

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-08-2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.4345 of 2019

And

C.M.P.No.24773 of 2019

M/s.SBI General Insurance Company Ltd.,
Rep. by its Manager,
No.104, 2nd Floor,
Excellence Building,
Race Course Road,
Coimbatore-641 018.

..Appellant/3rd Respondent

vs.

1.Tmt.Kannammal

2.Uma Bharathi

3.Alamelumangai

..Respondents 1 to 3/Petitioners

4.P.T.Govindarajan

5. M/s.Poppys Apparels
Rep by its Owner,
No.57 Appachi Nagar,
Perumanallur Main Road,
Tiruppur-641 602.

..Respondents 4 & 5/Respondents 1 & 2

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.11.2018 passed in M.C.O.P. No.1146 of 2016 on the file of the learned II Additional District and Sessions Judge, II Additional District and Sessions Court-cum-Motor Accidents Claims Tribunal, Tiruppur.

For Appellant : Mr.M.B.Raghavan

For Respondents-1 to 3 : Mr.N.Manokaran

J U D G M E N T

The Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 26.11.2018 passed in M.C.O.P. No.1146 of 2016 on the file of the learned II Additional District and Sessions Judge, II Additional District and Sessions Court-cum-Motor Accidents Claims Tribunal, Tiruppur.

2. M/s.SBI General Insurance Company Limited is the appellant, questioned the award mainly on quantum.

3. The learned counsel appearing on behalf of the appellant-Insurance Company reiterated that the Tribunal has erroneously calculated the compensation and the compensation granted by the Tribunal is excessive. The Tribunal has committed the basic error by not deducting the family pension being received by the wife of the deceased. The deceased, admittedly, was a pensioner and after his demise, his family was getting the family pension. Therefore, the Tribunal ought to have deducted the amount of family pension for the purpose of calculating the compensation.

4. Contrary to the principles, the Tribunal has erroneously treated the entire pension amount of the deceased as an income by not deducting the family pension, which is being received by the family of the deceased even now. The deceased, after his retirement, was not only receiving the pension, but he was employed as a Manager in the Marriage Hall. However, such an employment was not proved in support of any documents and the statement of the witness alone has been taken by the Tribunal for the purpose of considering the employment after retirement of the deceased in the Marriage Hall. The daughters of the deceased were already married and they are living separately with their husbands. Thus, the actual deduction should have been 50% since the wife alone was the dependent of the deceased. For all these reasons, the award of the Tribunal is liable to be scrapped.

5. The learned counsel appearing on behalf of the respondents-claimants disputed the grounds raised by the learned counsel appearing on behalf of the appellant-Insurance Company by stating that the employment of the deceased, after his retirement, was established through a reliable witness and this apart, the other evidences were also produced to establish that

the deceased was very actively working as a Manager in the Marriage Hall. Therefore, the Tribunal has not committed any error in calculating the compensation and further, the pension received by the deceased, cannot be deducted in view of the fact that the family pension is the right of the family of the deceased and therefore, the award of the Tribunal is to be confirmed.

6. The accident occurred on 21.03.2016 at about 03.45 P.M., at Police Station Road, Uttukuli, near Uttukuli Police Station. The Uttukuli Police Station registered a case in Crime No.166 of 2016 under Sections 279, 337 and 304 (A) of IPC. The deceased was travelling in the Moped. On account of the accident, he sustained grievous head injuries and in spite of the treatment provided, he died on 24.04.2016. Thus, the claim petition was filed by the wife of the deceased as well as his daughters.

7. The second and third claimants were the daughters of the deceased aged about 45 years and 42 years respectively. The wife of the deceased, at the time of filing the claim petition, was aged about 65 years. Therefore, as rightly contended by the learned counsel for the appellant, the daughters of the deceased cannot be considered as dependents. As per the claim petition, the deceased himself was aged about 72 years at the time of accident and under these circumstances, the wife of the deceased alone is to be considered as a dependent and admittedly, the deceased was a pensioner and was working as Headmaster in a Government School and was receiving a decent amount of pension.

8. The first claimant, wife of the deceased, is receiving the family pension and therefore, the appellant is right in contending that the family pension, being received by the wife of the deceased, is to be deducted for the purpose of calculating the compensation. Unfortunately, the Tribunal has not deducted the family pension. Contrarily, the entire pension amount was considered as loss of income and accordingly, compensation was granted.

9. The total amount of compensation granted by the Tribunal is Rs.21,00,000/-. The learned counsel appearing for the appellant contended that the family pension, being received by the wife of the deceased, is to be deducted and accordingly, the loss of income is to be reassessed and revised compensation is to be granted.

10. This Court is of the considered opinion that the income fixed by the Tribunal is Rs.30,000/-. However, this Court is of the opinion that the income must be Rs.34,000/-, in view of the fact that the deceased received a monthly pension of Rs.24,000/- and after his retirement, he was working as a

Manager in the Marriage Hall, wherein he was being paid a monthly salary of Rs.10,000/-. Therefore, Rs.34,000/- must be a proper income to be fixed for the purpose of calculating the compensation. Thus, the income fixed by the Tribunal as Rs.30,000/- is modified as Rs.34,000/-. Accordingly, one-third (1/3rd) personal expenses is to be deducted. One-third personal expenses would be Rs.11,333/- and consequently, the monthly income to be taken for consideration would be Rs.22,666/-.

11. Again the family pension, being received by the wife of the deceased amounting to Rs.12,000/-, is to be deducted. By deducting Rs.12,000/- from Rs.22,666/-, finally income to be deducted would be Rs.10,700/-. Thus, the loss of income to be assessed with multiplier 5 and accordingly, multiplier 5 is applied i.e., Rs.10,700/- x 12 x 5 = Rs.6,42,000/-. The compensation granted in respect of other heads deserve no modification and the same are to be confirmed.

12. Accordingly, the quantum of compensation of Rs.21,00,000/- granted by the Tribunal is modified as detailed hereunder:

	Rs.
Loss of income (Rs.10,700/- x 12 x 5)	6,42,000/-
Loss of Love and Affection	80,000/-
Loss of Consortium	40,000/-
Transportation	20,000/-
Funeral Expenses	15,000/-
Medical Expenses	6,70,000/-
Attender Charges	25,000/-
Loss of Estate	15,000/-

	15,07,000/-
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Thus, the respondents/claimants are entitled to get the total compensation of Rs.15,07,000/- along with interest at the rate of 7.5% per annum.

13. The appellant-Insurance Company is directed to deposit the entire award amount along with accrued interest at the rate of 7.5% per annum, if not already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit being made, the respondents-claimants are permitted to withdraw the modified compensation of Rs.15,07,000/- along with interest at the rate of 7.5% per annum by filing appropriate applications before the Tribunal and the balance amount, if any, deposited shall be returned to the

appellant-Insurance Company. The respective parties are permitted to file appropriate applications before the Tribunal and payments are to be made through RTGS.

14. Accordingly, the judgment and decree dated 26.11.2018 passed in M.C.O.P. No.1146 of 2016 on the file of the learned II Additional District and Sessions Judge, II Additional District and Sessions Court-cum-Motor Accidents Claims Tribunal, Tiruppur stands modified to the above extent and consequently, the C.M.A.No.4345 of 2019 stands allowed in part. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
II Additional District and Sessions Judge,
Tiruppur.

+1 CC to Mr.N.Manokaran, Advocate sr 27455.

CMA No.4345 of 2019
And

C.M.P.No.24773 of 2019

MR (CO)
SP (02/02/2021)

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