IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.06.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.2879 of 2015
and CMP.No.1 of 2015

The United India Insurance Company Limited,
134, Shilini Building,
Greams Road,
Chennai 600 006. Appellant/2nd respondent

Vs

1.V.Alice

2.Vincent Ravi ..1st&2nd respondent/ Petitioner

3.G.Rajendran
Ex parte before the Tribunal) .3rd Respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 05.08.2015, passed in M.C.O.P.No. 5093 of 2012, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. IV, Chennai.

For Appellant : Mr.A.Dhiraviyanathan

For Respondent : Mr.R.Manoranjithan for R1 and R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the Judgment and decree made in M.C.O.P.No.5093 of 2012 dated 05.08.2015, on the file of the Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai. The United India Insurance Company Limited, is the appellant herein, who has aggrieved against the award passed by the Tribunal made in the said claim application by stating that is highly excessive and exorbitant.

2. The brief case leading to the claim petition is that on 12.09.2009, at about 10.30 p.m., when the deceased was travelling in a Autorickshaw from north to south direction at Santhome High Road near Santhome Church, at that time an autorickshaw bearing Registration No. TN 07 W 0183, driven by its driver in a rash and negligent manner, over took the Omnibus which was proceeding in front of him, while overtaking the bus, hit the MTC bus, which came in the opposite

direction. Hence, the autorickshaw capsized and the deceased sustained severe injuries, which leads to death of the deceased. The driver of the auto was solely responsible for the said accident. The first respondent is the owner and the second respondent is the Insurance Company. The claimants claimed a sum of Rs.10,00,000/- in support and other loss sustained by the claimants.

3.The appellant/ Insurance Company not only denied the manner of accident, but also objected the award passed by the Tribunal.

4.The Tribunal after analysing the evidence and documents placed before the same, has given up finding that it is only negligence on the part of the driver of the first respondent. The evidences clearly show that while the driver of the autorickshaw, trying to overtake the omni bus, hit against the MTC Bus and thus caused the accident by capsized of the autorickshaw.

5.while determining the award, the Tribunal considered the relevant documents and taken monthly income of the deceased at Rs.4,000/-, annual income taken as Rs. 48,000/- and the Tribunal has also awarded a sum of Rs.2,00,000/- towards love and affection and Rs.25,000/- towards funeral expenses. On the whole, the total compensation as Rs.9,27,000/-.

6.Aggrieved against the said award, the appellant/ Insurance Company has preferred this appeal by denying the liability as there is no negligence on the part of the driver.

7.Hence, the negligence aspect determining by the Tribunal is very much aggrieved by the appellant. The other grievance raised by the appellant/Insurance Company is that the Tribunal has taken the annual income at Rs.48,000/-, but contrary to the said calculation, the Tribunal while calculating the loss of dependency has taken the monthly income of Rs.78,000/- without any proper reasons and calculating the loss of dependency at Rs.7,02,000/-. The other grievance raised by the appellant is that the sum awarded towards love and affection Rs.2,00,000/- is very much on the higher side.

8.Heard, Mr.A.Dhiraviyanathan, learned counsel appearing for the appellant/Insurance Company and Mr.R.Manoranjithan, learned counsel appearing for the respondents 1 and 2.

9.On perusal of the records, it is seen that the Tribunal in the absence of any concrete findings and consider the age and present employment circumstances, the Tribunal has taken a notional income at Rs.4,000/- per month, while making a deduction with regard to the 50% since the deceased was a bachelor without any discussion determined the annual income at Rs.78,000/-.

10.The learned counsel for the respondents referred to the decision of the Hon'ble Supreme Court in the cases AIR 2003 SUPREME COURT 674, 2015 (2) TNMAC 171, 2013 (1) TNMAC 481 (SC) and the decision of Division Bench of this Court in the 2016 (1) TNMAC 145 (DB) and contended that in the absence of any proof of income or occupation, the monthly income of the claimant ought to have taken as Rs.6,500/-. It is also represented by the respondents that the first claimant died and the second respondent is only surviving person in their family and entitled to receive a total award amount.

11.By virtue of the decision of the Supreme Court, the deceased is entitled 40% towards future prospects and by taking the monthly income of the deceased at Rs.4,500/- and adding future prospects at 40% which would workout to Rs.1,800/-, the monthly income comes to Rs.6,300/- (Rs.4,500/- + Rs.1,800/-) and the annual income would be Rs.75,600/-. After deducting 50% towards personal expenses and applying the proper multiplier the loss of dependency would be Rs.6,80,400/- (37,800/- x 18), which is proper and reasonable.

12.With regard to the other contention raised by the appellant is that the sum awarded under the heads of love and affection at Rs.2,00,000/- and funeral expenses at Rs.25,000/- are highly excessive, this Court modifies the same into Rs.20,000/- towards love and affection and Rs.15,000/- towards funeral expenses. It is seen that the Tribunal has failed to award any amount towards loss of estate, therefore, this Court is inclined to grant a sum of Rs.15,000/- towards loss of estate.

13. In view of the above said discussion, the award is modified as follows:

S.No	Head	Compensation (in.Rs.)
1.	Loss of dependency	6,80,400.00
2.	Loss of love and affection	20,000.00
3.	Funeral expenses	15,000.00
4.	Loss of estate	15,000.00
	Total	7,30,400.00

Thus, the second respondent/claimant is entitled to a sum of Rs.7,30,400/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

14. In the result,

(i) In view of the fact and reason stating in the above, the award of the Tribunal is reduced and the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) The compensation awarded by the Tribunal is reduced from Rs.9,27,000/- to Rs.7,30,400/-, shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The second respondent is directed to pay the court fee for the compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The appellant/ Insurance Company is directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vkr
To

The Motor Accidents Claims Tribunal,
The Small Causes Court No. IV,
Chennai.

+1cc to Mr.A.Dhiraviyanathan , Advocate SR.No. 47645
+1cc to Mr.R.Manoranjithan , Advocate SR.No. 47792

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A.SK(21/07/2020)