IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.4736 of 2019
and
C.M.P.No.26987 of 2019
(heard through video-conferencing)

M/s.Cholamandalam MS General Insurance
Company Limited,
Represented by its Branch Manager,
Branch Office,
No.9, 1st Floor, Rajaji Road,
State Bank of Travancore Upstairs,
Peramanur,
Salem-636 007. .. Appellant/ 2nd Respondent

Vs.

1. Vanitha
2. Dinesh ..Respondent 1 & 2/ Petitioners
3. S.A.Stones,
No.249/3, Periyakumbanoor,
Kattuvalavu, Kongupatty Post,
Omalur Taluk, Salem-636 305. ..3rd Respondent/ I Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Award and decree dated 30.04.2019 made in M.C.O.P.No.118 of 2017 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For appellant : Mr.M.B.Raghavan
For respondents: Mr.Mukund R.Pandian for RR-1 and 2
No appearance for R-3

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 30.04.2019 in M.C.O.P.No.118 of

2017 on the file of the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri, the present appeal has been filed by the Insurance Company for reduction of the compensation amount.

2. The respondents 1 and 2 / claimants 1 and 2 are the wife and son of the deceased B.M.Jayaraman, who was an Advocate by profession. He was 50 years old at the time of accident according to claimants. He was practising as an Advocate in the District Court, Krishnagiri. On 24.09.2016, when the deceased was proceeding in a Hero Honda Speldour Motorcycle bearing Reg.No.TN-24-7627 from Bommasamudram Village to Karimangalam on Krishnagiri-Dharmapuri National Highways Road, a Mahindra Bolero Jeep bearing Reg.No.TN-30-BZ-3886 belonging to the third respondent herein and insured with the appellant/Insurance Company, came in a rash and negligent manner from behind and hit the two-wheeler in which the deceased was proceeding, as a result of which, the deceased lost his balance and fell down and sustained grievous injuries. Immediately, he was taken to Government Hospital, Karimangalam. Since his condition was very serious, he was referred to Government Medical College Hospital, Dharmapuri. Inspite of the treatment given to him, he died on the same day. Hence, the claimants have preferred the claim petition before the Tribunal claiming a sum of Rs.1 crore as compensation.

3. With regard to the quantum of compensation, it is the case of the respondents 1 and 2/claimants that the deceased was earning a sum of Rs.40,000/- p.m. from his practice as an Advocate.

4. In order to prove the claim, on the side of the claimants, the wife of the deceased, namely the first claimant, was examined as P.W.1, besides examining one Deivam as P.W.2 who was an eye-witness to the occurrence and Exs.P-1 to P-40 were marked. On the side of the Insurance Company, R.W.1 was examined and no document was marked.

5. Though the claimants have stated that the deceased was earning a sum of Rs.40,000/- p.m., the Tribunal, while calculating the loss of income, fixed only a sum of Rs.25,000/- as the monthly income of the deceased and thereafter, by fixing the age of the deceased as 50 years based on Ex.P-2 Post-mortem Certificate, the Tribunal applied the multiplier 13 and deducted 1/3 towards his personal expenses and added 25% towards his future prospects, and calculated the Loss of Income at Rs.32,49,948/-.

6. Now, it is the contention of the learned counsel for the appellant/Insurance Company that the claimants have not proved

the income earned by the deceased by marking any tangible evidence, except filing the Vakalats filed by the deceased in various cases dealt by him as an Advocate before the Courts at Krishnagiri. Hence, in the absence of any evidence, even a sum of Rs.25,000/- fixed by the Tribunal as the monthly income of the deceased, is on the higher side. Therefore, by fixing a sum of Rs.10,000/- as the monthly income of the deceased, the amount awarded by the Tribunal could be modified.

