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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.12.2020

Judgment Delivered on : 18.12.2020

Coram:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1057 of 2020
and
C.M.P.No.6703 of 2020

The New India Assurance Co. Ltd.,
LIC Building, NSC Bose Road,
Parrys, Chennai-600 001. .. Appellant

Vs.

1. Mariyal
2. Minor Hitesh
3. Minor Sivash
4. Vijayaragavan
5. Sowmani
(Respondents 2 and 3 are minors rep. by
their mother and natural guardian Mariyal)
6. A.Annadurai .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the order and decree dated 20.02.2019 in M.C.O.P.No.1244 of 2017 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For appellant : Mr.R.Sivakumar
For respondents: Mr.P.Selvaraj for RR-1 to 5
R-6 set ex-parte before the Tribunal

JUDGMENT

R.SUBBIAH, J

Challenging the quantum of compensation awarded by the Tribunal, in and by order dated 20.02.2019 passed in M.C.O.P.No.1244 of 2017 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, the present appeal is filed by the Insurance Company for reduction of the compensation awarded by the Tribunal.



2. The claimants are the wife, two minor children and parents of the deceased Vivekanandan. It is the case of the claimants that on 09.12.2016 at about 8.15 p.m., while the deceased was riding the motor-cycle bearing Registration No.TN-18-AE-2146 on Tambaram to Puzhal By-pass road, opposite to MGR University Boys hostel, Maduravoil, a container lorry bearing Registration No.TN-28-AD-2355 came in the same direction in a rash and negligent manner and hit the said motor-cycle, and thus caused the accident, resulting in causing fatal injuries to the deceased. It is the further case of the claimants that the deceased was working as Project Manager in Formative Solutions Limited, Selaiyur, Chennai and was receiving a sum of Rs.60,000/- per month. Thus, the claimants have made a claim for a sum of Rs.90 lakhs as compensation.

3. The case of the claimants was resisted by the Insurance Company by filing a detailed counter statement.

4. In order to prove the claim, on the side of the claimants, the wife of the deceased examined herself as P.W.1; one Naresh, who was the eye-witness to the accident, was examined as P.W.2 and one Sivakumar, the employer of the deceased, was examined as P.W.3. Exs.P-1 to P-20 were marked on their side. On the side of the Insurance Company, no oral and documentary evidence was adduced.

5. The Tribunal, after analysing the entire evidence on record, came to the conclusion that the accident had occurred due to rash and negligent driving of the said container lorry, insured with the appellant-Insurance Company. While coming to such conclusion, the Tribunal calculated the compensation under different heads and passed an Award for a sum of Rs.48,75,000/- as compensation with interest at the rate of 7.5% per annum from the date of claim petition till the date of payment. The break-up details of the compensation awarded by the different heads are as follows:

Sl. No.	Heads under which the amounts are awarded	Amount (in Rs.) awarded by the Tribunal
1	Loss of income	47,25,000
2	Loss of estate	15,000
3	Funeral expenses	15,000
4	Loss of consortium to the 1st claimant	40,000
5	Loss of love and affection to the claimants 2 and 3 (40,000 x 2)	80,000



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Sl. No.	Heads under which the amounts are awarded	Amount (in Rs.) awarded by the Tribunal
	Total	48,75,000

Aggrieved by the above compensation awarded by the Tribunal, the present appeal is filed by the Insurance Company.

6. The learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal, while calculating the compensation amount under the head 'loss of income', had taken a sum of Rs.25,000/- as the monthly income of the deceased. In order to prove the income of the deceased, on the side of claimants, Ex.P-5 salary certificate was marked, which does not contain the signature of the deceased and it also does not contain any particulars. Under such circumstances, the Tribunal ought not to have fixed Rs.25,000/- as the monthly income of the deceased. Hence, by fixing the notional sum of Rs.10,000/-, the amount awarded by the Tribunal under the head "loss of income" may be reduced.

7. Per contra, the learned counsel appearing for the respondents 1 to 5/claimants made submissions supporting the award passed by the Tribunal.

8. Keeping in mind the submissions made on either side, we have carefully perused the entire materials available on record.

9. Though Ex.P-5 salary certificate does not contain any particulars of the income earned by the deceased, on the side of the claimants, Ex.P-8 copy of the Bank Pass-book of the deceased was marked. The entry made in the Bank Pass-book clearly shows that a sum of Rs.25,000/- was deposited beginning of every month, which shows that the deceased was earning Rs.25,000/- as the monthly income. Therefore, we do not find any infirmity in fixing the sum of Rs.25,000/- as the monthly income of the deceased by the Tribunal. Hence, the Tribunal, by taking a sum of Rs.25,000/- as the monthly income, arrived at Rs.3,00,000/- (Rs.25,000 x 12) as the annual loss of income. The Tribunal adopted the multiplier 15 and arrived at a sum of Rs.45,00,000/-. (Rs.3,00,000 x 15). Then the Tribunal added 40% towards future prospects, which worked out to Rs.63,00,000/- (Rs.45,00,000 + (40% of Rs.45,00,000)). Thereafter, the Tribunal deduced 1/4th amount towards the personal expenses and arrived at Rs.47,25,000/- (63,00,000 - 1/4 of 63,00,000) as the loss of income to the family of the deceased.

10. That apart, the Tribunal awarded a sum of Rs.15,000/- each towards the loss of estate and funeral expenses. The Tribunal awarded Rs.40,000/- towards loss of consortium to the first claimant and awarded Rs.40,000/- each to the claimants 2



and 3. In all, the Tribunal awarded Rs.48,75,000/- as the total compensation to the claimants, with 7.5% interest from the date of claim petition till the date of payment.

11. Absolutely, we do not find any infirmity in the calculation made by the Tribunal while awarding the compensation, as the amounts awarded by the Tribunal under the above said heads are just and proper, which needs no interference by this Court. Hence, the appeal is liable to be dismissed. Accordingly, the appeal is dismissed, confirming the award passed by the Tribunal. The appellant/Insurance Company is directed to deposit the above said compensation as awarded by the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any already deposited by them. The apportionment of shares adopted by the Tribunal is hereby confirmed. On such deposit by the appellant/Insurance Company, the respondents 1, 4 and 5/claimants 1, 4 and 5 are permitted to withdraw their respective shares as apportioned by the Tribunal. As far as the share of the minor respondents 2 and 3/claimants 2 and 3 are concerned, the same shall be deposited in any Fixed Deposit scheme in any nationalised Bank and the same shall be renewed periodically till they attain majority and interest thereon shall be withdrawn by the mother being the first respondent herein (first claimant) once in three months. No costs. Consequently, C.M.P. is closed.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

CS

To

1.The Judge,

II Court of Small Causes,

Motor Accidents Claims Tribunal, Chennai.

2. The Section Officer,

V.R. Section,

High Court, Madras.

+1cc to Mr.R.Sivakumar, Advocate SR.No. 42164

+1cc to Mr.P.Selvaraj, Advocate SR.No. 41946

in C.M.A.No.1057 of 2020

PP(CO)

A.SK(08.09.2021)