

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.08.2020

PRONOUNCED ON : 27.08.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.1320 of 2016 and
C.M.P.No.10195 of 2016
(Heard through video conferencing)

The United India Insurance Company Ltd.,
No.70, NSC Bose Road,
III Floor, Sowcarpet,
Chennai - 600 079.

...

Appellant/2nd
Respondent

Vs

1.Mary Victoria
2.Yobu E
3.Karal Marks E
4.Soruba.E
5.Mohila.E
6.Louis Premkuar. E

... Respondents 1 to 6/Claimants

(1 to 6 are residing at
Old No.72, New No.200,
G.N.T Road, Erukkancherry,
Chennai - 600 118).

7.Sharad N.Singh
S/o Niranjan Singhi
4th Block,
1A, Kences Brindavan,
No.142/175, Poonamallee High Road,
Kilpauk, Chennai - 10.

... 7th Respondent/1st
Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under
Section 173 of the Motor Vehicles Act, 1988 against the judgment
and decree dated 13.07.2015 made in M.C.O.P.No.2087 of 2013 on
the file of the Motor Accidents Claims Tribunal (IV Small Causes
Court, Chennai) .

For Appellant

:Mr.A.Dhiraviyanathan

For RR.1 to 6

: Mr.S.Partheeban
R7- No Appearance

JUDGMENT

The United India Insurance Company aggrieved by the disproportionately high compensation awarded by the Motor Accident Claims Tribunal (IV Small Causes Court) Chennai in M.C.O.P.No.2087 of 2013 dated 13.07.2015 is before this Court, praying for interference.

2.The brief facts of the case is that, Emmanuel aged 71 years was knocked down by a Jeep bearing registration No. TAN 2190, on 13/10/2012 at about 16.00 hrs while he was walking on the GNT Road, Eurlancherry, near Ethiraj Road Signal. Emmanuel succumbed to the injuries. The cause of accident was attributed on the Driver of the Jeep. F.I.R., was registered against him and he was prosecuted.

3.Claim petition seeking Rs.5,00,000/- as compensation was filed by his wife, 3 sons and 2 daughters. According to the claimants, the accident was due to the rash and negligent driving of the Jeep Driver. The deceased was earning Rs.30,000/- pm at the time of accident. The claimants are all his dependants. Hence, they are entitled for compensation of Rs.5 lakhs payable by the offending vehicle owner and its Insurer.

4.The claim was resisted by the appellant Insurance Company and the owner of the offending vehicle before the Tribunal on liability as well as quantum. The Tribunal noting that F.I.R., is against the offending vehicle Driver, fixed the liability on the owner of the offending vehicle and the appellant Insurance Company. Since, there was no proof for income of the deceased, notional income of Rs.5,000/- was taken as monthly income. Applying multiplier 5, and deducting 1/5th for the personal expenses for the deceased, loss of dependency was fixed as Rs.2,40,000/-. In addition to this, for loss of consortium Rs.1,00,000/-; Loss of love and affection Rs.2,50,000/- ; towards Funeral expenses Rs.25,000/- were awarded. Thus, as against the claim of Rs.5,00,000/-, the Tribunal has awarded Rs.6,15,000/- as compensation to the claimants.

5.In this appeal, the learned counsel for the appellant Insurance Company pointing out the error of the Tribunal applying multiplier 5, contrary to Smt. Sarla Verma others Vs. Delhi Transport Corporation and another - 2009 (2) TN MAC 1 (SC)

judgement and deducting only $1/5^{\text{th}}$ for personal expenses of the deceased, would submit that the deceased was 71 years old at the time of the accident. He was in fact dependant on his sons and daughters. It is the admitted case of the claimants that at the time of the accident, the first claimant was aged about 62 years and the other claimants were between 28 years and 42 years. They are all adult members having independent earning and separate family of their own. Therefore, the multiplier must be only 3 as per the Sarla Verma others Vs. Delhi Transport Corporation and another (cited supra) and $1/3^{\text{rd}}$ amount should have been deducted towards the personal expenses while calculating the deceased monthly income.

6.Regarding the award under the conventional heads like, loss of consortium; loss of love and affection and funeral expenses, the learned counsel for the appellant Insurance Company, referring the judgment of the Hon'ble supreme court in National Insurance Co.Ltd., Vs. Pranay Sethi and others (2017 (2) TN MAC 609 (SC)) submitted that, the award of the Tribunal on these heads are shockingly high and beyond any reasons.

7.The deceased in this case is 71 years old Male. The claimants age are between 28 years and 62 years. The claimants have not produced any documents to show the earning capacity of the deceased at the time of his death. Hence, the Tribunal has taken notional income of Rs.5,000/- pm. While applying the multiplier, though the Tribunal has extracted the relevant portion of the Sarla Verma others Vs. Delhi Transport Corporation and another (cited supra), it has failed to note that the multiplicand has to be reduced by 2 units for every five years after 50 years (i.e.,) between 46 to 50 years the multiplier to be adopted is 13. Then, the multiplier has to be reduced by two units for every five years i.e., multiplier 11 for the age between 51 and 55; multiplier 9 for the age between 56 and 60; multiplier 7 for the age between 61 and 65 and multiplier 5 for the age between 66 and 70.

