IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.01.2020

Coram:

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice KRISHNAN RAMASAMY

C.M.A.No.1771 of 2018

The Branch Manager
M/s.Oriental Insurance Company Ltd.,
Extension Counter, 2nd Floor,
Vijay Shopping Complex,
2/7-16, Bangalore Main Road,
Zuzuwadi, Hosur.

...Appellant/2nd Respondent

Versus

1.Nagarathina
2.Minor Dharshini
3.Narayanappa @ Lakshminarayana
4.Munilakshmamma
(Minor represented by Mother & NF Nagarathina)

..1 to 4 Respondents/Claimants

5.A.Sowkath

...5th Respondents/1st Respondent

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree in M.C.O.P.No.806 of 2013 dated 15.09.2016 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Krishnagiri.

For Appellant	:	Mr.N.Vijayaraghavan
For Respondents - 1 to 4	:	Mr.S.Mukund R.Pandiyan
Respondent - 5	:	Notice served

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J U D G M E N T

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J.,)

This Civil Miscellaneous Appeal has been preferred by the appellant/Insurance Company, questioning the quantum of compensation awarded by the learned Additional District Judge, Motor Accidents Claims Tribunal, Krishnagiri, in and by its award dated 15.09.2016, passed in M.C.O.P.No.806 of 2013.

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2. The brief facts of the case reads as follows:

On 23.10.2012, at 1.30 p.m, one N.Krishnamoorthy was riding the Suzuki Axis Motor cycle bearing Registration No.TN 70/2576 towards Denkanikottai via Kelamangalam along with his minor son Navaneeth. He stopped his bike infront of an Iyappan Koil situated near the Kalgoposandiram Village in Kelamangalam to Denkanikottai road and standing nearby his vehicle. At that time, the driver of the Tempo Trax bearing Registration No.TN 58/J 7097 belonging to the fifth respondent and insured with the appellant/Insurance Company drove the same in a rash and negligent manner, at an uncontrollable speed, without adhering to the rules of the road and without sounding horn, came from Denkanikottai side and proceeding towards Kelamangalam side and capsized upside down on the said Krishnamoorthy and his son and both of them succumbed to death on the spot. Hence, the respondents 1 to 4 viz., wife, minor daughter, father and mother of the deceased Krishnamoorthy had filed a Claim Petition in M.C.O.P.No.806 of 2013 against the fifth respondent and the appellant/Insurance Company, claiming a sum of Rs.1,00,00,000/- as compensation for the death of said Krishnamoorthy.

3. The fifth respondent/owner of the said Tempo Trax remained ex parte before the Tribunal.

4. The appellant/Insurance Company filed a counter statement, wherein, they denied the averments made by the respondents 1 to 4 in the Claim Petition.

5. When the matter came up before the Tribunal on 15.09.2016, on the side of the respondents 1 to 4, 3 witnesses were examined viz., P.W.1 to P.W.3 and 16 documents were marked viz., Ex.P1 to Ex.P16 and on the side of the fifth respondent and appellant/Insurance Company, only one witness was examined viz., R.W.1 and one document was marked viz., Ex.R1.

6. On appreciation of the oral and documentary evidence produced before it, the Tribunal arrived at the finding that at the time of accident, the driver of the Tempo Trax was having Light Motor Vehicle (LMV) Licence and therefore, the fifth respondent/owner of the Tempo Trax violated the policy condition. However, the Tribunal refused to accept the contention of the Insurance Company and hence, it fixed the liability on the appellant/Insurance Company since it is the insurer of the fifth respondent and the insurance was also in force. The Tribunal directed the appellant/Insurance Company to pay the compensation to the respondents 1 to 4 in the following manner:

(i) Loss of Dependency -Rs.68,64,750/-

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(ii) Loss of Love and Affection-Rs. 2,00,000/-
(P1 to P4 each Rs.50,000/-)

(iii) Loss of Consortium -Rs. 1,00,000/-

(iv) Funeral Expenses -Rs. 20,000/-

Total -Rs.71,84,750/-

The aforesaid compensation amount was directed to be paid with interest at 7.5% per annum from the date of petition till the date of realization. Aggrieved by the quantum of compensation awarded by the Tribunal, the appellant/Insurance Company has filed the present Appeal.

Liability:

7. As far as liability is concerned, the learned counsel for the appellant/Insurance Company would contend that the driver of the Tempo Trax was not possessing the Heavy Motor Vehicle (HMV) Licence at the time of accident, whereas, he was only possessing the LMV Licence.

7.1 The said contention of the counsel for the appellant/Insurance Company cannot be accepted. It is the settled preposition of law that a driver who has possess LMV Licence can drive the vehicles having maximum weight of 7,500 kgs. Admittedly, the weight of Tempo Trax will be below 7,500 Kgs. Therefore, the driver who possess the LMV Licence can drive the Tempo Trax. In our point of view, the Tribunal rightly fixed the liability on the appellant/Insurance Company since the driver who drove the Tempo Trax possessed LMV Licence at the time of accident which will be sufficient to drive the Tempo Trax. Accordingly, we concur with the finding of the Tribunal.

