IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.04.2021

CORAM

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

C.M.A. No.1859 of 2020
and
CMP. No. 13759 of 2020

HDFC ERGO General Insurance Co. Ltd.,
No.528/559, 2nd Floor, Anna Salai,
Teynampet, Chenai 600 018. ..Appellant/2nd Respondent

Versus

1. C.Viswanathan
2. V.Lakshmi ...1&2 Respondents/Petitioners
3. L.Priya ...3rd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 16.09.2019 made in MCOP.No.2355 of 2017 on the file of the Motor Accident Claims Tribunal / II Court of Small Causes, Chennai.

For appellant : Mr. S. Arunkumar

For respondents
for RR1 & 2 : M/s S.R. Suga
for R3 : No Appearance

J U D G M E N T
(The Judgment of the Court was delivered by R.Subbiah, J)

The appeal is heard through video conferencing.

2. Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal/II Court of Small Causes, Chennai in MCOP No.2355 of 2017, dated 16.09.2019, the present appeal has been filed by the Insurance Company.

3. The respondents 1 and 2 are the parents of the deceased Baskar. It is the case of the respondents 1 and 2/claimants before the Tribunal that on 08.01.2017 at about 19.30 hours, while the deceased was riding a CBZ Honda Motorcycle bearing Registration No.TN 19 F 0628 on Mambakkam-Medavakkam Road, near Ponmar Bus stop, a Toyota Corolla Altis Car bearing Registration No.TN 14 D 7979, belonging to the third respondent and insured with the appellant Insurance Company came in a rash and negligent manner being driven by its driver from the opposite direction and dashed against the vehicle driven by the deceased. Due to the impact, the deceased sustained fatal injuries and died on the spot.

4. It is the further case of the claimants/respondents 1 and 2 that at the time of accident, the deceased was employed as a Machine Technician and earning a sum of Rs.16,000/- per month. Due to the sudden demise of the deceased, the claimants are suffering for their livelihood. Hence, they made a claim for a sum of Rs.75,00,000/- as compensation for the death of the deceased.

5. The claim petition was resisted by the appellant/Insurance Company as well as the third respondent/owner of the vehicle by filing separate counter statements denying the manner of the accident as projected by the claimants in the claim petition. They also denied the avocation and income mentioned in the claim petition. Thus, they sought for dismissal of the claim petition.

6. In order to prove the averments in the claim petition, on the side of the claimants, the second claimant/mother of the deceased examined herself as PW1, besides examining PW2, the eyewitness to the accident and marked Exs.P1 to P15. On the side of the third respondent/Owner of the Car, the driver, who is the husband of the third respondent, examined himself as RW1 and Exs.R1 to R4 were marked through him.

7. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Car bearing Registration No.TN 14 D 7979. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.27,85,500/- and directed the appellant/Insurance Company to pay the above amount. The break-up details of the amount awarded by the Tribunal under various heads are as follows:

S. No.	Heads under which amounts are awarded	Amounts in Rs.
1.	Loss of Dependency	24,70,500
2.	Loss of Love and Affection	1,00,000
3.	Filial Consortium	2,00,000
4.	Funeral Expenses	15,000
	Total	27,85,500

8. Now, it is the submission of the learned counsel for the appellant/ Insurance Company that the Tribunal while awarding the compensation had taken a sum of Rs.15,250/- as monthly income of the deceased and added 50% of the same towards future prospects, which resulted in awarding an exorbitant sum of Rs.24,70,500/- under the head "Loss of Dependency". Hence, instead of adding 50% of the monthly income towards future prospects, 40% has to be added and the amount awarded under the head "Loss of Dependency" has to be reduced.

9. The learned counsel for the appellant/Insurance Company further submitted that, as per the recent judgment of the Supreme Court in National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680], a sum of Rs.40,000/- has to be awarded to each of the legal heirs of the deceased towards "Filial Consortium", whereas the Tribunal awarded a sum of Rs.1,00,000/- to each of the claimants. Therefore, the amount awarded under the head "Filial Consortium" has to be reduced by awarding a sum of Rs.40,000/- to each of the claimants.

