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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.3457 of 2017

HDFC Ergo General Insurance Company Limited
Rep.by its Branch Manager,
New No.528, Old No.559,
No.177, 2nd floor, Anna Salai,
Teynampet, Opp.to the DMK Office,
Chennai 600 018.

... Appellant/R2

Vs.

1. Milan Rasiklal Parekh
2. Mona Milan Parekh
3. V.L.Venkata Subramaniam

... R1 & R2/Claimants
... 3rd Respondent/1st Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.08.2017 made in MCOP.No.1244 of 2012 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.G.Ashok Pathy
for M/s.Pass Associates for R1 & R2

J U D G M E N T

JUDGMENT OF THIS COURT WAS DELIVERED BY R.SUBBIAH.J

Aggrieved by the award passed by the Motor Accident Claims Tribunal /(II Court of Small Causes, Chennai), in MCOP.No.1244 of 2012 dated 02.08.2017, the Insurance Company/appellant herein, which is the second respondent in the above said MCOP, has filed this Appeal to set aside the same.



2. The respondents 1 & 2 herein have filed the claim petition under Section 173 of Motor Vehicles Act 1988, claiming compensation of Rs.76,00,000/-, which was restricted to Rs.25,55,000/- for the death of one Deepan M.Parekh, who is the son of the respondents 1 & 2 herein.

3. The case of the respondents 1 & 2 herein in the claim petition is that on 24.12.2011 at about 17:00 hrs, when the deceased Deepan M.Parekh was returning from Mahabalipuram to VGP golden Beach in a I-20 Hyundai Car bearing Registration No.TN 04-AJ-0505, which was driven by one Samrat Bhandari, in which he was sitting in the front seat, proceeding from South to North direction and carefully and slowly crossed the road East wards at Injambakkam VGP. At that time, a Volkswagen POLO car bearing Reg.No.TN 07 BK 0369 came in a rash and negligent manner speeding from North to South direction and dashed against the deceased car bearing Registration No.TN 04-AJ-0505. As a result, the deceased was grievously injured and he died on the spot.

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Car bearing Registration No.TN-07-BK-0369 belonging to the first respondent before the Tribunal and directed the second respondent therein/Insurance Company to pay a sum of Rs.25,55,000/- as compensation to the claimants.

5. The Claims Tribunal, after elaborate enquiry came to the conclusion that the alleged accident had happened only due to the rash and negligence act of the driver, who drove the car bearing registration No.TN-07-BK-0369. According to the submissions made by the learned counsel appearing for the appellant/Insurance Company, he did not dispute the findings of the Tribunal with regard to the negligence of the driver, who drove the offending vehicle, thereby, we also confirm the findings arrived by the Claims Tribunal.

6. As far as the quantum of compensation is concerned, the learned counsel for the appellant/Insurance Company submitted that the deceased was only a college student and non-earning member and the Tribunal wrongly fixed the notional monthly income at Rs.15,000/- p.m. The amounts granted by the Tribunal are excessive and hence the finding in this regard has to interfered with. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal has



erred in fixing the notional income of the deceased as Rs.15,000/- and adding future prospects.

7. Per contra, the learned counsel appearing for the respondents 1 & 2 claimants contended that the Tribunal had awarded a just compensation of Rs.25,55,000/-, taking into consideration various aspects and the same need not be disturbed at this juncture.

8. Heard the arguments advanced by Mr.N.Vijayaraghavan, learned counsel appearing for the appellant and Mr. G.Ashok Pathy for M/s.Pass Associates, learned counsel appearing for the respondents and perused the materials available on record.

