

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.543 of 2018
and
C.M.P.No.21908 of 2018

New India Assurance Company
(Third Party Cell),
No.45, Moore Street,
Chennai 600 001.

... Appellant/Respondent No.2

Vs

1.Frederick D.Ross, aged 60, S/o.Herbert D Ross
2.Matikla D Ross, aged 54, W/o.Frederick D Ross
Both at No.6, Palankottai Street, Poonamallee,
Chennai 600 056.

3.P.Lingharaj, No.1, Kamatchi Nagar,
Old Pallavaram,
Chennai 600 117.

... Respondents/Respondent No.1

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Decree and Judgment dated 21st day of August 2017, made in M.C.O.P.No.1034 of 2010, on the file of Motor Accident Claims Tribunal (II Additional District Court), Poonamallee.

For Appellant :Mr.S.Manohar

For Respondents :Mr.F.Terry Chellaraja (for R1 & R2)

R3 - Given up

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by Insurance Company against the award of Rs.77,04,780/- for the death of one Fabian Anthony D Rose, aged about 30 years, a Catering Steward working in Australia, allegedly earning about Rs.85,000/- per month, in the accident occurred on 29.09.2010, when he was riding his motorcycle from Poonamallee Road towards Porur and was hit down from behind by a TATA 407 vehicle belonging to the 3rd respondent and insured with the appellant/insurance company.

2.A Cross Objection has also been filed by the claimants questioning the quantum of compensation.

3.Heard Mr.S.Manohar, learned counsel appearing on behalf of the Insurance Company and Mr.Terry Chellaraja, learned counsel appearing on behalf of the 1st and 2nd respondents/claimants.

4.The only point which is canvassed is with regard to the quantum of compensation alone and there is no dispute with regard to negligence.

5.Though, it was contended by the Insurance Company before the Tribunal that at the time of accident, the deceased was jobless and there is no evidence for his income on the date of the accident, the Tribunal based on Ex.P.15 and Ex.P14/salary certificate determined the monthly income of the deceased at Rs.85,000/-. The said determination is challenged by Mr.S.Manohar, learned counsel appearing for the Insurance company contending that the accident occurred on 29.09.2010 whereas Ex.P.14 relates to the period from 01.08.2008 to 01.09.2009. Therefore, the said amount cannot be a criteria to determine the income of the deceased.

6.However, Mr.Terry Chellaraja, learned counsel appearing for the claimants would support the Tribunal's award.

7.Though the deceased was jobless as on 29.09.2010 as he was in India, this Court neither would accept the amount of Rs.85,000/- determined by the Tribunal as monthly income nor would consider the deceased as jobless and therefore, taking into consideration that the deceased had drawn Rs.85,000/- per month as salary, while he was working in Australia, this Court finds it fair and reasonable to fix the monthly income of the deceased at Rs.22,500/-. The age of the deceased is 30 years as proved by Ex.P.6/passport and after adding 40% towards future prospects, the monthly income would be at Rs.31,500/- (Rs.22,500/- + 40% of Rs.22,500/-).

8.The deceased died as a bachelor. The Tribunal instead of deducting 50% towards personal expenses, deducted only 1/3rd towards personal expenses. Therefore, the same is set aside and after deducting 50% towards personal expenses, the monthly income would be at Rs.15,750/-.

9.The Tribunal instead of determining the multiplier based on the age of the deceased, determined the multiplier based on the age of the mother of the deceased. Therefore, the same is set aside. According to the age of the deceased, right multiplier is '17'. Therefore, the loss of contribution would be at Rs.32,13,000/- (Rs.15,750/- x 12 x 17).

10.Further a sum of Rs.50,000/- is awarded towards loss of love and affection, a sum of Rs.15,000/- each is awarded towards loss of estate and funeral expenses and a sum of Rs.10,000/- is awarded towards transportation.

Head	Amount (Rs.)
Loss of contribution	3213000
Loss of estate	15000
Funeral expenses	15000
Loss of love and affection	50000
Transportation charges	10000
Total	3303000

11.Hence, the total compensation payable in this case is Rs.33,03,000/- rounded off to Rs.33,00,000/-, along with interest at the rate of 7.5% per annum. The apportionment made by the Tribunal is also confirmed.

12.It is represented before this Court that the Insurance Company has already deposited 50% of the amount awarded by the Tribunal which is more than the award passed by this Court and therefore, the excess amount which has been deposited by the Insurance Company before the Tribunal is to be returned to the Insurance Company.

13.From the available deposited amount, the Tribunal is directed to transfer the respective shares of the claimants along with interest and costs to their personal bank accounts through RTGS within a period of two weeks from the date of receipt of a copy of this order.

14.The above order has been passed based on the specific facts and circumstances of the present case and it cannot be taken as a precedent.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed, reducing the compensation amount from Rs.77,04,780/- to Rs.33,00,000/- with interest. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

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To

1. The II Additional District Judge,
Motor Accidents Claims Tribunal,
Poonamallee.

2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.Manoharan, Advocate, SR.No.57653.
+1cc to Mrs.M.Malar, Advocate, SR.No.57616.

C.M.A.No.543 of 2018

MR(CO)
CSR: 10.02.2020

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