IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2020

CORAM

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

C.M.A.Nos.1229 and 3026 of 2019
and
C.M.P.No.3403 of 2019 in C.M.A.No.1229 of 2019

C.M.A.No.1229 of 2019

United India Insurance Company Ltd.,
Branch-II, Salem-1, Office at Door No.77,
Oriental Complex, A.A.Street,
Salem - 1. ... Appellant/2nd Respondent

Vs.

1.Pushpa Devi
W/o.Tejraj Jain

2.Tejraj Jain
S/o.Champalal Jain

3.T.Jayakumar
S/o.Tarachand Jain ... Respondents/Petitioners & 1st Respondent

C.M.A.No.3026 of 2019

1.Pushpa Devi
W/o.Tejraj Jain

2.Tejraj Jain
S/o.Champalal Jain ... Appellants/Petitioners

Vs.

1.T.Jayakumar
S/o.Tarachand Jain

2.United India Insurance Company Ltd.,
Branch-II, Salem-1, Office at Door No.77,
Oriental Complex, A.A.Street,
Salem - 1. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.07.2018 passed in M.C.O.P.No.763 of 2017 on the file of the Motor Accident Claims Tribunal, II Additional District Judge/Special District Judge (FAC), Salem.

For appellant in C.M.A.No.1229/2019 and second respondent in C.M.A.No.3026/2019 : Mr.D.Bhaskaran

For respondents 1 and 2 in C.M.A.No.1229/2019 and appellants in C.M.A.No.3026/2019 : Mr.C.Thangaraju

For third respondent in C.M.A.No.1229/2019 and first respondent in C.M.A.No.3026/2019 : No appearance

COMMON JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

[Heard through Video Conference]

As both appeals arise against the judgment and decree dated 25.07.2018 passed in M.C.O.P.No.763 of 2017 on the file of the Motor Accident Claims Tribunal, II Additional District Judge/Special District Judge (FAC), Salem, they are disposed of by a common judgment.

2. For the sake of convenience, parties are referred to as 'insurance company' and 'claimants'.

3. Challenging the quantum of compensation awarded by the tribunal in the aforesaid judgment, insurance company has filed C.M.A.No.1229 of 2019. Not being satisfied with the quantum of compensation awarded by the tribunal in the aforesaid judgment, claimants have filed C.M.A.No.3026 of 2019.

4. The brief facts of the case is as follows:

Claimants are the parents of the deceased Hitesh Jain. On 11.11.2016 at about 11.30 a.m., while the deceased along with his cousin was travelling in a Car bearing Registration No.TN-30-AK-8178 on the Salem to Gopichettipalayam road, the said Car capsized due to the rash and negligent driving of the Car by its driver. In the said accident, the deceased sustained head injury and died on the way to hospital. Claimants filed a claim petition seeking compensation in a sum of Rs.1,00,00,000/- for the death of their son against the owner of the Car and the insurance company. The said claim was resisted by the insurance company by filing a detailed counter.

5. To prove their claim, on the side of claimants, father and uncle of the deceased were examined as PWs.1 and 2 and one G.Ganapathy, eye-witness, was examined as PW-3 and 15 documents, Exs.P1 to P15, were marked. On the side of insurance company, none were examined but one document was marked.

6. On appreciation of materials, the Tribunal found that the accident had occurred owing to the rash and negligent driving of the Car and awarded compensation in a sum of Rs.28,01,600/- The break-up details of the award is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency (3,78,000 (-) 1,89,000)*18 (-) 6,80,400]	27,21,600 /-
2.	Loss of love and affection	50,000/-
3.	Funeral expenses	15,000/-
4.	Loss of estate	15,000/-
	Total	28,01,600 /-

The Tribunal directed the insurance company, being the insurer, to pay the compensation along with interest at 7.5% p.a. from the date of petition till the date of deposit. Challenging the quantum of compensation, insurance company has filed C.M.A.No.1229 of 2019. Not being satisfied with the quantum of compensation, claimants have filed C.M.A.No.3026 of 2019.

7. Learned counsel for insurance company submits that it is the case of claimants before the tribunal that the deceased was aged 22 and was studying in Shriram College of Commerce, New Delhi, in regular course, at the time of accident. Though the deceased was a student, he was receiving a sum of Rs.4,00,000/- p.a. as commission from the concern viz., Rajratan Industries, New Delhi Branch. To establish the same, claimants have marked Ex.P8 - confirmation letter issued by PW-2 on behalf of Rajratan Industries to the deceased. The said Rajratan Industries is a proprietory concern run by PW-1, father of deceased. Further, claimants have marked Ex.P9 - Income Tax Returns of the deceased for the AY 2014-15, 2015-16 and 2016-17, in which the net income per annum was shown as Rs.3,80,450/-, Rs.3,54,910/- and Rs.3,78,120/- respectively. The Tribunal, on the basis of Ex.P9, has fixed the income of the deceased per annum at Rs.3,78,120/- i.e., the net income of the AY 2016-17. In this regard, learned counsel for appellant submits that the said Rajratan Industries is the family concern of the deceased. Even after the demise of deceased, the family is running the business. Hence, absolutely

