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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2343 of 2014

and

M.P.No.1 of 2014

The Oriental Insurance Company Limited
Divisional Office, 2nd floor, 90-A
Thuraiyur Road
Namakkal District-637 002.

... Appellant/2nd Respondent

Vs.

1.Devaki

2.T.Malini

3.T.Sathish

4.T.Divya

... Respondents 1 to 4/Petitioners

5.B.Srinivasan

.. 5th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.04.2014 made in M.C.O.P.No.4261 of 2012 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.Vinod

For R1 to R4 : Mr.Suganthan
for Mr.N.Manokaran

R5 : Given up

J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 28.04.2014 made in M.C.O.P.No.4261 of 2012 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.



2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.4261 of 2012 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one N.Thickeswaran, who died in the accident that took place on 22.08.2012.

3.According to the respondents 1 to 4, on the date of accident, i.e., on 22.08.2012, at about 1.15 p.m., while the deceased was riding in his Hero Honda Splendor motorcycle from Red Hills to his residence at Madhavaram GST Road, near Rountana, Manali Road junction under Madhavaram Bridge, the driver of the trailer lorry belonging to the 5th respondent, which was coming behind, drove the same in a rash and negligent manner, dashed against the motorcycle of the deceased and caused the accident. In the accident, the deceased sustained fatal injuries and died on the spot. Therefore, the respondents 1 to 4 filed the above claim petition claiming compensation against the 5th respondent and appellant.

4.The 5th respondent, owner of the trailer lorry remained exparte before the Tribunal.

5.The appellant/Insurance Company insurer of the trailer lorry filed counter statement denying the averments made in the claim petition and stated that the respondents 1 to 4 have to prove that the accident has occurred due to rash and negligent driving by the driver of the trailer lorry belonging to the 5th respondent and the deceased and the driver of the trailer lorry possessed valid driving license to drive their vehicles at the time of accident. The appellant/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, 1st respondent, wife of the deceased, examined herself as P.W.1, one D.Srinivasan, eye-witness to the accident, was examined as P.W.2 and 18 documents were marked as Exs.P1 to P18. The appellant/Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the trailer lorry belonging to the 5th respondent and directed the appellant/Insurance Company being insurer of the said trailer lorry to pay a sum of Rs.16,83,344/- as compensation to the respondents 1 to 4.



8. Against the said award dated 28.04.2014 made in M.C.O.P.No.4261 of 2012, the appellant/Insurance Company has come out with the present appeal challenging quantum of compensation awarded by the Tribunal.

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9. The learned counsel appearing for the appellant/Insurance Company contended that the 1st respondent is receiving a sum of Rs.12,000/- as family pension. The Tribunal without deducting the same, erroneously fixed a sum of Rs.22,355/- as monthly income of the deceased. The Tribunal ought to have deducted 1/3rd instead of 1/4th towards personal expenses. The amounts awarded by the Tribunal towards funeral expenses, loss of consortium and loss of love and affection are excessive. The Tribunal went wrong in awarding Rs.1,00,000/- towards loss of expectation of life and applying multiplier '7'. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the respondents 1 to 4 contended that in the accident, the 1st respondent lost her husband and the respondents 2 to 4 lost their father. The Tribunal considering the same, awarded compensation for loss of consortium, loss of love and affection and expectation of life. The deceased was receiving a sum of Rs.22,355/- as monthly pension. If the deceased was alive, he would have contributed total amount to his family. The Tribunal considering the fact that there are four dependants of the deceased, deducted 1/4th towards personal expenses and the same is proper. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 4 and perused the entire materials on record.

12. From the materials on record, it is seen that the deceased was a retired Senior Motorman from Southern Railway and was receiving a sum of Rs.22,355/- as monthly pension at the time of accident. Due to sudden death of the deceased in the accident, the respondents 1 to 4 have filed claim petition claiming compensation for the death of the deceased Thicqueswaran. The respondents 1 to 4 are wife, two daughters and one son of the deceased. In view of the relationship of the claimants/respondents 1 to 4 to the deceased, the contention of the learned counsel appearing for the appellant that the Tribunal ought to have deducted family pension received by the wife of the deceased, the 1st respondent herein, is not acceptable. All the respondents 1 to 4 are entitled to compensation for the death of the deceased in the accident. Therefore, the Tribunal rightly rejected the contention of the



appellant for deduction of family pension received by the 1st respondent. The Tribunal considering the fact that there are four dependents, deducted 1/4th towards personal expenses, applied multiplier '7' as per the judgment of the Hon'ble Apex reported in 2009 (2) TNMAC 1 SC (Sarla Verma vs. Delhi Transport Corporation), granted compensation towards loss of dependency and the same is in order. The Tribunal has granted excessive amounts towards funeral expenses, loss of consortium and loss of love and affection and hence, the same are hereby reduced to Rs.15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium and Rs.20,000/- each towards loss of love and affection to the respondents 2 to 4. The Tribunal granted a sum of Rs.1,00,000/- as compensation towards loss of expectation of life. The respondents 1 to 4 are not entitled to the said amount and hence, the same is hereby set aside. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	14,08,344	14,08,344	Confirmed
2.	Funeral expenses	25,000	15,000	Reduced
3.	Loss of consortium	50,000	40,000	Reduced
4.	Loss of love and affection to the respondents 2 to 4	1,00,000	60,000	Reduced
5.	Loss of expectation of life	1,00,000	-	Set aside
6.	Loss of estate	-	15,000	Granted
	Total	16,83,344	15,38,344	Reduced by Rs.1,45,000/-

13. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.16,83,344/- awarded by the Tribunal is hereby reduced to Rs.15,38,344/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The



appellant/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 4 are permitted to withdraw the award amount now determined by this Court, as per the apportionment made by the Tribunal, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.4261 of 2012 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Kj

To

1.The II Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+lcc to Mr.Elveera Ravindran, Advocate, S.R.No.42005

+lcc to Mr.N.Manokaran, Advocate, S.R.No. 42076

C.M.A.No.2343 of 2014
and M.P.No.1 of 2014

KJ(CO)
GN(25/08/2021)