IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2019
DELIVERED ON : 06.09.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2188 of 2019

United India Insurance Company Ltd.,
No.134, Greams Road,
Siling Building, Chennai. … Appellant/2nd Respondent

Vs

1.M.Sumathy
2.M.Santhoshkumar (Minor)
3.M.Roshini (Minor)
(both minors rep by their Mother
/Natural Guardian M.Sumathy)

4.D.Paurnam .. 1 to 4 Respondents/Petitioners

5.M/s.Haulage Roadways,
No.2, Second Line Beach Road,
Parrys, Chennai. ...5th Respondent/1st Respondent

Prayer:
This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.12.2018 made in M.C.O.P.No.2218 of 2017 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.D.Bhaskaran
For RR1 to 4 : Mr.R.Ramesh

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 03.12.2018 made in M.C.O.P.No.2218 of 2017 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

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2.The brief facts is as follows:

On 09.03.2017 at about 06.00 pm, the deceased D.Manoharan was riding his two wheeler bearing Reg.No.TN-18-A-4735 from Eloour Bazaar to his home at Methipalayam near Elaoor junction. At that time a lorry bearing Reg.No.TN-04-AK-9124 came in the opposite direction driven by its driver at high speed in a rash and negligent manner and hit the deceased two wheeler. Due to that, the deceased was thrown out and died on the spot. Thus the respondents 1 to 4 who are the legal heirs of the deceased claimed a sum of Rs.30,00,000/- as compensation for the death of one Manoharan who died in the accident.

3.5.The Tribunal after analysing the evidence and documents placed before the same. Regarding the Ex.P1/FIR, the Tribunal has come to the conclusion that it is the driver of the 1st respondent's vehicle against whom FIR was registered and charge sheet was filed is responsible for the accident. Regarding the sum awarded as compensation claimed by the claimants, Ex.P4/postmortem certificate and Ex.P5/death certificate were filed before the Tribunal.

4.In the grounds of appeal, the appellant/Insurance Company contended that the Tribunal has failed to consider the manner of accident and negligence properly. Further contended that the claimants have suppressed the age of the deceased for the purpose of getting more compensation. The Tribunal failed to note that as per Aadhar card, the age of the deceased is 46 years and as per Aadhar card of the 1st claimant/wife of the deceased, is stated as 38 years. These aspects were not considered by the Tribunal. Further, the Tribunal failed to note that the claimants have not chosen to file driving license of the deceased to prove the exact age of the deceased for taking multiplier '13'. Hence, the assessment made by the Tribunal is without any basis and not supported by any documents. Further contended that the future prospects taken by the Tribunal by considering the age of the deceased as 46 years is not proper. Since the claimants have not filed any documents to prove avocation and income of the deceased, the notional income taken by the Tribunal at Rs.15,000/- per month is highly excessive. Hence the appellant/Insurance Company is sought for setting aside the judgment made by the Tribunal by taking the age as well as the income.

5.On the other hand, the respondents/claimants contended that the Tribunal has taken the age of the deceased based on Ex.P4/postmortem certificate and no contra evidence has been placed before the Tribunal. The assessment of the Tribunal by taking age of the deceased as 36 years by verifying the

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Ex.P4/postmortem certificate and Ex.P5/death certificate is very much reasonable and multiplier adopted is also not on the higher side. Further the notional income fixed by the Tribunal at Rs.15,000/- per month is also very reasonable. Since the claimants are only dependants on the income of the deceased, who is only the bread winner of the family, the sum awarded by the Tribunal under other heads are very much reasonable.

6.It is argued by the appellant/Insurance Company that in the claim application the age of the deceased has been mentioned as 39 years and in the Aadhar Card of the 1st claimant who is the wife of the deceased, her age is mentioned as 38 years. Therefore without considering the Aadhar Card the deceased in which, it has been mentioned as 46 years and the Aadhar Card of the 1st claimant/wife of the deceased the age taken by the Tribunal at 36 years is not supported by any relevant documents. It is further argued by the appellant that the Aadhar Card is only the valid document and very much considered in all aspects, this is the vital documents, issued by the Government on furnishing the correct particulars in all aspects, viz., age, address etc. Hence the assessment of the Tribunal by taking Ex.P4/postmortem certificate and Ex.P5/death certificate is not proper.

7.Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant/Insurance Company and Mr.R.Ramesh, learned counsel appearing for the respondents 1 to 4 and perused all the materials available on record.

8.On perusal of records, it is seen that in the claim application the age of the deceased was mentioned as 39 years but in the Aadhar Card, it is mentioned as 46 years and the age of the wife of the deceased is aged 38 years. It is seen that the respondents/claimants have not produced driving license of the deceased to confirm the age of the deceased. If driving license is produced by the respondents/claimants, the exact age of the deceased can be verified. Hence, in the absence of furnishing the driving license of the deceased, it would be proper to rely upon the Aadhar Card of the deceased. As per Aadhar Card the age of the deceased is 46 years and the proper multiplier for the age '46' is '13'. The other ground vehemently objected by the appellant/Insurance Company is that the deceased was a fisherman and owning boat and he was also a self employed person and was earning a sum of Rs.15,000/- per month. But the respondents/claimants have failed to produce the documents to substantiate the same. Hence, this Court is of the view that in the absence of any relevant documents, the notional income fixed

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by the Tribunal at Rs.15,000/- per month and taking 40% towards future prospects is not proper and the same needs to be modified. Even though, the claimants have not produced any documents to prove the earnings of the deceased through his self employment, this Court by considering the age of the deceased, finds it proper to take the notional income at Rs.10,000/- and adding 25% towards future prospects and considering the number of claimants deducting 1/3rd towards personal expenses is proper. Accordingly, calculates the loss of dependency at Rs.14,62,500/- [(Rs.10,000/- + 2,500 (Rs.10,000/- of 25%) x 12 x 13 x 3/4)]. It is seen that the sum awarded by the Tribunal towards loss of love and affection is excessive and hence this Court grants Rs.50,000/- each to the claimants 2 & 3 and Rs.25,000/- to the 4th claimant. The sum awarded by the Tribunal towards loss of consortium and funeral expenses are reasonable and does not require any modification. 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)
1.	Loss of dependency	Rs.28,35,000/-	Rs.14,62,500/-
2.	Loss of consortium	Rs. 40,000/-	Rs. 40,000/-
3.	Loss of love and affection	Rs. 2,25,000/-	Rs. 1,25,000/-
4.	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
	Total	Rs.31,15,000/-	Rs.16,42,500/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.31,15,000/- is reduced to Rs.16,42,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are not entitled for interest for the default period if any. No Costs.

10.The appellant/Insurance Company is directed to deposit the modified award amount 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 order. On such deposit, the respondents 1 & 4/claimants 1 & 4 are permitted to withdraw their respective share from the modified award amount on the basis of apportionment fixed by the Tribunal along with

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proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor respondents 2 & 3 is directed to be deposited in any one of the Nationalised Bank till they attains majority. The 1st respondent being the mother of the respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.2218 of 2017, if the entire award amount has already been deposited by them.

Sd/-
Assistant Registrar(AD IV)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The III Judge,
   Small Causes Court,
   Motor Accidents Claims Tribunal,
   Chennai.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.77053

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