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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2021

CORAM:

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

C.M.A. NO.25 OF 2021
AND
C.M.P.NO.226 OF 2021

M/s.Reliance General Insurance Company Limited
6th Floor, Reliance House
No.6, Haddows Road
Nungambakkam
Chennai - 600 006

...Appellant / 2nd Respondent

Versus

1.Tmt.R.Sasikala Devi
2.J.Kanchana
3.Saran Raj
4.Monisha
5.B.Gandhi

...Respondents 1 to 4 / Petitioners
...5th Respondent / 1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree in M.C.O.P.No.4378 of 2016 dated 27.07.2020 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr. M.B. Raghavan

For Respondents 1 to 4 : Mr. C. Richard Suresh Kumar

Respondent - 5 : No Appearance

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed by the appellant / Insurance Company questioning the validity and/or correctness of the award passed by the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai in M.C.O.P. No. 4378 of 2016 dated 27.07.2020.



2. It is stated in the claim petition filed by the respondents 1 to 4 herein that on 16.04.2016, at about 9.00 a.m, while the first respondent's husband was riding his Scooty Pep bearing Registration No. TN 20 AD 5611 from Gummidipoondi to Elavur at Petthikuppam bridge, a Motorcycle bearing Registration No. TN 18 AZ 6584 owned by the fifth respondent and insured with the appellant/Insurance Company came from the opposite direction being driven by its rider in a very rash and negligent manner and hit against the scooty pep vehicle, which the husband of the first respondent was riding. As a result of which, the first respondent's husband sustained multiple injuries. Immediately he was taken to Government Hospital at Kottaikarai, from where he was referred to Rajiv Gandhi Government General Hospital, Chennai for further treatment. Due to the multiple injuries sustained by the first respondent's husband, he died on 25.04.2016, at Rajiv Gandhi Government General Hospital, Chennai. Hence, the respondents 1 to 4, who are the legal heirs of the deceased, had filed a Claim Petition in M.C.O.P.No.4378 of 2016 against the fifth respondent and the appellant/Insurance Company, claiming a sum of Rs.75,00,000/- as compensation for the death of first respondent's husband.

3. The fifth respondent and appellant Insurance Company have filed their respective counter statements before the Tribunal, wherein, they denied the averments made by the claimants/respondents 1 to 4 in the Claim Petition.

4. Before the Tribunal, in order to prove the averments made in the claim petition, 2 witnesses were examined viz., P.W.1 & P.W.2 and 7 documents were marked as exhibits viz., Ex.P1 to Ex.P7. On the side of the fifth respondent and appellant/Insurance Company, one witness was examined as R.W.1 and 4 documents were marked as exhibits viz., Ex.R1 to Ex.R4.

5. Based on the oral and documentary evidence produced, the Tribunal arrived at the finding that the accident had occurred due to the rash and negligent riding of the vehicle owned by the fifth respondent. Accordingly, the appellant/Insurance Company was held liable to indemnify the fifth respondent and to pay a sum of Rs.24,98,000/- (Rupees Twenty Four Ninety Eight Thousand) to the claimants/respondents 1 to 4. The break-up details of the compensation awarded by the Tribunal are as follows:

(i) Loss of Dependency	-	Rs.21,78,000/-
(ii) Loss of Consortium	-	Rs. 40,000/-
(iii) Parental Consortium	-	Rs. 2,00,000/-
(iv) Medical Expenses	-	Rs. 50,000/-
(v) Loss of Estate	-	Rs. 15,000/-
(vi) Funeral Expenses	-	Rs. 15,000/-

Total	-	Rs.24,98,000/-
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6. Aggrieved by the quantum of compensation awarded by the Tribunal, the appellant/Insurance Company has filed the present Appeal before this Court.

7. Mr. M.B. Raghavan, learned counsel for the appellant/Insurance Company would submit that as per the conditions of the Insurance Policy, the insured vehicle must be driven by a person with a valid driving license. In the present case, one A.Babu, who drove the fifth respondent's motorcycle did not possess a valid driving license at the time of accident. He would further submit that the accident had occurred only due to the negligence of the deceased first respondent's husband who failed to observe the on-coming vehicle. It is also to be noted that the deceased first respondent's husband was not wearing the helmet at the time of accident. Had he worn the helmet, he could have averted the accident and survived. In such circumstance, the Tribunal ought to have fixed contributory negligence on the part of the deceased as well.