Quantum:

7.2 The learned counsel for the appellant/Insurance Company strongly contended that the compensation awarded by the Tribunal is too high and therefore, the same may be modified as per the Calculation Memo filed by him before this Court. The said Calculation Memo reads as follows:

(i) Loss of Dependency - Rs.58,27,680/-
(ii) Loss of Love and Affection- Rs. 1,20,000/-
(P1 to P4 each Rs.50,000/-)

(iii) Loss of Consortium - Rs. 40,000/-

(iv) Funeral Expenses - Rs. 15,000/-

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(v) Loss of Estate	-	Rs. 15,000/-
Total	-	Rs.60,17,680/-

7.3 The learned counsel would contend that on perusing the Ex.P15, Salary Slip of the deceased, the Tribunal fixed the Monthly Income of the deceased as Rs.39,108/-. However, the Tribunal failed to properly deduct any amount towards income tax from the salary of the deceased.

7.4 It is the further contention of the counsel for the appellant/Insurance Company that the Tribunal fixed the Loss of Consortium as Rs.1,00,000/- which is on the higher side. Hence, he prayed that the same may be reduced to Rs.40,000/- as the appellant/Insurance Company assessed in its Calculation Memo. However, in the present case, following the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC), the Tribunal added 50% of the Monthly Income of the deceased towards Future Prospects. It awarded a sum of Rs.2,00,000/- towards Love and Affection but the said amount is on the higher side. The maximum amount that can be paid by the appellant/Insurance Company towards Love and Affection is only Rs.1,20,000/- i.e., Rs.40,000/- each to the respondents 2 to 4. Also aggrieved by the amount of Rs.20,000/- awarded by the Tribunal towards Funeral Expenses, the appellant/Insurance Company fairly submitted that the maximum amount they can give towards the Funeral Expenses is Rs.15,000/-. It is also brought to the knowledge of this Court that no amount was awarded by the Tribunal towards Loss of Estate. He therefore submitted that the appellant/Insurance Company agreed to pay a sum of Rs.15,000/- towards Loss of Estate. Accordingly, a sum of Rs.15,000/- awarded towards Funeral Expenses and a sum of Rs.15,000/- awarded towards Loss of Estate.

8. Though the learned counsel appearing for the respondents 1 to 4 is reluctant to accept the Calculation Memo filed by the appellant/Insurance Company, however, he would submit that if the Court decide the case and pass orders as per law without any prejudice to the claimants/respondents 1 to 4, he would not stand against the same.

9. We have also gone through the Calculation Memo filed by the counsel for the appellant/Insurance Company, wherein, the appellant/Insurance Company has assessed the Monthly Income of the deceased as Rs.34,000/- and after ¼th deduction towards Personal Expenses and Income Tax, the Loss of Income would be a

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sum of Rs.21,584/- per month (34,000 - 5,221 (IT) - ¼). Further, having considering the fact that the age of the deceased was only 37 years at the time of accident, the appellant/Insurance Company has applied the multiplier 15 and assessed the Loss of Income as Rs.38,85,120/- i.e., (21,584 x 12 x 15 = 38,85,120) and by adding 50% towards Future Prospects, the Loss of Income or Dependency would be a sum of Rs.58,27,680/-. As nothing was awarded by the Tribunal towards Loss of Estate, the appellant/Insurance Company has willingly come forward to pay a sum of Rs.15,000/- as compensation towards the same. Therefore, this Court is inclined to accept the Calculation Memo filed by the counsel for the appellant/Insurance Company and accordingly, we modify the quantum of compensation awarded by the Tribunal in the following manner:

S.No.	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed or modified or granted
1	Loss of Dependency	Rs.68,64,750 /-	Rs.58,27,680 /-	modified
2	Love and Affection	Rs. 2,00,000/-	Rs. 1,20,000/-	modified
3	Consortium	Rs. 1,00,000/-	Rs. 40,000/-	modified
4	Funeral Expenses	Rs. 20,000/-	Rs. 15,000/-	modified
5	Loss of Estate	-	Rs. 15,000/-	granted
	Total	Rs.71,84,750 /-	Rs.60,17,680 /-	

10. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.71,84,750/- (Rupees Seventy One Lakhs Eighty Four Thousand Seven Hundred and Fifty) awarded by the Tribunal is modified to a sum of Rs.60,17,680/- (Rupees Sixty Lakhs Seventeen Thousand Six Hundred and Eighty). The appellant/Insurance Company is directed to deposit the award amount modified by this Court, deduct the amount, if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit to the credit of M.C.O.P.No.806 of 2013 within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the respondents 1, 3 & 4, as per

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the ratio of apportionment ordered by the Tribunal, through RTGS, within a period of three weeks thereafter. So far the second respondent/minor daughter of the deceased is concerned, the Tribunal shall deposit the amount of the second respondent/minor claimant in fixed deposit in any one of the Nationalized Banks, till she attain majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank. Necessary Court fee, if any, shall be paid by the respondents 1 to 4/claimants herein before receiving the copy of the judgment. No costs.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To
1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

+1 CC to Mr.N.Vijayaraghavan, Advocate sr 1540.
+1 CC to Mukund R. Pandiyan, advocate sr 1465.

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