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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 13.10.2020

Judgment Delivered on : 03.11.2020

Coram:

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

C.M.A.No.1507 of 2020
and
C.M.P.No.11153 of 2020

The Oriental Insurance Co. Ltd.,
114/215, Broadway,
Prakasam Salai, Chennai-600 108.

.. Appellant/2nd respondents

Vs.

1. Jeho Kriston, S/o Late Moses
2. Jebaz Winston, S/o Late Moses

..Petitioners 1&2

3. C.Ravimurugan

.. 1st Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 20.12.2019 made in M.C.O.P.No.1243 of 2017 on the file of the Motor Accidents Claims Tribunal (Special Sub-Court No.1 to deal with the Motor Accident Claims Original Petitions), Small Causes Court, Chennai.

For Appellants : Mr.R.Sivakumar

For respondents : Mr.P.Selvaraj for RR-1 and 2

JUDGMENT

Questioning the quantum of compensation awarded by the Tribunal, in and by award dated 20.12.2019 in M.C.O.P.No.1243 of 2017 on the file of the Motor Accidents Claims Tribunal (Special Sub-Court No.1 to deal with MCOP Cases), Small Causes Court, Chennai, the present appeal is filed by the Insurance Company.

2. The respondents 1 and 2 are the claimants before the Tribunal. They are the sons of the deceased Mohideen Fathima @



Niraimathi, whose husband pre-deceased her. The claimants are aged about 20 years and 19 years respectively.

3. It is the case of the respondents 1 and 2/claimants before the Tribunal that on 19.01.2017 at about 6 p.m., their mother was travelling as a pillion-rider in a motor-cycle bearing Reg.No.TN-69-AU-0645 ridden by one Ravimurugan, who is the third respondent herein, from Red Hills to Vadapalani on the 100 Feet Road and while they were nearing Asian Games Village at Koyambedu, the rider of the two-wheeler drove the vehicle in a rash and negligent manner, and applied sudden brake, as a result of which, the deceased fell down from the bike and sustained head injuries. Immediately, she was admitted in the SIMS Hospital, Vadapalani and on 20.01.2017, she died inspite of treatment given to her. At the time of accident, the deceased was aged about 47 years and was working as Senior Professor in J.N.N.College of Engineering, Red Hills, Tiruvallur and earning Rs.40,000/- per month. Hence, the claimants have made a claim of Rs.80 lakhs as compensation before the Tribunal for the death of their mother, who died in the said accident.

4. The claim petition filed by the claimants, was resisted by the appellant-Insurance Company by filing counter statement, denying the manner in which the accident had occurred, the occupation and the income of the deceased.

5. In order to prove the claim, on the side of the respondents 1 and 2/claimants, the first claimant was examined as P.W.1, besides the eye-witness to the accident was examined as P.W.2 and the employer of the deceased was examined as P.W.3 and Exs.P-1 to P-22 were marked on their side. On the side of the Insurance Company, R.W.1 being the Administration Officer of the appellant-Insurance Company, was examined and Exs.R-1 to R-3 were marked. The third respondent herein was examined as R.W.2 and on his side, Exs.R-4 to R-7 were marked.

6. The Tribunal, after analysing the entire evidence available on record, has come to the conclusion that the accident is the result of rash and negligent driving of the two-wheeler by its rider. After coming to such conclusion, the Tribunal has passed the award under various heads and the break-up details of the award are as follows:

Sl. No.	Head under which the amounts are awarded by the Tribunal	Amount (in Rs)
1	Total loss of dependency	42,90,000
2	Loss of love and affection	50,000



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Sl. No.	Head under which the amounts are awarded by the Tribunal	Amount (in Rs)
3	Medical and transportation expenses	1,02,092
4	Loss of estate	15,000
5	Funeral expenses	15,000
	Total	44,72,092/- rounded off to Rs.44,72,100/-

The Tribunal awarded interest at the rate of 7.5% per annum from the date of filing of the claim petition till realisation. Challenging the above award passed by the Tribunal, the Insurance Company has filed the present appeal.

7.Now, it is the main submission of the learned counsel appearing for the appellant/Insurance Company that the respondents 1 and 2 are the major sons of the deceased mother, and therefore, it cannot be said that they are the dependants on the income of their mother. Under such circumstances, the Tribunal ought not to have fixed a sum of Rs.33,000/- as the monthly income of the deceased. Moreover, the Tribunal failed to deduct necessary Income Tax deductions to be made from the salary of the deceased. Thus, the learned counsel appearing for the appellant/Insurance Company prayed for reducing the compensation amount.

