

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2771 of 2018

M/s.IFFCO-TOKIO General Insurance Co. Ltd
Represented by its Branch Manager,
GSN Arcade, 2nd Floor,
Near Vemala Kalyana Mandapam,
Bye-pass Road, Hosur.

...2nd Respondent/Appellant

Vs.

1.R.Ashok
2.A.Ravikumar
3.Radha
4.G.Sivaji

... Petitioner/Respondent 1 to 3

... 1st Respondents/4th Respondents

PRAYER:

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree made in MCOP No. 336 of 2017, dated 29.06.2018 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.Mukund R.Pandiyan
for R1 to R3

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

Challenging the award passed by the Tribunal in M.C.O.P No.336 of 2017, by which, a total compensation of Rs.31,09,000/- has been fixed, the present appeal has been filed by the insurance company.

2. The deceased was 22 years, working as Diploma Mechanic. As per Ex.P8, he was treated as an apprentice receiving monthly salary of Rs.7,083/-, though he worked for lesser number of days. This was at the time of accident.

3. The Tribunal fixed the income of the deceased at Rs.20,000/- per month. Thereafter, 40% has been added towards the future prospects. For the other conventional heads such as transportation, funeral expenses, loss of estate and loss of love and affection, a sum of Rs.25,000/-, Rs.15,000/-, Rs.15,000/- and Rs.30,000/- respectively have been awarded.

4. The learned counsel appearing for the appellant would submit that one of the claimants is the grandmother. There is no basis for fixing the income at Rs.20,000/- for the deceased, who was aged about 22 years, which is even contrary to Ex.P8. The Tribunal has not considered the case as projected by the appellant. Therefore, the compensation awarded by the Tribunal requires interference.

5. The learned counsel appearing for the claimants/respondents 1 to 3 would submit that Ex.P8 has been marked to show the potential earning of the deceased. Admittedly, he was apprentice at the relevant point of time. Therefore, the same cannot be the basis for fixing the compensation. The proceedings being summary coupled with the claimants being three in number, the just compensation has been fixed. Thus, the appeal will have to be dismissed.

6. We do find that the amount fixed towards loss of dependency by the Tribunal is rather excessive. There is no material to substantiate that the deceased was earning about Rs.20,000/- per month. Even, if we give some credit to Ex.P8, by taking note of the fact that it is only when the deceased was working as apprentice, the fact remains, it was a recent one. However, this will not diminish the potential of the appellant to get a job. We can take this document to show that the deceased was capable of getting employment being aged about 22 years only at the time of death. In such view of the matter, we are inclined to fix the monthly income at Rs.13,000/- per month. We also note that the deceased was undergoing apprenticeship at a reputed concern, by name, M/s. Ashok Leyland. Thus, we fix the loss of dependency at Rs.19,65,600/- ($\text{Rs.13,000/-} \times 1/2 \times 12 \times 18 + 40\% = \text{Rs.19,65,600/-}$). This is inclusive of loss of future prospects.

7. On the conventional heads such as transportation, funeral expenses and loss of estate, we are not inclined to interfere with the amount awarded by the Tribunal. However, insofar as the loss of love and affection, Rs.30,000/- has been awarded, which is contrary to the law laid down in National Insurance Company Limited v. Pranay Sethi, reported in (2017) 16 SCC 680. Accordingly, the same has been increased to Rs.80,000/-. In such view of the matter, the award passed by the Tribunal stands modified to a sum of Rs.21,00,600/- , rounded off to

Rs.21,01,000/- with interest at 7.5% per annum as under:

Head	Amount Awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
Loss of dependency	21,60,000.00	19,65,600.00 (including loss of future prospects)
Loss of future prospects	8,64,000.00	-----
Transportation	25,000.00	25,000.00
Funeral expenses	15,000.00	15,000.00
Loss of estate	15,000.00	15,000.00
Loss of love and affection	30,000.00	80,000.00
TOTAL	31,09,000.00	21,00,600.00 Rounded off to 21,01,000.00

8. In the result, the civil miscellaneous appeal is allowed in part. No costs. Consequently, connected C.M.P.No.21100 of 2018 is closed.

9.The appellant insurance company is directed to deposit the reduced compensation amount awarded by this Court along with proportionate interest, less the amount if any already deposited, to the credit of MCOP No. 336 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur, within a period of eight weeks from the date of receipt of a copy of the judgment.

8.We also direct the Tribunal to transfer the entire amount deposited by way of RTGS to the bank account of the claimants within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimants are entitled to withdraw the same.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssm

To

1. The Motor Accident Claims Tribunal,
Additional District Judge,
Hosur.
2. The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.101742

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.101567

C.M.A.No.2771 of 2018

AD(CO)
CS/23/01/2020