

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1018 of 2018 and
C.M.P.No.8270 of 2018

M/s.The New India Assurance Company Limited,
No.594, Obli Towers, 1st Floor, D.B.Road,
R.S.Puram, Coimbatore. ... Appellant/3rd Respondent

Vs.

1.M.Sreedharan ...1st Respondent/1st Petitioner
2.S.Vatchala Devi ...2nd Respondent/2nd Petitioner
3.R.Subash ...3rd Respondent/1st Respondent
4.P.S.Saravanakumar ...4th Respondent/2nd Respondent

(R3 and R4 remained exparte before Tribunal
and notice dispensed with for them)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.12.2017 made in M.C.O.P.No.1301 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Coimbatore.

For Appellant : Mr.M.Krishnamoorthy
For RR1 & 2 : Mr.R.Nandhakumar
R3 & R4 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against award dated 12.12.2017 made in M.C.O.P.No.1301 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Coimbatore.

2.The appellant is the third respondent in M.C.O.P.No.1301 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Coimbatore. The respondents 1 and 2 filed the above said claim petition, claiming a sum of Rs.70,00,000/- as compensation for the death of their daughter viz.,S.Hema, who died in the accident that took place on 17.03.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the mini bus, the third respondent herein, belonging to the fourth respondent and directed the appellant-Insurance Company and the respondents 3 and 4 to pay a sum of Rs.32,70,000/- as compensation to the respondents 1 and 2.

4.Against the said award dated 12.12.2017 made in M.C.O.P.No.1301 of 2016, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erroneously awarded excessive amount of Rs.32,70,000/- as compensation for the death of a girl aged 24 years. The occupation and income of the deceased was not proved by the respondents 1 and 2. In the absence of material evidence, the Tribunal erroneously fixed monthly income of the deceased at Rs.15,000/- considering Ex.P17/pay slip. As per Ex.P17, the monthly pay of Rs.15,000/- consists of Rs.800/- as transport allowances and Rs.1,250/- as medical allowances. The appellants are entitled only 40% enhancement towards future prospects and the Tribunal erroneously granted 50% enhancement towards future prospects. The Tribunal deducted 50% only from the monthly income fixed after adding 50% future prospects. The amount awarded by the Tribunal towards loss of dependency by applying excessive multiplicand and multiplier is excessive and prayed for setting aside the award passed by the Tribunal.

6.Per contra, Mr.R.Nandhakumar, learned counsel appearing for the respondents 1 and 2 contended that the respondents 1 and 2 have proved that deceased was working as Executive - QC & NPD in Sree Annapoorna Foods, Coimbatore, and was earning a sum of Rs.3,60,000/- per annum i.e., Rs.30,000/- per month. The Tribunal considering the salary certificate issued for only three months, taking into consideration only Ex.P17, fixed the monthly income at Rs.15,000/-. The respondents 1 and 2 have marked Ex.P16/appointment order issued by its employer showing the annual income of the deceased as Rs.3,60,000/-. The Tribunal erroneously taken Ex.P17 and fixed a sum of Rs.15,000/- as monthly income of the deceased. The respondents 1 and 2 are the parents of the deceased and they have lost their daughter at the young age of 24 years and the Tribunal has not granted any amount towards loss of love and affection and prayed for dismissal of the appeal.

7.I have heard the learned counsel appearing for the appellant as well as the respondents 1 and 2 and perused entire materials on record.

8. From the materials available on record, it is seen that respondents 1 and 2 have contended that the deceased was working as Executive - QC & NPD in Sree Annapoorna Foods, Coimbatore, and was earning a sum of Rs.30,000/- per month. To prove their contention, they have marked Ex.P16 and P17 copy of appointment order and copy of pay slip for the month of February in the name of deceased. From Ex.P16/copy of appointment order, it is seen that the deceased was given appointment and annual income of the deceased is fixed at Rs.3,60,000/- and for first three months, annual income of the deceased is fixed at Rs.1,80,000/-. The Tribunal has taken Ex.P17 and fixed a sum of Rs.15,000/- since deceased was earning only the said amount at the time of her death and granted 50% enhancement towards future prospects, which is not correct. The deceased was aged 24 years and the respondents 1 and 2 are entitled only 40% enhancement towards future prospects. The Tribunal while calculating compensation towards loss of dependency, erroneously deducted 50% only from monthly income and not deducted any amount towards future prospects. In view of the above, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.22,68,000/- [Rs.15,000/- + 40% of Rs.15,000/- X 12 X 18 X 1/2]. The Tribunal has granted compensation only for loss of estate and funeral expenses and not granted any amount towards loss of love and affection. Respondents 1 and 2 are entitled to Rs.40,000/- each towards loss of love and affection. The amount granted by the Tribunal under other heads are confirmed. Thus, the compensation 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 dependency	32,40,000/-	22,68,000/-	reduced
2.	Loss of estate	15,000/-	15,000/-	confirmed
3.	Funeral expenses	15,000/-	15,000/-	confirmed
4.	Loss of love and affection	-	80,000/-	granted
	Total	Rs.32,70,000/-	Rs.23,78,000/-	reduced by Rs.8,92,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.32,70,000/- is hereby modified to Rs.23,78,000/- together

with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company and the respondents 3 and 4 are 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. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the modified award amount, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.1301 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Coimbatore, if the entire amount has already been deposited by them. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The III Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Coimbatore.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mr.R.Nandhakumar, Advocate sr 28323.

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 28158.

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SSV(CO)
SP(24/09/2019)