

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3123 of 2018
and C.M.P.No.23669 of 2018

M/s.Universal Sampo General
Insurance Company Ltd.,
Capital Tower, 5th Floor
"B" Wing, No.554/555, Anna Salai
Teynampet
Chennai-600 018. Appellant/2nd Respondent

Vs.

1.Suseela Devi

2.Manisha Yadav

3.Abisheik Yadav (Minor)

(Minor rep. by his Mother &
next friend Suseela Devi)

.... Respondents 1 to 3/Petitioners

4.V.Dharmalingam4th Respondents/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.06.2018 made in M.C.O.P.No.2727 of 2014 on the file of the Motor Accidents Claims Tribunal, III Judge, Court of Small Causes, Chennai.

For Appellant : Mrs.R.Sree Vidhya

For R1 to R3 : Mr.K.Suryanarayanan
for Mr.S.Ravikumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 27.06.2018 made in M.C.O.P.No.2727 of 2014 on the file of the Motor Accidents Claims Tribunal, III Judge, Court of Small Causes, Chennai.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.2727 of 2014 on the file of the Motor Accidents Claims Tribunal, III Judge, Court of Small Causes, Chennai. The respondents 1 to 3-claimants filed the above claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Ramnarayan, who died in the accident that took place on 31.12.2013. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 4th respondent and directed the appellant/Insurance Company being the insurer of the said lorry to pay a sum of Rs.25,05,000/- as compensation to the respondents 1 to 3/claimants. Against the said award dated 27.06.2018 made in M.C.O.P.No.2727 of 2014, the appellant-Insurance Company has come out with the present appeal challenging the quantum of compensation awarded by the Tribunal.

3.Though the appellant has raised grounds with regard to negligence, at the time of hearing the appeal, the learned counsel appearing for the appellant restricted her arguments with regard to quantum of compensation.

4.The learned counsel appearing for the appellant submitted that the Tribunal failed to note that the respondents 1 to 3 have not filed any documentary evidence to prove the monthly income of the deceased and erred in fixing notional income of the deceased at Rs.15,000/- per month. Even for skilled labour, the Hon'ble Apex Court has fixed monthly income only at Rs.10,000/-. The Tribunal ought to have fixed the notional income of the deceased only at Rs.8,000/- per month. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

5.Per Contra, the learned counsel, who is representing the learned counsel appearing for the respondents 1 to 3 contended that the deceased was a cook and was earning a sum of Rs.15,000/- per month. The Tribunal considering the evidence on record, has rightly fixed the monthly income of the deceased at Rs.15,000/-. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

7.The respondents 1 to 3 have contended that the deceased was a cook and was earning a sum of Rs.15,000/- per month. They have not substantiated the same by any acceptable evidence. In view of the same, the notional income of the deceased fixed at

Rs.15,000/- per month is reduced to Rs.10,000/- per month. The deceased was aged 40 years at the time of accident and the respondents 1 to 3 are entitled to 25% towards future prospects. In view of the same, the amount awarded by the Tribunal towards loss of income is modified to Rs.15,00,000/- (Rs.10,000/- + 2,500 (25% of Rs.10,000/-) X 12 X 15 x 2/3). The Tribunal has not granted any amount towards loss of estate and hence this Court awards a sum of Rs.15,000/- towards loss of estate. The amount awarded by the Tribunal towards loss of love and affection is excessive and the same is hereby reduced to Rs.40,000/- each. The amounts awarded by the Tribunal towards loss of consortium and funeral expenses 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 income	22,50,000	15,00,000	Reduced
2.	Loss of Consortium	40,000	40,000	Confirmed
3.	Loss of Love and Affection	2,00,000	80,000	Reduced
4.	Funeral Expenses	15,000	15,000	Confirmed
5.	Loss of Estate	-	15,000	Granted
	Total	25,05,000	16,50,000	Reduced by Rs.8,55,000 /-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.25,05,000/- is hereby reduced to Rs.16,50,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The 1st respondent being the wife of the deceased is entitled to Rs.5,00,000/-, the 2nd respondent being daughter of the deceased is entitled to Rs.5,00,000/- and the 3rd respondent being minor son of the deceased is entitled to Rs.6,50,000/-. The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs now determined by this Court, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and

2 are permitted to withdraw their respective share amount along with proportionate interest and costs, less the amount if any, already withdrawn. The share amount of the minor-3rd respondent is ordered to be deposited in any one of the nationalised banks until he attains majority. The 1st respondent-first claimant-mother is permitted to withdraw the accrued interest once in three months. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kj/rst

To

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

+1cc to M/S.S.Ravikumar, Advocate Sr.5773
+1cc to M/S.R.Sreevidhya, Advocate Sr.6639

C.M.A.No.3123 of 2018
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srg 8/5/2019

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