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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.NO.2414 OF 2019

AND

CMP NO.11001 OF 2019

The United India Insurance Co.Ltd.,
PPS Complex, First Floor,
Mettur Main Road, Omalur Town & Taluk,
Salem District - 636 455

...Appellant

Vs.

1. Lakshmi
2. Minor Chandru
3. Minor Santhosh
4. Chinnapillai
5. Kaveriappan
(Minors 2 & 3 are represented by their
Mother and guardian Lakshmi, first respondent)
6. M. Mohan

...Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 11.08.2018 passed in MCOP No.405 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Dharmapuri.

For Appellant : Mr.D.Bhaskaran

For respondents : Mr.S.Sathiaseelan
for R1 to R5
R6- No appearance



JUDGMENT

Feeling aggrieved with the award passed by the tribunal, the appellant/Insurance Company is before this Court with this appeal.

2. The case of the claimant in brief is as follows:-

It is a case of fatal accident claim. The deceased, by name Periyasamy, who was working as a driver, was aged about 27 years old. On 17.03.2017, at about 6.00 p.m., while he was riding his two wheeler in Dharmapuri-Palacode road, opposite to Somanahalli Primary Agricultural CO-op Bank, a Eicher lorry bearing Registration No.TN 30 AJ 2018, belongs to the first respondent, and insured with the second respondent in the claim petition, came in a rash and negligent manner and dashed against the deceased, in which he sustained fatal injuries. Immediately, he was taken to Government Hospital, Dharmapuri and then Government Hospital, Salem for further treatment, where, he succumbed to injuries on 18.03.2017. According to the claimants, he was earning a sum of Rs.15,000/- and he was the sole breadwinner of the family and hence, claiming compensation of Rs.25 lakhs, wife, two minor children and parents of the deceased filed the claim petition.

3. The first respondent/ owner of the offending vehicle remained exparte. The second respondent/Insurance Company contested the claim petition on the ground that due to the rash and negligent driving of the deceased, the accident has taken place and a false claim has been preferred by the claimants and the Insurance Company is not liable to pay the compensation and the compensation sought for by the claimants are highly excessive and speculative. The Insurance Company also disputed the monthly income of the deceased.

4. In order to prove the case, before the Tribunal, the claimants examined 3 witnesses and marked as many as 21 exhibits. On the side of the respondent, no oral evidence has been adduced, however, the xerox copy of the deceased Aadhar card was marked as Ex.R.1.

5. The Tribunal, after considering the materials, has held that the accident has taken place due to the rash and



negligent driving of the driver of the first respondent lorry and fixed the negligence on the driver of the lorry. In respect of quantum of compensation, the tribunal fixed the monthly income at Rs.10,000/- and adding 50% towards future prospects and deducting 1/4 towards personal expenses, arrived at the notional income of the deceased at Rs.11,250/- and applying multiplier of 17, arrived at a loss of dependency at Rs.22,95,000/-. That apart, the Tribunal awarded a sum of Rs.25,000/- towards loss of consortium to the wife and another sum of Rs.25,000/- towards loss of love and affection to the children and parents and a sum of Rs.10,000/- towards funeral expenses and Rs.5000/- towards transport expenses and in total, a sum of Rs.23,60,000/- was awarded by the Tribunal towards compensation. Now, aggrieved over the same, the Insurance Company is before this Court with this appeal.

6. The learned counsel appearing for the appellant would submit that even though the claimants have stated that the deceased was working as a driver, absolutely, there is no evidence available on record to substantiate the case. That apart, the accident has taken place in the year 2017 and the Tribunal has taken the monthly income of the deceased at Rs.10,000/- without any evidence, which is on higher side. He would further submit that as per the Judgment of the Hon'ble Supreme Court, only 40% of the monthly income should be taken towards future prospects, whereas, the Tribunal has taken 50% of the monthly income of the deceased towards future prospects. That apart, the Tribunal has fixed the age of the deceased at 27 years based on the Post-mortem certificate. The Aadhar Card of the deceased was marked as Ex.R1, in which, the age of the deceased is mentioned as 33 years and hence, appropriate multiplier of 16 shall be applied instead of 17 as fixed by the Tribunal. The learned counsel also fairly submitted that towards loss of consortium, the Tribunal has granted very less amount. However, the multiplier applied by the Tribunal and the future prospects awarded by the Tribunal are not acceptable.

