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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1301 of 2015 and

M.P.No.1 of 2015

The National Insurance Company,
3rd Party Claims Office,
No.752, Mount Road,
Chennai - 2.

...Appellant/3rd Respondent

Vs.

1.Lalitha
2.Ulaganathan
3.Sai Jegadesan
4.Sri Vaisnavi Finance,
No.12/13, Kothandapani Street,
Mettupakkam, Chennai - 107.

... Respondents/Petitioners/
Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 18.09.2014, made in M.C.O.P.No.4448 of 2011, on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed by the United India Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 4448 of 2011, on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai. They have filed the M.C.O.P and the same is awarded. Challenging the award passed by the Motor Accidents Tribunal at the point of negligence of quantum.

2. The brief case of the first respondent/claimant is as follows:



(i) The first respondent/claimant was aged 24 years, on the date of the accident. She was working as Electrician and earning a sum of Rs.10,000/- per month.

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(ii) On 22.10.2009, at about 21.45 hours, while the deceased was riding his motor cycle bearing Regn.No.TN 22 AM 7484 from his job to his house, when he was nearing Kovilampakkam Main Road and Sathiya Nagar 1st street junction, the 1st respondent's driver, who drove the motor cycle bearing Regn.No.TN 22BF 5226 in a rash and negligent manner and dashed against the deceased motor cycle, so the deceased sustained head injuries and multiple injuries through out his body and died on 28.10.2009. The 1st respondent as the owner and the 2nd respondent is the financier of the vehicle and the 3rd respondent as the insurer of the vehicle, the accident occurred due to the negligence of 1st respondent's driver and hence all the respondents are severally and jointly liable to pay the compensation.

(iii) Immediately after the accident, the first respondent/ claimant was admitted as in-patient at Government General Hospital at Chennai for treatment.

3. Taking note of the fact that P.W.2 occurrence witness has spoken about the manner of the accident, the Tribunal has rightly come to the conclusion that the accident has taken place due to the negligence about the offending vehicle and hence the contention raised by the Insurance Company on the point of negligence stands negatived and finding rendered by the Tribunal is hereby confirmed.

4. On the point of quantum, it is seen that the deceased is bachelor aged about 23 years at the time of the accident. Before the Tribunal, the first respondent/claimant was herself examined as PW1 PW2 was examined and exhibits P1 to P8 were marked. On behalf of the Insurance Company, no oral or documentary evidence was marked. During the Trial, the Insurance Company has disputed the manner of the accident and they also disputed the age, avocation and alleged income of the first respondent/claimant. Based upon the oral evidence of PW1 coupled with FIR (Ex.P1), the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the motor cycle bearing



Registration No. TN 22 AM 7484., belonging to the second respondent herein and insured with the United India Insurance Company Limited. Aggrieved against the orders passed by the Tribunal, the National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard both sides.

6. On perusal of the orders passed by the Tribunal and the materials available on records, this Court finds that, the finding of the Tribunal that the accident has taken place due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 22 AM 7484 does not warrant any interference, at this appellate stage, and the same is hereby confirmed.

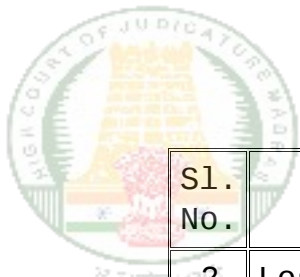
7. On the point of quantum, it is seen that the deceased is Bachelor aged about 25 years at the time of the accident fixing notional income at the rate of Rs.6500/-. At the time of the accident of the year 2009 the constitutional judgment is entitled for the 40% of the income of as in notional prospects income and multiplier is adopted and hence the compensation is re-fixed as under:-

(Rs.6500+40%*12*18/2=Rs.9,82,800/-)

8. Taking into consideration the age of the deceased as 25, the Tribunal adopted multiplier 18 and arrived at the compensation at Rs.9,82,800/- as loss of earning; for loss of estate, Rs.15,000/- is awarded; for loss of love and affection this Court is awarded Rs.40,000/- each and for loss of funeral expenses, this Court is awarded Rs.15,000/- and hence, the compensation is re-assessed at Rs.10,92,800/- . All the other heads awarded by the Tribunal are just and reasonable and the same are hereby confirmed.

9. Accordingly, the award of the Tribunal in M.C.O.P.No. 4448 of 2011 is modified as follows:-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of earning	Rs. 12,96,000/-	Rs. 9,82,800/-



Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
2.	Loss of Consortium	Rs. 50,000/-	---
3.	Funeral Expenses	Rs. 25,00,000/-	Rs. 15,000/-
4.	Loss of Estate	----	Rs. 15,000/-
5.	Loss of love and affection	----	Rs. 80,000/-
	Total	Rs.13,71,000/-	Rs.10,92,800/-

The compensation awarded by the Tribunal is reduced from Rs.13,71,000/- to Rs. 10,92,800/- which shall carry interest at the rate of 7.5% per annum.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.13,71,000/- to Rs. 10,92,800/-.

(iii) The appellant - Insurance Company is directed to deposit the compensation awarded by this court, i.e., Rs.10,92,800/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.No.4448 of 2011, dated 18.09.2014, on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the present appellant, the first and second respondents/claimants is permitted to withdraw the same, in the suitable manner known to law.

(v) The present appellant - Insurance Company is permitted to withdraw the amount, in excess of the award passed by this Court, if any, in the suitable manner known to law.

Sd/-

Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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To

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

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

+1CC to M/s.S.ArunKumar, Advocate, SR.No. 3362

C.M.A.No.1301 of 2015 and
M.P.No.1 of 2015

SSV(CO)
B.VC (14/09/2021)