IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM:

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

C.M.A.No.3926 of 2019
and
C.M.P.No.22314 of 2019

M/s.United India Insurance Co. Ltd.,
No.46/51, 1st Floor, TKM Complex,
Katpadi Road, Vellore-632 007.
Rep. by its Manager,
Policy No.0121033114P100147042,
Period of Insurance 07.04.2014
Midnight on 06.04.2015. .. Appellant/3rd Respondent

Vs.

1. S.Usharani

2. V.Sundaramoorthy ... 1st and 2nd Respondent/Petitioners

3. G.Karthigeyan ... 3rd Respondent/1st Respondent

4. Sureshbabu ... 4th Respondent/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 06.07.2018 made in M.A.C.T.O.P.No.102 of 2015 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Vaniyambadi.

For appellant : Mr.S.Arun Kumar

For respondents : Ms.S.Thamizharasi for RR-1 and 2
No appearance for RR-3 and 4

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

Challenging the quantum of compensation awarded by the Tribunal, in and by Award dated 06.07.2018 made in M.A.C.T.O.P.No.102 of 2015 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Vaniyambadi, the present appeal has been filed by the Insurance Company.

2. The respondents 1 and 2 herein are the claimants before the Tribunal. They are the parents of the deceased Saravanan, aged about 30 years at the time of accident. The case of the respondents 1 and 2/claimants is that on 08.02.2014 at about 4.15 p.m., while the deceased was riding a two-wheeler bearing Regsitration No.TN-23-BM-5841 from Ambur to Odugattur, by having his wife as a pillion rider, a bus, bearing Registration No.TN-23-AU-3359, owned by the third respondent and insured with the appellant-Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the said two-wheeler and thus caused the accident. In the said accident, the rider as well as pillion rider died on the spot itself. Hence, the claimants, who are the parents of the deceased Saravanan, had filed the Claim Petition before the Tribunal claiming a sum of Rs.84 lakhs as compensation for the death of their son. It is the further case of the claimants that the deceased was a professional Electrician and was working at Singapore under Rotary Electrical Company Private Limited and his net pay per day was $150, i.e. approximately Rs.25,000/- per month. Thus, the claimants have claimed compensation of Rs.84 lakhs before the Tribunal.

3. The appellant-Insurance Company has filed counter statement before the Tribunal stating that it is only the deceased who was riding his two-wheeler rashly and negligently without possessing driving licence and dashed against the bus. The deceased is guilty of negligence. Thus, the Insurance Company prayed for dismissal of the Claim Petition.

4. In order to prove the claim on the side of the claimants, the mother of the deceased was examined as P.W.1 and Exs.P-1 to P-25 were marked. On the side of the Insurance Company, no oral or documentary evidence was adduced. The Tribunal, on an analysis of the evidence available on record, awarded compensation of Rs.48,19,520/- under the following heads:

Loss of dependency	:	Rs.34,06,800
Loss of expectation of life	:	Rs.13,62,720
Funeral expenses	:	Rs.25,000
Loss of love and affection	:	Rs.25,000
Total:		Rs.48,19,520 (with interest at 6%)

5. The learned counsel appearing for the appellant/Insurance Company submitted that the evidence on record would show that the deceased was working as contract labourer under daily wage scheme. He is not in any permanent employment in Singapore. The evidence on record would further

show that from 2013 onwards, he was in India till his death on 08.12.2014. The claimants have also not produced any proof of earning since 2013 in India. However, the Tribunal, without any documentary proof, had come to the conclusion that the deceased would have earned a sum of Rs.25,000/- per month and thus fixed the monthly income of the deceased as Rs.25,000/-, and thereafter, by adding 40% towards future prospects, deducting 1/3 towards personal expenses and applying multiplier 17, had awarded a sum of Rs.34,06,800/- under the head "loss of income/dependency", and therefore, the same needs proper reduction by way of re-calculation by fixing the notional sum of Rs.10,000/- as monthly income. That apart, the learned counsel for the appellant submitted that after arriving at a sum of Rs.34,06,800/- towards the loss of income/dependency, the Tribunal has separately awarded a sum of Rs.13,62,720/- by applying multiplier method and the same is liable to be set aside.