10. The learned counsel for the appellant/Insurance Company also relied on the judgment of the Supreme Court in United India Insurance Company Ltd., vs. Satinder Kaur reported in 2020 ACJ 2131 and submitted that the Tribunal after awarding amount under the head "Filial Consortium", cannot separately award another sum of Rs.1,00,000/- towards "Loss of Love and Affection". Hence, the amount awarded under the head "Loss of Love and Affection" has to be set aside.

11. The learned counsel appearing for the respondents 1 and 2/claimants made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

12. This Court heard the submissions made on either side and perused the materials available on record.

13. As rightly contended by the learned counsel for the appellant/Insurance Company, since the deceased was working in a Private Company, 50% of the monthly income cannot be added

towards future prospects. Hence, by adding 40% of the monthly income towards future prospects, the amount under the head "Loss of Dependency" is re-calculated as follows:

Monthly income	:	Rs. 15,250/-
Add: Future prospects 40% of Rs.15,250/-	:	Rs. 6,100/-
		Rs. 21,350/-
Less: Personal expenses 50% of Rs.21,350/-	:	Rs. 10,675/-
		Rs. 10,675/-
Annual income (10,675*12)	:	Rs. 1,28,100/-
Multiplier	:	18
Loss of dependency (1,28,100 * 18)	:	Rs.23,05,800/-

14. Thus, the sum of Rs.24,70,500/- awarded by the Tribunal under the head "Loss of Dependency" is hereby reduced to Rs.23,05,800/-

15. As per the oft-quoted decision of the Honourable Supreme Court in Pranay Sethi Case (referred supra), the sum of Rs.2,00,000/- awarded by the Tribunal under the head "Filial Consortium" cannot be sustained. The parents of the claimants are only entitled for a sum of Rs.40,000/- each under this head. Therefore, the amount of Rs.2,00,000/- awarded by the Tribunal towards Filial consortium is set aside, instead a sum of Rs.80,000/- is awarded to the claimants by awarding each of the claimant a sum of Rs.40,000/-

16. As rightly pointed out by the learned counsel for the appellant- Insurance Company, when Rs.80,000/- is awarded to the claimants towards "Filial Consortium" the compensation awarded by the Tribunal towards loss of love and affection cannot be sustained. Therefore, the sum of Rs.1,00,000/- awarded by the Tribunal cannot be sustained and it is liable to be set aside.

17. At the same time, we find that the Tribunal has not awarded any amount under the head "Transportation Expenses", therefore, a sum of Rs.15,000/- is hereby awarded towards transportation expenses. Similarly, another sum of Rs.15,000/- is awarded under the head "Loss of Estate", which the Tribunal failed to award.

18. The sum of Rs.15,000/- awarded by the Tribunal towards "Funeral Expenses" is just and fair and hence, the same is hereby confirmed.

19. Accordingly, the modified compensation payable is as follows:

Sl. No.	Compensation awarded under the head	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Loss of Dependency	24,70,500	23,05,800
2.	Loss of Love and Affection	1,00,000	-
3.	Filial Consortium	2,00,000	80,000
4.	Funeral Expenses	15,000	15,000
5.	Transportation Expenses	-	15,000
6.	Loss of Estate	-	15,000
7.	Total	27,85,500	24,30,800

20. Accordingly, the sum of Rs.27,85,500/- awarded by the Tribunal towards compensation is hereby reduced to Rs.24,30,800/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The appellant/Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. In case, the Appellant-Insurance Company had deposited excess amount than the amount determined in this appeal, they are at liberty to withdraw the same. On such deposit, the claimants are permitted to withdraw the entire amount as has been apportioned by the Tribunal in equal proportion.

21. With the above observations and directions, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs/rsh

To

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

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

+1cc to Mr.S.Arunkumar, Advocate Sr No.25085
+1cc to M/s.S.R.Suga, Advocate Sr No.24888

CMA No.1859 of 2020
and
CMP. No. 13759 of 2020

SSD (CO)
PR (18/11/2021)