IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.06.2021

Coram:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.42 of 2021
and
C.M.P.No.340 of 2021

The Manager,
M/s.Reliance General Insurance Co. Ltd.,
Chennai. .. Appellant/ 2nd Respondent

Vs.

1. Bhavani, W/o Late Balamurali
2. Minor B.Saranya, D/o Late Balamurali
3. Minor B.Hariharan, S/o Late Balamurali
4. Yasotha, W/o Late Rangasamy ..Respondents 1 to 4/ Petitioners

5. B.Ellammal, W/o Babu .. 5th Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 24.06.2019 made in M.C.O.P.No.484 of 2012 on the file of the Motor Accidents Claims Tribunal, District Court-II, Kancheepuram.

For appellant : Mr.S.Arun Kumar

For respondents: Mr.M.Sivakumar for RR-1 to 4
R-5 set ex-parte before the Tribunal

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

This appeal had been filed by the Insurance Company as against the Award, dated 24.06.2019 passed in M.C.O.P.No.484 of 2012 on the file of the Motor Vehicle Accidents Claims Tribunal, (District Court-II), Kanchipuram.

2. The respondents 1 to 4 herein are the claimants before the Tribunal, who are the wife, minor children and the mother of the deceased Balamurali.

3. It is the case of the claimants before the Tribunal that, on 04.07.2012 at about 10 a.m., while the deceased was riding motor cycle bearing Registration No.TN-20-AB-2623, keeping on

the extreme left side of Tambaram-Walajabad Highways Road, a lorry bearing Registration No.TN-30-Z-4644, owned by the fifth respondent herein and insured with the appellant/Insurance Company, came in a rash and negligent manner from behind and hit the motor cycle, as a result of which, the deceased fell down and sustained injuries and died on the spot itself. Hence, the respondents 1 to 4 herein, as legal heirs, filed the claim petition as against the owner of the said lorry and insurer being the appellant herein, claiming a sum of Rs.1 Crore as compensation.

4. The appellant-Insurance Company filed counter statement before the Tribunal denying the averments made in the claim petition, more particularly, the manner in which the accident had occurred.

5. In order to prove the claim, on the side of the claimants, the wife of the deceased was examined as P.W.1, besides P.W.2 being the eye-witness to the accident and Exs.P-1 to P-21 were marked. On the side of the Insurance Company, one Ramasamy was examined as R.W.1. No documentary evidence was adduced on the side of the Insurance Company.

6. The Tribunal, on a consideration of the entire oral and documentary evidence, passed an Award for a sum of Rs.59,57,416/- with interest @ 7.5% per annum from the date of claim petition till the date of deposit. The break-up details of the amounts awarded by the Tribunal, are as follows:

Sl.No.	Head under which the Tribunal had awarded compensation	Amount (in Rs.)
1	Loss of earnings	58,27,416
2	Loss of Estate	15,000
3	Loss of consortium to spouse/children/parents	1,00,000
4	Funeral and Transport expenses	15,000
	Total	59,57,416

7. Now, the present appeal has been filed questioning only the quantum of compensation awarded by the Tribunal under the head "Loss of earnings".

8. The learned counsel appearing for the appellant/Insurance Company submitted that, it is the case of the claimants before the Tribunal that the deceased was a partner in a firm, namely Shamira Enterprises and drawing a sum of Rs.1 lakh as profit and also Rs.12,000/- as salary. In order to prove the same, on the

side of claimants, except the Bank Statements of the deceased and the partnership firm, as Exs.P-20 and 21, no other tangible evidence was produced. Only if it is established that after the demise of the deceased, the firm was closed and there is no income from the said firm, the question of fixing a sum of Rs.37,000/- as the monthly income of the deceased, as claimed by the claimants, would arise. But, in the instant case, absolutely, no such evidence is available. But the Tribunal, without considering all these aspects, has fixed a sum of Rs.37,000/- as the monthly income of the deceased and added 25% towards future prospects, thereby arrived at a sum of Rs.46,250/- and made calculation on that basis, which had resulted in awarding an exorbitant sum of Rs.58,27,416/- under the head "loss of earnings". In this regard, the learned counsel appearing for the appellant/Company submitted that in the absence of any concrete evidence to show that the income from the partnership firm was totally stopped, fixing a sum of Rs.37,000/- per month as the income of the deceased, appears to be on the higher side and hence, by fixing a notional sum of Rs.20,000/- as the monthly income of the deceased, the amount awarded by the Tribunal may be modified.