6. Further, the learned counsel appearing for the appellant/Insurance Company submitted that the claimants are only the parents of the deceased, and therefore, under such circumstances, the Tribunal ought to have deducted 50% towards the personal expenses of the deceased. In support of his contention, the learned counsel appearing for the appellant/Insurance Company relied on a decision of the Supreme Court reported in 2002 (6) SCC 281 (United India Insurance Company Vs. Patrica Jean Mahjan and others), wherein the Apex Court held that in a claim of foreign employment, while fixing the income, the Courts have to strike a golden balance between two economies and in the said case, the Supreme Court applied lesser multiplier to compute the loss of dependency. Further, in the recent decision of the Supreme Court reported in CDJ 2020 SC 601 (United India Insurance Company Vs. Satinder Kaur @ Satwinder Kaur and others), it was held by the Apex Court that the deceased would have spent for maintaining himself in the foreign country and also for his wife and children in India, and thus, 50% was deducted towards the personal expenses in that case. Thus, the learned counsel appearing for the appellant-Insurance Company submitted that applying the ratio laid down by the Supreme Court in the said case, 50% of the amount has to be deducted towards the personal expenses of the deceased.

7. Per contra, the learned counsel appearing for the respondents 1 and 2/claimants submitted that the claimants have produced ample documentary evidence in Ex.-8 being the Provisional Notional Trade Certificate of the deceased obtained from the employer, to substantiate their contention that the deceased was earning not less than Rs.25,000/- per month. In the said circumstances, the calculation made by the Tribunal by fixing a sum of Rs.25,000/- p.m. cannot be found fault with.

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

on record.

9. The evidence on record shows that the deceased was working in Singapore and earning income. Therefore, the Tribunal, by considering the documentary evidence produced on the side of the claimants, came to the conclusion that the deceased would have earned not less than Rs.25,000/- p.m. in Singapore, which is perfectly correct in the facts and circumstances of the given case. Therefore, we do not find any infirmity in the fixation of Rs.25,000/- as the monthly income of the deceased to make calculation under the head "loss of income". At the same time, we find that the Tribunal has deducted only 1/3 towards the personal expenses of the deceased. The claimants are only the parents of the deceased. Hence, the Tribunal ought to have deducted 50% towards personal expenses of the deceased. Therefore, we are of the opinion that the amount under the head "loss of income" has to be re-calculated by way of re-assessment by deducting 50% towards the personal expenses of the deceased. Accordingly, the loss of income is re-calculated below:

annual income = 25,000 x 12 = Rs.3,00,000 p.a.
Future prospects = 40% of 3,00,000 = 1,20,000
total income = Rs.4,20,000 p.a.
50% deducted towards personal expenses, i.e. 4,20,000 - 50%
actual loss of income = 2,10,000
multiplier is 17. then 2,10,000 x 17 = Rs.35,70,000/-.

Hence, the loss of income awarded by the Tribunal at Rs.34,06,800/- is hereby enhanced to Rs.35,70,000/-.

10. The sum of Rs.25,000/- awarded towards love and affection is hereby enhanced to Rs.1,50,000/- (Rs.75,000 for each parents).

11. Further, the amount awarded by the Tribunal towards loss of expectation of life at Rs.13,62,720/- is hereby set aside, as the amount is awarded under the head "loss of income".

12. The amount awarded by the Tribunal towards funeral expenses at Rs.25,000/- is hereby confirmed.

13. Thus, the break-up details of the amount awarded are as follows:

Sl. No.	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Loss of income/dependency	34,06,800	35,70,000
2	Loss of expectation in life	13,62,720	-

Sl. No.	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
3	Funeral expenses	25,000	25,000
4	Loss of love and affection	25,000	1,50,000
	Total	48,19,520	37,45,000

14. Thus, the appeal is partly allowed by reducing the compensation awarded by the Tribunal from Rs.48,19,520/- to Rs.37,45,000/-, which shall carry interest at 7.5% per annum from the date of claim petition till the date of payment. The appellant/Insurance Company shall deposit the above amount within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount, if any already deposited. The excess amount, if any lying in the deposit made by the appellant/Insurance Company, shall be refunded to them. The above compensation amount shall be shared by the claimants equally. On such deposit made by the appellant/Insurance Company, the claimants shall withdraw their respective shares before the Tribunal in accordance with law. No costs. Consequently, C.M.P. is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer,
   Motor Accidents Claims Tribunal,
   Sub-Court, Vaniyambadi.

2. The Section Officer,
   V.R. Section,
   High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 26545

C.M.A.No.3926 of 2019

GP(CO)
GN(10/02/2021)