

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.544 of 2016

The Oriental Insurance Company Ltd.,
Rep. by its Divisional Manager,
at 6A, North Katton Road,
Tutukudi Town,
Tutukkudi Taluk and Munsifi .. Appellant/2nd Respondent

Vs.

1.Thenmozhi
2.Rajeswari1st & 2nd Respondents/Petitioners
3.Babiyan3rd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the award and decree dated 04.08.2015 made in M.C.O.P.No.350 of 2009 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mannargudi.

For Appellant : Mr.D.Bhaskaran

For Respondents Mr.C.Elamurugan
for Ms.P.T.Ramadevi for R2
: R1- Notice service awaited
R3- No appearance

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

This appeal has been preferred by the appellant being the insurer questioning the quantum alone.

2. The deceased was aged about 25 years at the time of accident. He was stated to be earning Rs.12,000/- per month. The

Tribunal, deducted one-third while adopting the multiplier '17'. Incidentally, for funeral expenses, a sum of Rs.20,000/-, for loss of love and affection, Rs.1,00,000/- and for transportation Rs.20,000/- have been awarded by the Tribunal, while no amount has been awarded for the loss of estate. Thus, in total, a sum of Rs.17,72,000/- has been fixed as compensation.

3. The learned counsel appearing for the appellant submitted that claimants/respondents 1 and 2 are married elder sisters of the deceased, who was unmarried. Therefore, the normal deduction of one-third cannot be adopted in this case. The Tribunal has committed an error in doing so. On the other conventional heads also, there must be reduction, as per the judgment of the Apex Court in National Insurance Company Limited v. Pranay Sethi, reported in (2017) 16 SCC 680. Thus, the appeal will have to be allowed.

4. The learned counsel appearing for claimant/second respondent would submit that only a sum of Rs.17,72,000/- has been awarded. The aforesaid amount is not excessive or high. Certainly, being the sisters of the deceased, the claimants are entitled to file claim petition. Thus, the appeal will have to be dismissed.

5. We find some force in the submission made by the learned counsel appearing for the appellant. Admittedly, respondents 1 and 2/claimants 1 and 2 are the married sisters of the deceased, and the deceased died unmarried. In such view of the matter, the Tribunal instead of deducting one-third, ought to have deducted 50%. Had the deceased been alive, he would not have given more than 50% to his married sisters. Thus, by adopting 50% deduction and while fixing the multiplier '17', the loss of income is arrived at Rs.12,24,000/- ($\text{Rs.12,000} / \frac{1}{2} \times 12 \times 17$). Thus, under the other conventional heads such as funeral expenses, loss of love and affection, transportation, loss of estate, sums of Rs.15,000/-, Rs.80,000/-, Rs.20,000/- and Rs.15,000/- have been awarded as compensation. Thus, in total, a sum of Rs.13,54,000/- has been arrived at, which is rounded off to Rs.13,60,000/-. The reduced compensation amount has to be apportioned amongst the claimants in the same ratio as ordered by the Tribunal.

6. In view of the above, the Civil Miscellaneous Appeal stands allowed in part. No costs. Consequently, connected C.M.P.No.4557 of 2016 is closed.

7. The appellant insurance company is directed to deposit the reduced compensation amount along with interest, less the

amount if any already deposited, to the credit of M.C.O.P.No.350 of 2009 on the file of the Motor Accident Claims Tribunal, Mannargudi, within a period of eight weeks from the date of receipt of a copy of the judgment.

8. We also direct the Tribunal to transfer the respective shares to the claimants by way of RTGS to their bank accounts within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimants is entitled to withdraw the same.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ssm

To

1.The Motor Accident Claims Tribunal,
Subordinate Judge, Mannargudi.

2.The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.D.Bhaskaran, Advocate SR.104834

MR(CO)
CB(17/09/2020)

C.M.A.No. 544 of 2016

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