IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.2975 of 2019
and
C.M.P.No.15914 of 2019

United India Insurance Company Limited,
Door No.170/6, 1st Floor,
M.R.Complex, IOB Upstairs,
Jambai, Bhavani Taluk,
Erode District 638 312.
.. Appellant/R3

Vs

1.Revathi ..RR1 & 2/Petitioners
2.Sakthi Vishakan
3.S.Kalidoss ..R3/R1

4.S.Pandurangan ..R4/R2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and award passed in M.C.O.P.No.98 of 2017 dated 03.11.2018 on the file of the Motor Accident Claims Tribunal, Special District Judge, Fast Track Court, Erode.

For Appellant : Mr.D.Bhaskaran
For Respondents: Mr.R.P.Muruganraja for R1 and R2
R3 and R4 - Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the decree and Judgment passed in M.C.O.P.No.98 of 2017 dated 03.11.2018 on the file of the Motor Accident Claims Tribunal, the learned Special District Judge, Fast Track Court, Erode. The appeal has been preferred by the United India Insurance Company Limited aggrieved against the liability and award made by the Tribunal at Rs.21,77,000/- against the claim of Rs.25,00,000/-.

2. The brief facts leading to the claim petition is that on 25.01.2017, at about 08.45 a.m., when the deceased Ramakrishnan was riding his motor cycle bearing Registration No. TN 86 3766 in Erode to Chithode road from east to west direction on the

southern side of the road and he was nearing Karumbu Kaadu Vinayagar temple, at that time, the first respondent drove the town bus bearing Registration No. TN 45 AP 2646 from the same direction, in a rash and negligent manner, dashed against the motor cycle. As a result of which, the deceased was thrown away and sustained head injury. Immediately, the deceased was taken to the Government Head Quarters Hospital, Erode for first aid. After, he was shifted to KMCH Speciality Hospital, Erode for further treatment. A major surgery on the brain was done in the said hospital and thereafter, the deceased was shifted to Government Head Quarters Hospital, Erode, since no improvement in the condition of the deceased even after the surgery. Due to which, the deceased died on 27.01.2017. Hence, the claimants made a claim petition as against the driver of the vehicle/third respondent herein, owner of the vehicle/ fourth respondent herein as well as the insurer of the offending vehicle, viz., the appellant.

3.The Tribunal observed the contentions raised by both side by way of evidence and documents and has given a finding that the accident occurred only due to the rash and negligent driving of the third respondent herein and awarded a sum of Rs.21,77,000/- as compensation under the following heads:

Future loss of income	Rs.19,36,000/-
Love and affection	Rs.25,000/-
Transportation	Rs.10,000/-
Funeral expenses	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Medical expenses	Rs.1,51,000/-
Total	Rs.21,77,000/-

4. The learned counsel for the appellant/ Insurance Company submitted that the Tribunal has awarded a huge amount of compensation without any proper adjudication. He further submitted that the Tribunal has not considered that the deceased failed to exercise a reasonable care, while driving and ought to have atleast apportioned the liability equally. The employer of the deceased failed to furnish any basic employment particulars viz., payment vouchers, cash memos, muster role, attender register, ID card, bank account of the deceased to show that the deceased's employment and payment of wages. The other grievance raised by the appellant is that in the absence of these details, the Tribunal has fixed the monthly income of the deceased at Rs.20,000/-, which is not proper. Hence, the notional income determined by the Tribunal is highly excessive, in the absence of any document or proof.

5.The learned counsel for the claimants submitted that the negligence aspect as well as the quantum arrived at by the Tribunal is only based on the evidence on record and documents placed before it. Hence, there is no need to interfere with the award of the Tribunal.

6. Aggrieved over the award passed by the tribunal, the appellant/ Insurance Company has filed the present appeal.

7.Heard, Mr.D.Bhaskaran, learned counsel for the appellant/ Insurance Company and Mr.R.P.Muruganraja learned counsel appearing for the respondents 1 and 2.

