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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2432 of 2019

and C.M.P.No.11107 of 2019

M/s.Reliance General Insurance Company Limited,
Reliance House, 6th Floor,
No.6, Haddows Road,
Nungambakkam,
Chennai - 600 006.

... Appellant

vs.

1.C.Kumar

2.K.Anusaya

...Respondents 1 & 2

3.V.Mani

... 3rd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in MCOP.No.6469 of 2014 dated 20.08.2018 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.R.Mohanbabu
for M/s.M.B.Gopalan Associates

For Respondents: served - No appearance

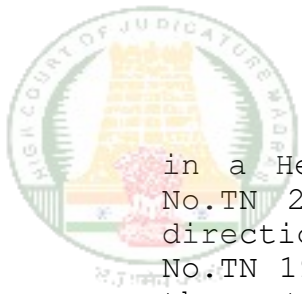
JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the Insurance Company challenging the Award dated 20.08.2018, passed by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai in M.C.O.P.No.6469 of 2014.

Brief facts leading to the filing of this appeal:

2.A person by name K.Mahesh Pradhap died on 14.07.2014 as a result of an accident caused by a TATA Ace bearing Registration No.TN 19 Z 3955 owned by the third respondent and insured with the Appellant. The deceased was travelling as a pillion rider



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in a Hero Honda Passion Plus motor cycle bearing Registration No.TN 21 AW 5690 proceeding from Vengambakkam to Chengalpattu direction at GST Road, when a TATA Ace bearing Registration No.TN 19 Z 3955 came from opposite direction and dashed against the motor cycle. Due to the said accident, the pillion rider died on the spot.

3.The first and second respondents who are the parents of the deceased preferred a claim before the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai against the Appellant Insurance Company as well as the third respondent, seeking a compensation of Rs.40,00,000/- for the death of Mahesh Pradhap.

4.The Motor Accidents Claims Tribunal by its Award dated 20.08.2018 in M.C.O.P.No.6469 of 2014, directed the Appellant Insurance Company to pay the claimants a sum of Rs.20,09,000/- together with interest at 7.5% per annum from the date of numbering of the claim petition i.e. from 07.10.2014, till the date of realization with costs.

5.Aggrrieved by the Award dated 20.08.2018, passed in M.C.O.P.No.6469 of 2014, this appeal has been filed by the Insurance Company.

6.Heard Mr.R.Mohanbabu, learned counsel appearing for the Appellant. Despite service of notice on the respondents, and their names having been printed in the cause list today, none has entered appearance on their behalf.

Discussion:

7.The Appellant has not challenged the adverse finding of negligence on the part of the insured vehicle and hence, the said finding of the Tribunal has attained finality. They have challenged only the quantum of compensation assessed by the Tribunal.

8.The Appellant has challenged the impugned Award on the ground that the notional income fixed by the Tribunal is excessive and has been fixed without any documentary evidence. According to them, the deceased being only a Diploma student, the Tribunal without any basis has fixed his notional monthly income at Rs.12,000/-. Further, it is their case that since the deceased was only a student, the Tribunal ought to have added only 40% towards loss of future prospects and not 50%.

9.This Court has perused and examined the impugned Award and also considered the materials and evidence available on record.



10. Before the Tribunal, the claimants have filed 14 documents which were marked as Exs.P1 to P14 and three witnesses were examined on their side namely, PW1, PW2 and PW3. On the side of the Appellant Insurance Company neither any documentary evidence was produced nor any witness examined.

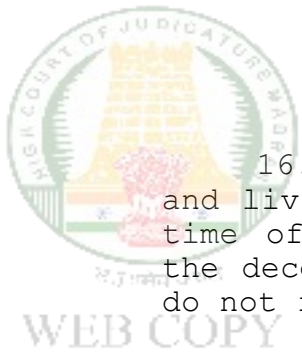
11. The deceased was aged 17 years as per his College Transfer Certificate Ex.P5. The deceased was studying a Diploma Course in Computer Engineering from Adhiparasakthi Polytechnic College as seen from Ex.P5.

12. It is also the case of the claimants that the deceased was earning Rs.12,000/- per month by doing a part time job. To prove his income, the claimants have examined PW3 and through him, the salary certificate (Ex.P14) of the deceased was filed. No contra evidence has been produced by the Appellant Insurance Company to disprove the claim that the deceased was earning a monthly income of Rs.12,000/- at the time of the accident.

13. The Tribunal after considering the oral and documentary evidence in the impugned Award has observed that had the deceased been alive, he would have earned much more income on the basis of his College degree and would have supported his family even more. The Tribunal has also observed that there are also chances that the deceased after finishing his degree will be doing his higher education.

14. The Tribunal after considering the above factors has fixed the monthly notional income of the deceased at Rs.12,000/- which in our considered view is a correct assessment. The Tribunal has added 50% as loss of future prospects to the notional monthly income of the deceased which is not a correct assessment is not in accordance with the decision of the Constitution Bench Judgement of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680.

15. In the said judgment, Hon'ble Supreme Court held that in case the deceased was not having a permanent employment only 40% has to be added as loss of future prospects. In the case on hand, the deceased was only a student and therefore, applying the said judgment of the Hon'ble Supreme Court, the Tribunal ought to have added only 40% towards loss of future prospects but instead has erroneously added 50%. Accordingly, we modify the loss of future prospects from 50% to 40%.



16.The Tribunal has rightly deducted 50% towards personal and living expenses of the deceased as he was a bachelor at the time of the accident and has rightly applied 18 multiplier as the deceased was aged 17 years at the time of the accident. We do not find any infirmity in the same.

17.The Tribunal has awarded Rs.50,000/- towards loss of love and affection and Rs.15,000 towards funeral expenses which in our considered view is correct assessment and is in accordance with the Constitution Bench judgement of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680.

18.The Tribunal has not awarded any compensation towards loss of estate which in our considered view, the claimants are entitled to as per Pranay Shethi's judgment referred to supra. As per the said judgment, we Award a sum of Rs.15,000/- towards loss of estate.

19.The Tribunal has not awarded any compensation towards transportation charges which in our considered view, the claimants are entitled to. Accordingly, we Award a sum of Rs.5,000/- towards transportation charges.

20.For the foregoing reasons, the impugned Award is modified in the following manner:

Sl. No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
1	Loss of Dependency	19,44,000/-	18,14,400/- (8,400x12x18)
2	Loss of Love and Affection	50,000/-	50,000/-
3	Funeral Expenses	15,000/-	15,000/-
4	Loss of Estate	-	15,000/-
5	Transport	-	5,000/-
	Total	20,09,000/-	18,99,400/-

Conclusion:

21.In the result, the impugned Award is partly allowed by modifying the impugned Award by reducing the compensation from Rs.20,09,000/- to Rs.18,99,400/-, payable by the appellant within a period of 4 weeks, however, the rate of interest fixed by the Tribunal at 7.5% is confirmed. It is brought to our notice that the Appellant has already deposited the entire Award



amount as per the impugned Award. Hence, the Tribunal is directed to pay the Award amount as per this judgment to the claimants as per the ratio of apportionment made by the Tribunal through RTGS within a period of four weeks and after the said payment refund the balance amount to the Appellant Insurance Company, within a period of one week thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.

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

+1cc M/s.M.B.Gopalan Associates, Advocate sr.81639

C.M.A.No.2432 of 2019

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