8.Countering the above submissions, the learned counsel appearing for the respondents 1 and 2/claimants submitted that the sons of the deceased, namely the respondents 1 and 2 are aged about 20 years and 19 years respectively. They are only students and therefore, it cannot be said that they are not depending on the income of their deceased-mother. Their father pre-deceased their mother. The learned counsel appearing for the respondents 1 and 2/claimants further submitted that in order to establish that the deceased was working as Professor, her appointment order was marked as Ex.P-7 and the pay slip for the month of December 2016 was marked as Ex.P-8, which shows the actual income of the deceased at Rs.35,000/-, whereas the Tribunal had taken the income of the deceased as Rs.33,000/- and made calculation for the loss of dependency. Therefore, the learned counsel appearing for the respondents 1 and 2/claimants submitted that this is a fit case for enhancement of the compensation by fixing Rs.35,000/- as the monthly income of the deceased. He further submitted that even without the cross-objection



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being filed by the claimants, this Court may enhance the award to arrive at a just and proper compensation by way of re-calculation of the same by fixing a sum of Rs.35,000/- as the monthly income of the deceased to arrive at a just and proper compensation.

9.Keeping the above submissions made on either side, we have carefully perused the entire materials available on record.

10.It is the submission of the learned counsel appearing for the appellant/Insurance Company that the claimants are majors and therefore, they cannot be construed to be dependants on the income of the mother of the deceased. Under such circumstances, the Tribunal ought not to have fixed Rs.33,000/- as the monthly income of the deceased mother.

11.Per contra, it is the submission of the learned counsel appearing for the respondents 1 and 2/claimants that the deceased was earning Rs.35,000/- p.m. which is evident from the salary slip of December 2016 marked as Ex.P-8. Therefore, the salary amount has to be enhanced by fixing Rs.35,000/- as the monthly income of the deceased.

12. We find that the deceased was earning Rs.35,000/- p.m. as is evident from Ex.P-8. At the same time, without filing cross-objection by the claimants, this Court is not inclined to enhance the compensation amount. Further, the Tribunal, by fixing Rs.33,000/- as the monthly income of the deceased, and by adding 25% towards future prospects, arrived at a sum of Rs.41,250/- as the monthly loss of income of the deceased. Thereafter, by adopting multiplier "13" and deducting 1/3 towards personal expenses, the Tribunal arrived at a sum of Rs.42,90,000/- as the total loss of dependency of the deceased. We do not find any infirmity in the above calculation made by the Tribunal. However, we find that the Tribunal had not deducted any amount towards Income Tax payable by the deceased. This is a fit case where the Income Tax had to be deducted from the salary of the deceased. Accordingly, in respect of the assessment year 2017-2018, the following are the Income Tax slab rates:

Upto Rs. 3,00,000	NIL
Rs. 3,00,000 to 5,00,000	10% of the amount exceeding Rs.3,00,000
Rs. 5,00,000 to 10,00,000	Rs. 20,000 + 20% of the amount exceeding Rs.5,00,000



Rs. 10,00,000 &
above

Rs.1,20,000 + 30% of the amount
exceeding Rs.10,00,000

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13. The annual income of the deceased is calculated at Rs.4,95,000/- (41,250 x 12). Adopting the above Income Tax slab rates, there will be "nil" tax in respect of the earnings of the deceased upto Rs.3,00,000/-. Beyond Rs.3,00,000/- and upto Rs.4,95,000/-, the slab rate is 10%. as indicated above, i.e. 10% of 1,95,000 (4,95,000 - 3,00,000). i.e. The income tax will be Rs.19,500/-. Then, the net income is Rs.4,75,500/-. (Rs.4,95,000 - 19,500). Then, deducting 1/3 towards personal expenses, the annual loss of income works out to Rs.3,17,000/- (4,75,500 - 1/3 of 4,75,500). Thereafter, by applying multiplier 13, the actual loss of income works out to Rs.41,21,000/- (Rs.3,17,000 x 13).
14. Further, the amount awarded by the Tribunal towards loss of love and affection is enhanced from Rs.50,000/- to Rs.1,00,000/- by awarding Rs.50,000 for each of the two claimants, the same being just and proper for loss of love and affection to them, as they have lost their mother and they being only students.
15. The amount awarded by the Tribunal towards medical expenses and transportation, the same being from and out of the medical bills at Rs.1,02,092/- is hereby confirmed only in respect of the head "medical expenses".
16. The amounts awarded by the Tribunal at Rs.15,000/- each towards loss of estate and funeral expenses, being just and proper, are hereby confirmed.
17. It is seen that the Tribunal had included the transportation charges with the medical expenses, which is not proper and separate amount is hereby awarded towards transportation charges, at Rs.15,000/-.
18. Thus, the break-up details with comparative table of the amounts awarded by the Tribunal and this Court are as follows:

Sl. No.	Head under which the amounts are awarded	Amounts awarded by the Tribunal (in Rs.)	Amounts awarded by this Court (in Rs.)
1	Total loss of dependency	42,90,000	41,21,000
2	Loss of love and affection	50,000	1,00,000



To

1. The Presiding Officer,
Motor Accidents Claims Tribunal,
Special Sub-Court No.1,
Small Causes Court, Chennai.

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

+2cc to Mr.R.Sivakumar, Advocate, S.R.No.33820 & 35373
+1cc to Mr.P.Selvaraj, Advocate, S.R.No.35428

C.M.A.No.1507 of 2020

SPD(CO)
BE(06/08/2021)