8. The learned counsel would further contend that the claimants/ respondents 1 to 4 have not produced any documentary proof to substantiate the monthly income of the deceased. However, the Tribunal, by relying on the oral evidence of P.W.1 (wife of the deceased) to the effect that her husband was working as a Painting Contractor, fixed the monthly income of the deceased as Rs.20,000/-. Further, the Tribunal added 10% i.e., Rs.2,000/- to his monthly income towards future prospectus and thus arrived at a sum of Rs.22,000/- as the actual monthly loss of income and Rs.2,64,000/- (Rs.22,000 X 12) as annual loss of income. Thereafter, the Tribunal deducted 1/4th i.e., Rs.66,000/- from his Annual Income of Rs.2,64,000/-. Finally, it fixed the annual contribution of the deceased as Rs.1,98,000/-. Taking note of the age of the deceased, who was 52 years old at the time of accident, the Tribunal applied Multiplier 11 and awarded a sum of Rs.21,78,000/- towards Loss of Income. In the absence of any proof to show the income of the deceased, the Tribunal ought not to have awarded such a huge amount towards Loss of Income. Therefore, the amount awarded by the Tribunal towards Loss of Income has to be reduced by fixing the monthly income of the deceased as Rs.16,000/-. He would further contend that a sum of Rs.2,00,000/- awarded by the Tribunal towards Parental Consortium is on the higher side and the same also needs to be reduced. It is his contention that in a case of this nature where the deceased was admittedly taking treatment in a Government Hospital, there is absolutely no need to award any amount towards medical expenses. Even otherwise, the respondents 1 to 4/ claimants have not filed any documentary proof to show the extent of expenses incurred towards hospitalisation or purchase of medicine. In the absence of the above, the Tribunal is not justified in awarding Rs.50,000/- towards medical expenses. The learned counsel for the appellant



also filed a Calculation Memo before this Court and the same reads as follows:

Heads	Award of Tribunal	Suggested amount
Income Fixed	Rs.20,000/-	Rs.16,000/-
Future Prospects	Rs. 2,000/- (10%)	Rs. 1,600/- (10%)
Annum Income	Rs.20,000/- Rs.2,000/- x 12 Rs.2,64,000/-	Rs.16,000/- Rs.1,600/- x 12 Rs.2,11,200/-
Personal Deduction (1/4)	Rs.66,000/- Rs.1,98,000/-	Rs.52,800/- Rs.1,58,400/-
Loss of Dependency	Rs.1,98,000/- x 11 = Rs.21,78,000/-	Rs.1,58,400/- x 11 = Rs.17,42,400/-
Loss of Consortium	Rs.40,000/-	Rs.40,000/-
Love and Affection	Rs.2,00,000/-	Rs.1,20,000/-
Medical Expenses	Rs.50,000/-	Nil
Funeral & Transport	Rs.15,000/-	Rs.15,000/-
Loss of Estate	Rs.15,000/-	Rs.15,000/-
Total	Rs.24,98,000/-	Rs.19,32,400/-

9. Per contra, Mr. C. Richard Suresh Kumar, learned counsel appearing for the respondents 1 to 4 would submit that the accident occurred only due to the rash and negligent driving of the rider of motorcycle owned by the fifth respondent and therefore, the Tribunal is right in fixing the entire negligence on the respondents in the claim petition. He would also submit that the compensation awarded by the Tribunal for the death of the deceased is just and fair and the same needs no modification by this Court.

10. Heard the learned counsel on both sides and perused the materials available on record.

11. On a careful perusal of records, it is seen that the Tribunal is wholly justified in coming to the conclusion that the accident occurred only due to the rash and negligent driving of the two wheeler owned by the fifth respondent. We find no infirmity in such finding of the Tribunal and therefore, we concur with the same.

12. Considering the submissions made by the appellant's counsel, this Court is inclined to modify the quantum of compensation awarded by the Tribunal for the reasons given below.