8. On hearing both sides and on perusing the available records, it is observed that the Tribunal has fixed the liability on the driver of the first respondent vehicle. The Tribunal analysed the evidence and document placed by the claimants Ex.P2/Observation Mahazar, Ex.P3/ rough sketch, Ex.P7/Motor vehicle Inspector's report, which are all clearly prove the fact that no witness was examined on the side of the appellant/ Insurance Company. The Tribunal has given a finding that the rash and negligent driving of the third respondent herein. Hence, the negligent aspect and liability fixed by the Tribunal purely based on the evidence and document.

9. It is seen from the records that the salary certificate issued by Sree Krishna Textiles was marked as Ex.P16 and the salary certificate issued by Mass Creation was marked as Ex.P15, which shows that the deceased was earning a sum of Rs.32,000/-, and was working as Marketing Manager, PW.3 in that aspect was examined to prove the occupation as well as the income of the deceased, PW.3 is not a salary disbursing officer or authorised person of the said institution to speak about the salary particulars and the job of the deceased because he is only a co-worker. The Tribunal has also made a observation by stating that "the income of the deceased is not proved through reliable documents". The Tribunal has taken the monthly income of the deceased as Rs.20,000/-, which is very much aggrieved by the appellant herein. Hence, It is the strong contention of the appellant that the determination of the Tribunal is very much excessive without any proper document or evidence.

10. While perusing the sum awarded by the Tribunal, it is seen the Tribunal has discussed the various aspects such as the deceased was aged about 53 years at the time of the accident and the said fact was also very much discussed by verifying the Post Morterm Certificate (Ex.P5) and the Legal Heirs Certificate (Ex.P12).

11. Now coming to the determination of compensation by the Tribunal, by virtue of the decision of the Supreme Court, the deceased is entitled to 10% towards future prospects and this Court is inclined to modify the monthly income of the deceased at Rs.16,000/- and adding future prospects at 10% which would workout to Rs.1,600/-, the monthly income comes to Rs.17,600/- (Rs.16,000/- + Rs.1,600/-) and the annual income which would be as Rs.2,11,200/- and after deducting 1/3rd towards personal expenses and applying the proper multiplier, the loss of pecuniary benefits would be Rs.15,48,800/- (Rs.2,11,200/- x 2/3 x 11), which is proper and reasonable. The sum awarded by the Tribunal under the heads of love and affection, funeral expenses, consortium, transportation and medical expenses are found very much proper and reasonable, hence, this Court is not inclined to make any modification under the said heads. Accordingly, this Court modifies the sum awarded by the Tribunal under various heads as follows:

S.No	Head	Awarded by the Tribunal (in.Rs.)	Enhanced Compensation (in.Rs.)
1.	Future loss of income	19,36,000.00	15,48,800.00
2.	Love and affection	25,000.00	25,000.00
3.	Transportation	10,000.00	10,000.00
4.	Funeral expenses	15,000.00	15,000.00
5.	Loss of consortium	40,000.00	40,000.00
6.	Medical expenses	1,51,000.00	1,51,000.00
Total		21,77,000.00	17,89,800.00

Thus, the claimants are entitled to a sum of Rs.17,89,800/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

12. In the result

(i)The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii)The compensation awarded by the tribunal is reduced from Rs.21,77,000/- to Rs.17,89,800/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii)The appellant/ United India Insurance Company Limited, is directed to deposit the entire amount, modified by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS as apportioned by the Tribunal within a period of two weeks thereon.

(v) It is represented that the entire compensation awarded by the tribunal was already deposited by the appellant/ Insurance Company. Hence, the Insurance Company is at liberty to withdraw the excess award amount.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To
The Special District Judge,
The Motor Accidents Claims Tribunal,
Fast Track Court, Erode.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.D.Bhaskaran, Advocate sr 66609.
+1 CC to Mr.R.P.Muruganraja, Advocate sr 66462

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EV(CO)
SP(03/01/2020)