7. It is the further submission of the learned counsel for the appellant/Insurance Company that the Tribunal has fixed the age of the deceased as 50 years based on Ex.P-2 Post-mortem Certificate. But, on verification from the Bar Council of Tamil Nadu, it was found that the Date of Birth of the deceased was 25.09.1956. On the date of accident, the deceased has completed 50 years. Therefore, the multiplier 13 adopted by the Tribunal is wrong and the correct multiplier to be adopted in this case is 9. Thus, the learned counsel submitted that by fixing a sum of Rs.10,000/- as the monthly income of the deceased and applying multiplier 9, the amount of compensation awarded by the Tribunal has to be reduced.

8. While countering the above submissions, the learned counsel for the respondents 1 and 2/claimants admitted the age of the deceased as 50 years at the time of accident. However, he submitted that a sum of Rs.25,000/- fixed by the Tribunal as the monthly income of the deceased while calculating the Loss of Income, cannot be said to be on the higher side. He was a practising Advocate for more than 30 years and considering his vast experience in the legal field, the Tribunal ought to have fixed a sum of Rs.40,000/- as the monthly income of the deceased, even in the absence of documentary proof for the same. In the instant case, the Tribunal has fixed only Rs.25,000/- as the monthly income of the deceased, and therefore, there is no need for any interference in the above Award of the Tribunal.

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

10. We find as contended by the learned counsel for the appellant/Insurance Company that absolutely, no evidence is produced before this Court in respect of the income of the deceased. However, considering the long period of his practice as an Advocate, we are of the opinion that atleast a sum of Rs.30,000/- could be fixed as his monthly income of the deceased to arrive at appropriate compensation. Hence, instead of Rs.25,000/- fixed by the Tribunal, the income is hereby enhanced to Rs.30,000/- p.m. Since the deceased was aged about 50 years, the correct multiplier to be adopted in this case is 9.

Further, if 10% is added towards future prospects, the monthly income works out to Rs.33,000/-. If 1/3 is deducted towards personal expenses, the amount works out to Rs.22,000/-, which can be taken as the monthly loss of contribution to the family of the deceased. The annual loss of contribution works out to Rs.2,64,000/- (22,000 x 12). If multiplier 9 is applied, it works out to Rs.23,76,000/-, which sum could be awarded as just and fair compensation under the head "loss of income". Accordingly, the sum of Rs.32,49,948/- awarded by the Tribunal under the head "Loss of Income", is hereby reduced to Rs.23,76,000/-.

11. Further, we find that the Tribunal has not awarded any amount under the head Loss of Love and Affection, for which, Rs.50,000/- is hereby awarded to the second claimant/son of the deceased.

12. The amount of Rs.40,000/- awarded towards Loss of Consortium to the first claimant/wife of the deceased, is just and proper, and the same is hereby confirmed.

13. The amounts of Rs.15,000/- each awarded by the Tribunal towards Loss of Estate and funeral expenses, being just and fair, are hereby confirmed.

14. Thus, the total compensation is tabulated below:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Income/Dependency	32,49,948	23,76,000
2	Loss of Consortium	40,000	40,000
3	Loss of Estate	15,000	15,000
4	Funeral expenses	15,000	15,000
5	Loss of Love and Affection	50,000	50,000
	Total	33,19,948 33,20,000 (rounded off)	24,96,000 25,00,000 (rounded off)

15. Thus, the Award of the Tribunal is hereby reduced from Rs.33,20,000/- to Rs.25,00,000/- (Rupees twenty five lakhs only) which shall carry interest at 7.5% interest from the date of claim petition till the date of payment. The appellant/Insurance Company is directed to deposit the total compensation before the Tribunal, after adjusting the amount already deposited, within a

period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 and 2 (respondents 1 and 2 herein) are permitted to withdraw their respective share of compensation in accordance with law before the Tribunal, as apportioned by the Tribunal.

16. With the above observations and directions, the appeal is partly allowed. No costs. Consequently, C.M.P. is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

cs

To

Thew Motor Accidents Claims Tribunal,
Special District Court, Krishnagiri.

Copy to

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

C.M.A.No.4736 of 2019

MG (CO)
kk 30/12