(i) Loss of Income:

Though no income proof was produced by the claimants, considering the cost of living prevailed at the time of accident, the Tribunal fixed the monthly income of the deceased as Rs.20,000/-. At the same time, fixation of Rs.20,000/- in our opinion is on the higher side especially when there is no documentary proof filed by the claimants. Furthermore, the deceased was 46 years at the time of accident and therefore also, we fix the monthly income of the deceased as Rs.16,000/-. If 10% of the amount of Rs.16,000/- is added towards future prospects, the monthly income of the deceased could be Rs.17,600/- per month (Rs.16000 + Rs.1600). Thus, the annual income of the deceased could be (Rs.17600 X 12) Rs.2,11,200/-. The Tribunal has rightly given 1/4th deduction considering the number of dependents of the deceased. If such deduction is given, the yearly income of the deceased will be (Rs.2,11,200 - Rs.52,800) Rs.1,58,400/-. Since the deceased was 52 years at the time of accident, we apply Multiplier 11 and award a sum of Rs.17,42,400/- towards Loss of Income.

(ii) Loss of Consortium and Loss of Estate:

The Tribunal has rightly awarded a sum of Rs.40,000/- towards Loss of Consortium to the first claimant and a sum of Rs.15,000/- towards Loss of Estate. We find no reason to interfere with the award of the amount under these heads

(iii) Parental Consortium:

As rightly pointed out by the learned counsel for the appellant, a sum of Rs.2,00,000/- awarded by the Tribunal towards Parental Consortium is on the higher side and the said amount has to be re-determined. Following the principles laid down by the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & Ors. reported in 2017 (2) TNMAC 609 (SC), this Court awards a sum of Rs.1,20,000/- towards Parental Consortium i.e., Rs.40,000/- each to the respondents 2 to 4.

(iv) Medical Expenses:

Though no documentary proof was produced by the claimants for having incurred medical expenses for the treatment of the deceased from the date of accident till his death, the Tribunal awarded a sum of Rs.50,000/- towards Medical Expenses. In our considered opinion, the amount awarded by the Tribunal towards Medical Expenses is fallible. Hence, the sum of Rs.50,000/- awarded by the Tribunal under the head Medical expenses is hereby set aside.

(v) Funeral Expenses:

The Tribunal awarded a sum of Rs.15,000/- towards Funeral Expenses which is inadequate and insufficient. Hence, we enhance the Funeral Expenses from Rs.15,000/- to Rs.40,000/-.



13. Accordingly, a sum of Rs.24,98,000/- awarded by the Tribunal is re-determined as Rs.19,57,400/-. The break-up details of the re-determined amount of compensation awarded by this Court are as follows:

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(i) Loss of Dependency		
(Rs.16,000/- + Rs.1,600/- x 12 = Rs.2,11,200/-)		
(Rs.2,11,200 - Rs.52,800/- = Rs.1,58,400/-)		
(Rs.1,58,400/- x 11)	-	Rs.17,42,400/-
(ii) Loss of Consortium	-	Rs. 40,000/-
(iii) Parental Consortium	-	Rs. 1,20,000/-
(iv) Loss of Estate	-	Rs. 15,000/-
(vi) Funeral Expenses	-	Rs. 40,000/-
Total	-	Rs.19,57,400/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.24,98,000/- (Rupees Twenty Four Lakhs Ninety Eight Thousand) awarded by the Tribunal in M.C.O.P.No.4378 of 2016 is re-determined as Rs.19,57,400/- (Rupees Nineteen Lakhs Fifty Seven Thousand and Four Hundred) by this Court. The appellant/Insurance Company is directed to deposit the award amount re-determined by this Court, deduct the amount, if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit to the credit of M.C.O.P.No.4378 of 2016 within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants/respondents are permitted to withdraw the compensation amount re-determined by us in equal proportion. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

mrr/rsh

To

The Motor Accidents Claims Tribunal,
II Court of Small Causes,
Chennai.



Copy To

The Section Officer,
Vernacular Records Section
High Court, Madras

+1cc to M/s.C.Richard Suresh Kumar, Advocate SR.No.26558

CMA No.25 of 2021

VSN-II(CO)
RVM(28/09/2021)