8.In this case, the deceased admittedly crossed 70 years. He was 71 years old at the time of his death. Therefore, the correct multiplier is only '3' and not '5'. Likewise, the claimants are undoubtedly legal heirs of the deceased, but they are not dependants of the deceased financially. As submitted by the learned counsel for the appellant, 71 years old male member will have his own expenses peculiarly related to his age. Therefore, his financial need will certainly be between $1/3^{\text{rd}}$ and 50%. So, $1/3^{\text{rd}}$ has to be deducted towards his personal expenses from the notional income inclusive of future prospect.

9.The compensation given under the other heads also are very exorbitant fixed without any rational reasoning. Therefore, the tribunal award is modified as below:-

Sl.No	Under the Heads	Amount in Rs.
1	Loss of dependency: (Rs.5000 x 12 x 2/3 x 3)	1,20,000/-
2	Loss of consortium for first claimant (wife)	40,000/-
3	Loss of love and affection for claimants 2 to 6 (Rs 20,000 x 5)	1,00,000/-
4	Funeral Expenses	15,000/-
5	Loss of Estate	15,000/-
	Total	2,90,000/-

10.The claimants are entitled for interest @ 7.5 % per annum from the date of filing (20/03/2013) till the date of realisation with costs. The award amount shall be apportioned among the claimants as below:-

First claimant (wife) Rs.1,40,000/-

Claimants 2 to 6 each Rs.30,000/- with proportionate interest and costs.

From the records, it is seen that by order dated 28.06.2016 in CMA No.1320 of 2016 in CMP No.10195 of 2016, this Court directed the appellant Insurance Company to deposit 50% of the award amount passed by the Tribunal. If it is so, after satisfying the modified award amount as ordered by this Court to the claimants, if any excess amount is lying in the MCOP account, the appellant Insurance company is permitted to withdraw the same by filing appropriate petition before the Tribunal.

11.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

jbm

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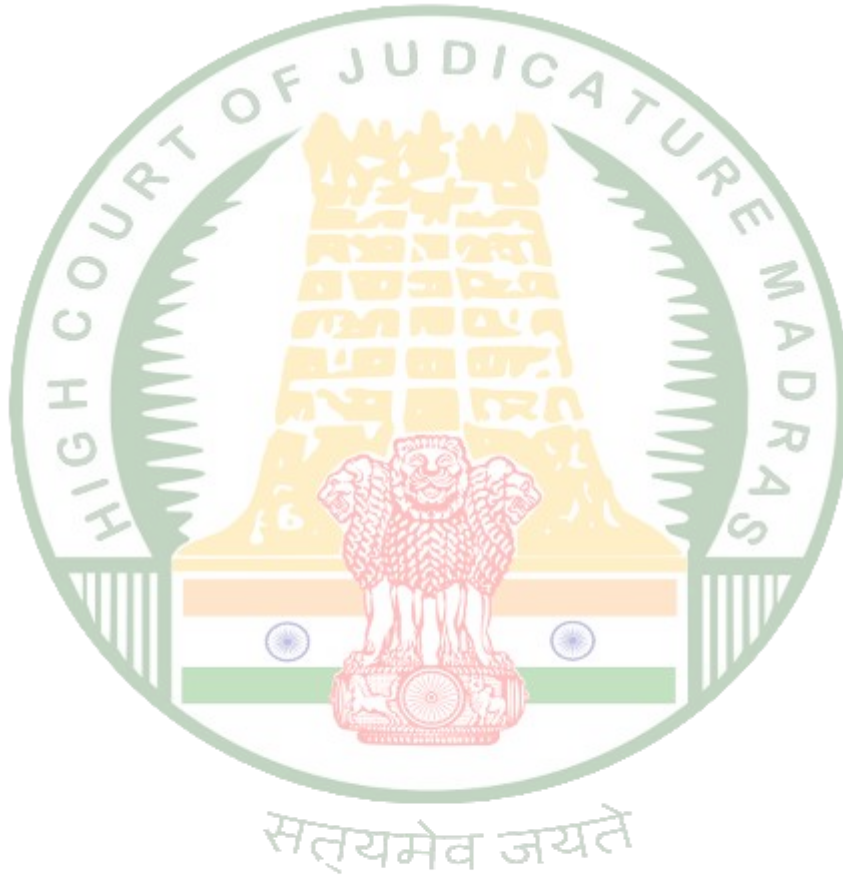
The Motor Accidents Claims Tribunal,
(IVSmall Causes Court, Chennai).

+1cc to Mr. A.Dhiraviyanathan, Advocate SR.No. 28088

+1cc to Mr.S.Partheeban , Advocate SR.No. 28077

C.M.A.No.1320 of 2016

A.SK(29.12.2020)



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