000	Confirmed
5.	Funeral Expenses	25,000	25,000	Confirmed
6.	Loss of estate	-	15,000	Granted
	Total	Rs.15,59,000	Rs.11,50,000/-	Reduced by Rs.4,09,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



Rs.15,59,000/- is hereby reduced to Rs.11,50,000/-. No costs. Consequently, the connected miscellaneous petition is closed.

9. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the modified award amount along with proportionate interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

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

+lcc to Mr.S.Arunkumar, Advocate, S.R.No.66078

+lcc to Mr.S.Murugan, Advocate, S.R.No.66444

C.M.A.No.1346 of 2016
and
C.M.P.No.10403 of 2016

SPD(CO)
CS/09/01/2020