

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2541 of 2016
and C.M.P.No.18047 of 2016

Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, 45 & 46, Whites Road,
Chennai 600 014. .. Appellant/2nd Respondent

Vs.

1.Ellamma

2.Minor Radha

3.Minor Vinoth .. Respondents 1 to 3/Petitioner

(minors 2 and 3 rep. By their
next friend and mother 1st respondent)

4.S.Govinda Reddy .. 4th Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.10.2015 made in MCOP.No.985 of 2013 on the file the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri.

For appellant : Mr.S.Manohar

For RR1 to 3 : Mr.Mukund R.Pandiyan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the quantum of compensation granted by the Tribunal in the award dated 16.10.2015 made in MCOP.No.985 of 2013 on the file the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant-Insurance Company is 2nd respondent in MCOP.No.985 of 2013 on the file the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Venkatappan who died in the accident that took place on 10.05.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the tipper lorry belonging to the 4th respondent and directed the 4th respondent as owner of the vehicle as well as the appellant-Insurance Company as the insurer to pay a sum of Rs.17,68,000/- jointly and severally as compensation to the respondents 1 to 3/claimants.

4.The appellant-Insurance Company has come out with the present appeal, questioning the quantum of compensation granted by the Tribunal in the award dated 16.10.2015 made in MCOP.No.985 of 2013,

5.The learned counsel appearing for the appellant-Insurance Company submitted that the respondents 1 to 3 failed to prove the avocation and income of the deceased. In the absence of any material, the Tribunal fixed a sum of Rs.12,000/- per month as the notional income of the deceased and granted compensation excessively under the conventional heads and prayed for setting aside the award of the Tribunal.

6.Per contra, the learned counsel appearing for the respondents 1 to 3 contended that the deceased was working as a carpenter and was earning a sum of Rs.20,000/- per month. The Tribunal erroneously fixed a sum of Rs.12,000/- per month as notional income of the deceased. The deceased was 32 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. In any event, the amounts granted by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 3 and perused the materials available on record.

8.From the materials on record, it is seen that the respondents 1 to 3 have contended that the deceased was working as a carpenter and was earning a sum of Rs.20,000/- per month. They have not filed any document to prove the said contention. In the absence of any material, the Tribunal has fixed a sum of Rs.12,000/- per month as the notional income of the deceased. The Tribunal has not granted any enhancement towards future prospects. The accident is of the year 2013. In view of the same, the notional income fixed by the Tribunal is not

excessive. The Tribunal has granted excessive amount towards funeral expenses, loss of consortium and loss of love and affection. Hence, the same are reduced to Rs.15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium and Rs.40,000/- each to the respondents 2 and 3, towards loss of love and affection. The Tribunal failed to grant any amount towards loss of estate. The respondents 1 to 3 are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts granted by the Tribunal under the heads of transportation and loss of cloth are just and reasonable and they are hereby 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 income	15,36,000/-	15,36,000/-	Confirmed
2.	Loss of consortium	1,00,000/-	40,000/-	reduced
3.	Loss of love and affection	1,00,000/-	80,000/-	reduced
4.	Loss of estate	-	15,000/-	granted
5.	Funeral expenses	25,000/-	15,000/-	Reduced
6.	Transportation	5,000/-	5,000/-	confirmed
7.	Damages to clothes	2,000/-	2,000/-	confirmed
	Total	17,68,000/-	16,93,000/-	reduced by Rs.75,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.17,68,000/- is reduced to Rs.16,93,000/- along with interest and costs. The appellant-Insurance Company as well as the 4th respondent are jointly and severally directed to deposit the modified award amount 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, to the credit of M.C.O.P.No.985 of 2013. On such deposit, the 1st respondent is permitted to withdraw her share of the award amount, on the basis of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. The share of the minor respondents 2 and 3

are directed to be deposited in any one of the Nationalized Bank, till they attain majority. The 1st respondent/mother of the minors is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 and 3. The appellant/Insurance Company is permitted to withdraw the excess amount, lying in the deposit of M.C.O.P.No.985 of 2013. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gsa

To

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

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

+1 cc to Mr.S.Manohar, Advocate, S.R.No.24561

+1 cc to MR.Mukund R.Pandiyan, Advocate, S.R.No.25888

C.M.A.No.2541 of 2016
and C.M.P.No.18047 of 2016

RSK(CO)
SSM(20/09/2019)

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