9. The deceased, on the date of accident, was a student, studying in SRM University. The respondents 1 & 2 herein, viz., the mother and father of the deceased, have filed the claim petition claiming a sum of Rs.76,00,000/- as compensation. In support of the claim, the first claimant, viz., the father of the deceased was examined as P.W.1. One, eye witness Mr.Samrat Bhandari was examined as P.W.2 and Exs.P-1 to P-15 were marked, the details of which are as follows:-

Ex.P.1 Copy of FIR and Sketch

Ex.P.2 Post Mortem Certificate

Ex.P.3 Motor Vehicle Inspection report

Ex.P.4 Final report

Ex.P.5 Copy of registration certificate

Ex.P.6 Copy of Insurance

Ex.P.7 Copy of driving licence

Ex.P.8 Death Certificate

Ex.P.9 Conduct Certificate

Ex.P.10 Copy of mark sheet

Ex.p.11 Income Tax return

Ex.P.12 Copy of legal heir certificate

Ex.P.13 Copy of SBI Passbook

Ex.P.14 Copy of Bank of Baroda Passbook

Ex.P.15 Copy of 3 Passbook

10. On the side of the appellant/Insurance Company no witnesses was examined and no exhibit was marked before the Tribunal.



11. In all, the Tribunal awarded a compensation of Rs.25,55,000/- with interest at the rate of 9% from the date of claim petition till date of payment/deposit with further direction that each claimant was entitled to one half share of the compensation along with interest. Aggrieved by the said award, the insurer of the vehicle is before this Court by filing this appeal.

12. The only point raised by the learned counsel appearing for the appellant/Insurance Company is that the income of the deceased fixed is on the higher side, as admittedly, the deceased was studying engineering course and was not earning and, therefore, the notional income should have been fixed at Rs.13,000/- instead of Rs.15,000/- and adding future prospects as fixed by the Tribunal.

13. This Court has given its careful consideration to the above contentions advanced by either parties. From the award of the Tribunal, the notional monthly income of the deceased was fixed at Rs.15,000/-. Considering the age of the deceased and since the deceased is a bachelor, the Tribunal fixed notional income of the deceased at Rs.15,000/- per month and deducted 50% towards his personal expenses i.e. Rs.22,500 - Rs.11,250/- (Rs.7,500 X 50%) = Rs.11,250/-. The Tribunal has applied multiplier 18 and awarded a sum of Rs.24,30,000/- towards loss of income. The Tribunal in addition to that, granted a sum of Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. As per the judgment of the Hon'ble Apex Court reported in National Insurance Company v. Pranay Sethi reported in 2017(2)TNMAC 609 (SC), the claimants are entitled to 40% towards future prospects as the deceased was aged 19 years at the time of accident. The monthly income fixed by the Tribunal at Rs.15,000/- is on the higher side and hence, the same is reduced to Rs.13,000/-. In view of the same, the amount granted by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.13,000/-} + 5,200 \text{ (13,000 X 40\%)} \times 12 \times 18 \times 1/2 = \text{Rs.19,65,600/-}$$

Further, the amount awarded by the Tribunal towards loss of love and affection is hereby confirmed. The amounts granted by the Tribunal towards funeral expenses is reduced to Rs.15,000/- from Rs.25,000/- as per the judgment of the Hon'ble Apex Court reported in National Insurance Company v. Pranay Sethi reported in 2017(2)TNMAC 609 (SC). Since no amount has been awarded under the head "loss of estate" and "transportation", this Court is inclined to award Rs.15,000/- and Rs.10,000/- respectively for



the same. 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
1.	Loss of income	24,30,000/-	19,65,000/-	Reduced
2.	Loss of love and affection	1,00,000/-	1,00,000/-	Confirmed
3.	Transportation		10,000/-	Granted
4.	Funeral expenses	25,000/-	15,000/-	Reduced
5.	Loss of estate		15,000/-	Granted
	Total	25,55,000/-	21,05,000/-	Reduced by Rs.4,50,000/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.25,55,000/- is hereby reduced to Rs.21,05,000/- with interest at the rate of 9% per annum from the date of petition till the date of realisation. The claimants who are the parents of the deceased are entitled equal share of the award amount. The appellant/Insurance Company is directed to deposit the award amount with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The excess amount if any lying in deposit, shall be refunded to the appellant/Insurance Company. On such deposit, the claimants are permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dpq



To

1. The Presiding Officer,
The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

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Copy To

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

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.20769

+1cc to M/s.Pass Associates, Advocate, S.R.No.20043

C.M.A.No.3457 of 2017

VSNII(CO)
CS/28/07/2021