

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2943 of 2017
and C.M.P.No.17332 of 2017

National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai 600 002.

... Appellant/2nd Respondent

Vs.

1.Valli ... 1st Respondent/Petitioner

2.M.SatishKumar ... 2nd Respondent/1st Respondent
(R2 remained exparte before the Tribunal)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 15.11.2016, made in M.C.O.P.No.3227 of 2014, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.S.Arun Kumar
For R1 : Ms.Ramya V.Rao
for M/s.A.N.Viswanatha Rao

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, challenging the award dated 15.11.2016, made in M.C.O.P.No.3227 of 2014, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.3227 of 2014, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the death of one A.Adithya, son of the 1st respondent who died in the accident that took place on 13.04.2014. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 2nd respondent and directed the appellant as the

insurer of the vehicle to pay a sum of Rs.11,61,000/- as compensation to the 1st respondent.

3.Challenging the said award dated 15.11.2016, made in M.C.O.P.No.3227 of 2014, the appellant-Insurance Company has come out with the present appeal.

4.Though the learned counsel appearing for the appellant-Insurance Company raised plea with regard to negligence for the accident, at the time of arguments, the counsel for the appellant submitted that he is challenging the appeal only with regard to quantum of compensation. The learned counsel appearing for the appellant-Insurance Company submitted that the deceased was 5 years old at the time of accident. The Tribunal erred in fixing the monthly income of the deceased at Rs.6,500/- and applying the multiplier of '18', which is not correct. The Tribunal has awarded excessive amounts for loss of love and affection and prayed for reducing the compensation awarded by the Tribunal.

5.Per contra, the learned counsel appearing for the 1st respondent contended that considering the age of the child, the Tribunal has fixed the monthly income of the deceased at Rs.6,500/-. The same is not excessive. The amounts awarded by the Tribunal for loss of love and affection is not excessive and in support of her contentions, she relied on the judgment reported in 2018 (2) TNMAC 452 (SC) Supreme Court [Magma General Insurance Company vs. Nanu Ram @ Chuhru Ram and others].

6.Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

7.From the materials on record, it is seen that the deceased was minor aged about 5 years. As per Schedule II of the Motor Vehicles Act, the annual income of the minor is fixed at Rs.15,000/-. The Apex Court has held that due to passage of time, more amounts have to be fixed as annual income of the deceased minor, for calculating the loss of income. This Court in number of judgments have fixed more than Rs.50,000/- per annum as income of the deceased minor. Considering the year of accident, this Court fixes a sum of Rs.50,000/- per annum as notional income of the deceased minor, instead of Rs.6,500/- per month. Since the deceased was a minor, no amount has to be deducted from Rs.50,000/-. The multiplier applicable is '15'. The Tribunal erroneously applied the multiplier of '18'. Hence, the loss of dependency is modified as Rs.7,50,000/- [Rs.50,000/- x 15]. The amounts awarded under other heads are just and reasonable and they are hereby confirmed. 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)	Award confirmed or enhanced or granted
1.	Loss of dependency	9,36,000/-	7,50,000/-	reduced
2.	Funeral expenses	25,000/-	25,000/-	confirmed
3.	Loss of love and affection	2,00,000/-	2,00,000/-	confirmed
	Total	11,61,000/-	9,75,000/-	Reduced by Rs.1,86,000/-

8. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.11,61,000/- is reduced to Rs.9,75,000/- along with interest and costs. The appellant is directed to deposit the modified award amount along 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 judgment, to the credit of M.C.O.P.No.3227 of 2014. On such deposit, the 1st respondent/claimant is permitted to withdraw the modified award amount, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Judge, IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.
2. The Section Officer, VR Section, High Court, Madras (2 Copies)

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.5159
+2cc to M/s.A.N.Viswanatha Rao, Advocate, S.R.No.5541

C.M.A.No.2943 of 2017
and C.M.P.No.17332 of 2017

SKV(CO)
CS/26/04/2019