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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 18.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.1500 of 2013 and
M.P.No.1 of 2013

The New India Assurance Co. Ltd.,
Post Box No.43, N.S.Towers,
Near Stadium Bus Stand,
Palakkad-13, Kerala State. ... Appellant/3rd respondent

Vs.

1. Subramaniam
2. Geetha
3. Minor Vengatachalam ..Respondents 1 to 3/ Claimants
(Minor Rep.by Lrs Next friend
Guardian cum Mother Geetha)
4. Raghu ...IV respondent/I respondent
5. Krishnakutty ...V respondent/II Respondent
(RR 4,5 set Exparte in the Lower Court)

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 29.02.2012 passed in MCOP No.85 of 2010 by the Subordinate Judge, Motor Accident Claims Tribunal, Perundurai.

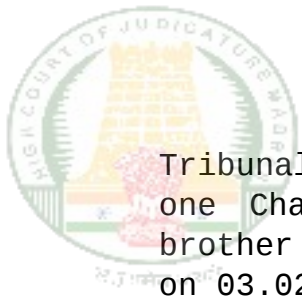
For Appellant : Mr.R.Sivakumar

For respondents: None appeared for R1 to R3

J U D G M E N T

Aggrieved over the award passed by the Tribunal, the insurance company has filed the present appeal challenging the quantum of compensation.

2. The claimants have filed a claim petition before the



Tribunal seeking compensation of Rs.20,00,000/- for the death of one Chandrasekar, son of the first and second claimants and brother of the third claimant, in a road accident that took place on 03.02.2010.

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3. The brief case of the claimants is as follows: On 03.02.2010, the deceased Chandrasekar was travelling as a pillion rider in a motorcycle bearing registration No. TN-41-R-7043 riding by one Paramasivam and while they nearing Srinagar Gopalapuram at Moongilmedai, a speedy bus bearing registration No.KL-09-U-59 came from opposite side dashed against the motorcycle, thereby, the deceased thrown away from the motorcycle and sustained grievous injuries all over his body and died on the spot. According to the claimants, the rash and negligent driving of the driver(first respondent) of the bus was the cause of accident and since the second respondent/ owner of the vehicle insured his bus with the third respondent/ insurance company, all of them are liable to pay compensation.

4. The claim petition was resisted by the Insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimants, three witnesses were examined as PW1 to PW3 and Ex.P1 to Ex.P10 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.6,44,999.40/- as compensation to the claimants under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of earning	5,99,999.40
2	Transportation charges	5,000
/3	Damages to cloths and articles	5,000
4	Funeral expenses	10,000
5	Loss of love and affection	25,000
6	Total	6,44,999.40



Challenging the quantum of compensation awarded by the Tribunal, the insurance company has filed the present appeal to scale down the compensation.

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7. Heard the learned counsel for the appellant and I have perused the materials on record.

8. The learned counsel appearing for the appellant/ insurance company submitted that the deceased was a non earning member, however, without any basis the Tribunal has fixed the monthly income of the deceased as Rs.5000/- per month. He further submitted that at the time of accident, the deceased was a bachelor and hence, 50% of the income should be deducted towards personal expenses of the deceased, but the Tribunal has erred in deducting 1/3 amount of the income towards personal expenses. He also submitted that the compensation awarded under the other heads are also on the higher side and hence, he seeks to set aside the same.

9. Now the point for consideration is whether the compensation awarded by the Tribunal has to be scaled down.

10. Point

A perusal of the award shows that after considering the evidence of the PW3 and the documents on record, the Tribunal has fixed the notional income of the deceased at Rs.5000/-. The accident was occurred on 03.02.2010. Even as per the amended Minimum Wages Act, monthly income of a person should be fixed at Rs.9,000/-. However, the Tribunal has fixed only a sum of Rs.5,000/- p.m. as income of the deceased and hence, this court do not find fault on the above said findings. The contention of the appellant is that instead of deducting 50% towards personal expenses, the Tribunal has deducted 1/3 amount of the income, which is wrong. But, the Tribunal while deducting 1/3 amount towards personal expenses has given reason by following the decision of the Honourable Supreme Court and hence, this court do not find any error on the above findings. The compensation awarded under the other heads also just and reasonable and the Tribunal has given cogent reasons for awarding the same. Hence, the Award passed by the Tribunal does not warrant any interference by this court. Accordingly, the point is answered and the appeal fails.



11. In the result,

(i) The Civil Miscellaneous Appeal is dismissed, No costs. Consequently, connected miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the entire compensation as awarded by the Tribunal along with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimants are entitled to withdraw the same, as per the apportionment made by the Tribunal, after following due process of law.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

mst

To

The Motor accident Claims Tribunal,
The Subordinate Judge,
Perundurai.

Copy To:

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

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.17672

CMA. No.1500 of 2013 and
M.P.No.1 of 2013

AJB(CO)
SB(28/09/2021)