7. Per contra, the learned counsel appearing for the respondents 1 to 5 would submit that the deceased was 27 years old at the time of accident and he was working as a driver and to substantiate the same, the driving licence of the deceased was marked as Ex.P.19. That apart, the oral evidence was also let in before the Tribunal, which was also not disputed by the



appellant/Insurance Company. The accident has taken place in the year 2017 and he was earning a sum of Rs.15,000/- per month and the Tribunal fixed the earning only as Rs.10,000/- without any reason whatsoever and he has also relied upon number of orders passed in the Division Bench of this Court, wherein, the monthly income of the driver was fixed at Rs.12,000/- to Rs.15,000/-. The learned counsel also would submit that considering the age of the deceased and the total dependents numbering 5, and also considering his bright future, the Tribunal added 50% of monthly income towards future prospects. So far as the multiplier is concerned, as the Post Mortem Report clearly reveals the age of the deceased as 27, the Tribunal has taken his age as 27 and appropriate multiplier of 17 has been applied. According to the learned counsel, so far as the loss of consortium is concerned, even though the claimants are entitled for a sum of Rs.2 lakhs, the Tribunal awarded a meager sum of Rs.50,000/- only. Apart from that towards funeral expenses only a sum of Rs.5000/- has been awarded by the Tribunal instead of Rs.15000/- and towards loss of estate no amount has been awarded by the Tribunal. Hence, the quantum of compensation awarded by the Tribunal is much less and the same is necessarily to be enhanced.

8. I have considered the submission made by the learned counsel on either side and perused the materials available on records carefully.

9. The primordial contention of the learned counsel for the appellant is with regard to the monthly income of the deceased and also the future prospects taken by the Tribunal. From the evidence available on record, it could be seen that the deceased was working as a driver. The accident has taken place in the year 2017 and being a driver, he could easily get a sum of Rs.12,000/- per month, however, the Tribunal taken the monthly income at Rs.10,000. The Division Bench of this Court also in number of cases fixed the monthly income at Rs.12,000/- to the skilled labours. If the monthly income of the deceased is taken as Rs.12,000/- and after adding 40% towards future prospects and deducting 1/4 towards his personal expenses, the notional monthly income of the deceased will come to Rs.12,600/- and applying the multiplier of 16, the loss of dependency comes to Rs.24,19,200/-, where as, the Tribunal granted only a sum of Rs.23,60,000/- towards loss of dependency. That apart, as per



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the judgment of the Hon'ble Supreme Court, in Pranay Sethi's case, all the 5 claimants , who are the wife, minor children and parents , are entitled to get a sum of Rs.40,000/- each towards consortium, totally Rs.2,00,000/- where as the Tribunal has awarded only Rs.60,000/-.

10. Hence, Considering all the above said facts and circumstances, this Court finds that , the quantum of compensation awarded by the Tribunal is not excessive and there is no reason to interfere with the same and this Court finds no merit in the appeal.

11. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The appellant/Insurance Company is directed to deposit the award amount as ordered by the Tribunal, 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/claimants are permitted to withdraw the award amount along with interest and costs as apportioned by the Tribunal.

Sd/-

Assistant Registrar(J)

// True Copy //

Sub Assistant Registrar

mrp

To:

1. The Motor Accidents Claims Tribunal,
(Principal District Court), Dharmapuri.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Sathiaseelan, Advocate, S.R.No.41359

C.M.A.No.2414 of 2019

AK-II(CO)

RLP(12/11/2021)