9. Per contra, the learned counsel appearing for the claimants made his submissions supporting the Award passed by the Tribunal.

10. Keeping the submissions made on either side, we have gone through the entire materials available on record.

11. As contended by the learned counsel appearing for the appellant/Insurance Company, except the Bank statement of the deceased, no other evidence such as Income Tax Returns, was produced before the Tribunal. In the absence of any crucial document, the sum of Rs.37,000/- fixed by the Tribunal, as the income of the deceased, appears to be on the higher side. Considering the facts, by fixing a sum of Rs.30,000/- as the monthly income of the deceased, the calculation could be made to arrive at a just and proper compensation. Accordingly, Rs.37,000/- fixed by the Tribunal is reduced to Rs.30,000/- as the monthly income of the deceased. Since the deceased was aged 41 years at the time of accident, 25% has to be added towards future prospects. Further, considering the number of claimants being four, 1/4 has to be deducted towards personal expenses. Hence, the total compensation under the head "loss of earnings" is worked out as follows:

Annual salary = 30,000 x 12 = 3,60,000
Future prospects = 3,60,000 + 25% of 3,60,000 = 4,50,000
Personal expenses = 4,50,000 - 1/4 of 4,50,000 = 3,37,500
multiplier = 14
3,37,500 x 14 = 47,25,000

Hence, the amount of Rs.58,27,416/- awarded by the Tribunal under the head "loss of earnings" is hereby reduced to Rs.47,25,000/-.

12. Further, we find that the Tribunal has awarded only a consolidated sum of Rs.1,00,000/- as "loss of consortium" to the spouse, children and parents of the deceased and the said sum of Rs.1,00,000/- appears to be on the lower side. Hence, as per the judgment of the Supreme Court reported in 2017 (16) SCC 680 (National Insurance Co. Ltd. Vs. Pranay Sethi), a sum of Rs.40,000/- is awarded as "loss of consortium" to the wife of the deceased and Rs.40,000/- each is awarded to the respondents 2 to 4 herein, i.e. Rs.1,20,000/- under the head "loss of love and affection".

13. The amounts awarded by the Tribunal under the other heads, being just and proper, are confirmed.

14. Accordingly, the amounts awarded by this Court in comparison with the amounts awarded by the Tribunal, are tabulated hereunder:

Sl. No.	Heads under which the amounts are awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Loss of earnings	58,27,416	47,25,000
2	Loss of Estate	15,000	15,000
3	Loss of consortium to spouse/children/parents	1,00,000	-
4	Loss of consortium to the first respondent	-	40,000
5	Loss of love and affection to the respondents 2 to 4	-	1,20,000
6	Funeral and Transport expenses	15,000	15,000
	Total	59,57,416	49,15,000

15. In the result, the appeal is partly allowed and the amount of compensation of Rs.59,57,416/- awarded by the Tribunal is reduced to Rs.49,15,000/- (Rupees forty nine lakhs fifteen thousand only), which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant/Insurance Company is directed to deposit the above said amount of Rs.49,15,000/- along with interest and costs (as awarded by the Tribunal) within a period of four weeks

from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw the said compensation, along with proportionate/accrued interest and costs (as awarded by the Tribunal), less the amount, if any already withdrawn. As far as the share of the minor claimants (respondents 2 and 3 herein) is concerned, the same shall be deposited in any one of the Nationalised Bank, in the interest bearing Fixed Deposit scheme, till the minor claimants attain majority and the natural guardian of the minors, being the first respondent herein, is permitted to withdraw the accrued interest thereon once in three months. The proportion of allocation of shares as adopted by the Tribunal, shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, C.M.P. is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   District Court-II, Kanchipuram.

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

+1CC to M/s.C.Prabakaran, Advocate, Sr.No.28050
+1CC to M/s.S.Arun Kumar, Advocate, Sr.No.28209

C.M.A.No.42 of 2021

RSI(CO)
SB(15/11/2021)