there is no loss of income to the claimants. Therefore, it is incorrect to state that the claimants were solely depending on the income of the deceased. Further, the case of claimants that the deceased, who was doing regular course of B.Com, was earning to an extent of Rs.4,00,000/- p.a. by way of commission cannot be accepted. Further, Ex.P9 is only an acknowledgement of returns filed and the statement of accounts has not been placed before the tribunal. Further, the TDS particulars have not been placed before the tribunal. In such circumstance, the tribunal ought not to have placed reliance on Ex.P9 for fixing a sum of Rs.3,78,120/- as the annual income of the deceased. On the whole, the evidence on the side of claimants that the deceased, who was studying regular course, was earning such a huge income is unbelievable and imaginary. Submitting as above, learned counsel submits that the Tribunal, without application of mind, has fixed Rs.3,78,120/- as the annual income of the deceased by relying upon Exs.P8 and P9. Therefore, the compensation awarded by the Tribunal requires proper modification.

8. Per contra, learned counsel appearing for claimants submits that though the deceased was undergoing regular course, as a part-time job, he was carrying on the business of purchasing goods and supplying the same to the Rajratan Industries and receiving commission for the same. Claimants have clearly established their case by marking Ex.P9 - Income Tax Returns, which are genuine documents. Therefore, there is nothing wrong on the part of the Tribunal in fixing the annual income of the deceased at Rs.3,78,120/- by relying upon such documents and arriving at a sum of Rs.27,21,600/- as compensation under the head 'loss of dependency'. Submitting as above, learned counsel submits that the amount awarded under the other heads are on the lower side and hence, the same may be enhanced.

9. This Court has considered the rival submissions. Perused the materials on record.

10. When it is the admitted case of claimants that the deceased was studying regular course at Delhi, the claim of claimants that the deceased was earning a sum of Rs.4,00,000/- p.a. by way of commission cannot be accepted. Therefore, under such circumstance, the calculation made by the Tribunal by fixing a sum of Rs.3,78,120/- as the annual income of deceased is on the higher side. Considering the fact that the deceased was studying B.Com at Shriram College of Commerce, New Delhi, this Court is of the opinion that by fixing a nominal sum of Rs.15,000/- as the monthly income of the deceased, calculation could be made towards arriving at a just and proper compensation. Accordingly, a sum of Rs.15,000/- is fixed as the monthly income of the deceased and 40% is added towards future

prospects. As the deceased was a batchelor at the time of accident, 50% has to be deducted towards personal expenses. If it is so done, the monthly income of the deceased would be Rs.10,500/- (15000 + 6000 - 10500) and the annual income would be Rs.1,26,000/- (10,500 * 12). The proper multiplier to be applied in this case is '18'. If it is so applied, the compensation payable under the head 'loss of dependency' works out to Rs.22,68,000/- (1,26,000 * 18). As the claimants have lost their son at his young age, this Court is of the view that the amount of Rs.50,000/- awarded by the tribunal under the head 'loss of love and affection' is on the lower side and hence, the same is enhanced to Rs.1,00,000/- (Rs.50,000/- each). Further, the sum of Rs.15,000/- awarded under the head 'funeral expenses' is enhanced to Rs.20,000/-. The amount awarded under the head 'loss of estate' is hereby confirmed.

11. Accordingly, the modified compensation payable is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency [(15000 + 40% - 1/2)*12*18	22,68,000/-
2.	Loss of love and affection (50,000 + 50,000)	1,00,000/-
3.	Funeral expenses	20,000/-
4.	Loss of estate	15,000/-
	Total	24,03,000/-

In the result,

(i) C.M.A.No.1229 of 2019 is partly allowed. The compensation of Rs.28,01,600/- awarded by the tribunal is hereby reduced to Rs.24,03,000/- (Rupees Twenty Four Lakhs and Three Thousand only). Out of the award amount, each claimant is entitled to a sum of Rs.12,01,500/-. Insurance company is directed to deposit the said amount of Rs.24,03,000/- together with interest at 7.5% p.a. from the date of petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. On such deposit, claimants are entitled to withdraw their respective shares along with proportionate interest on due application.

(ii)C.M.A.No.3026 of 2019 is dismissed.
No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gm

To

The Motor Accident Claims Tribunal,
II Additional District Judge/Special District Judge (FAC),
Salem.

Copy to

The Section Officer,
High Court, Madras.

C.M.A.Nos.1229 and 3026 of 2019

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