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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

CMA.NO.1659 OF 2015
AND
MP.NO.1 OF 2015
AND
CMP.NO.15057 OF 2017

The Branch Manager,
United India Insurance Co. Ltd.,
52, Katcheri Road,
AKT Complex,
Kallakurichi,
Villupuram District. ... Appellant/2nd Respondent

Versus

1. Parvathi
2. Dhanapothi
3. Ganesh Koodailingam
4. Gomathiyammal ... Respondents 1 to 4/Petitioners
5. Anandhanayagi ... 5th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 12.08.2014 made in MCOP No.224 of 2012 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.A.A.Venkatesan for R1 to R4
R5 - Served - No appearance

JUDGMENT
(Heard Video Conference)

This appeal has been filed by the appellant/Insurance Company challenging the award dated 12.08.2014 passed by the Motor Accidents Claims Tribunal, Principal District and Sessions Judge, Perambalur, in MCOP No.224 of 2012.

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2. The appellant/Insurance Company has challenged the award primarily questioning the quantum of compensation awarded by the Tribunal.

3. The Tribunal under the impugned award directed the appellant/Insurance Company to pay the respondents/claimants a compensation of Rs.14,52,000/-together with interests and costs as detailed hereunder :-

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency	12,32,010/-
Loss of consortium	1,00,000/-
Filal consortium (Rs.20,000/- x 4)	80,000/-
Loss of estate	10,000/-
Transport charges	5,000/-
Funeral expenses	25,000/-
Total	14,52,010/-
R/off	14,52,000/-

4. Heard Mr.S. Arunkumar, learned counsel for the appellant /Insurance Company and Mr.A.A.Venkatesan, learned counsel for the respondents 1 to 4. Despite service of notice on the 5th respondent, there is no representation on her side.

5. This Court has perused the materials and evidence available on record before the Tribunal.

6. Selladurai died on 11.03.2012 as a result of an accident caused by a vehicle owned by the 5th respondent and insured with the appellant/Insurance Company. Selladurai was a Manager in a private rice mill and in the claim petition filed by the respondents/claimants, they have pleaded that he was earning Rs.15,000/-p.m., at the time of the accident. The deceased was aged 48 years at the time of the accident, which has not been disputed by the appellant/Insurance Company before this Court. The Tribunal has fixed the notional monthly income of the deceased at Rs.9,000/-. This Court after perusing and examining the evidence available on record is of the considered view that the said assessment is a correct assessment. However, the Tribunal has erroneously awarded 30% to the respondents/ claimants towards loss of future prospects. The deceased was working in a private concern and was aged 48 years at the time of the accident and therefore, the Tribunal ought to have

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awarded only 25% towards loss of future prospects and not 30%. Accordingly, this Court modifies the same to 25% instead of 30%. The respondents/claimants are the wife, two children and the mother of the deceased. The second respondent was already a Major, aged 21 years at the time of the accident. No evidence was also produced by the respondents/claimants to prove that the second respondent was a dependant of the deceased. However, the Tribunal without any evidence on record has deducted 1/4th towards personal expenses of the deceased since there were four claimants. The correct deduction is 1/3rd since there were only three dependants for the deceased viz., his wife, his son aged 17 years at the time of the accident and his mother aged 65 years at the time of the accident. Therefore, this Court modifies the deduction to 1/3rd instead of 1/4th fixed by the Tribunal. The Tribunal has adopted the correct multiplier of 13 for the purpose of assessing the loss of dependency and the same is confirmed by this Court. For the foregoing reasons, the loss of dependency is now assessed by this Court at Rs.11,70,000/- instead of 12,32,000/- fixed by the Tribunal under the impugned award, which is as follows :

Rs.9,000/- + 25% x 1/3rd x 12 x 13 = Rs.11,70,000/-

7. With regard to loss of consortium awarded at Rs.1,00,000/- is concerned, the same is also excessive and not in accordance with the setlted law. In accordance with the decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 16 SCC 680, the first respondent/claimant, who is the wife of the deceased is entitled only to a sum of Rs.40,000/- and not Rs.1,00,000/- as erroneously fixed by the Tribunal. Accordingly, the loss of consortium is reduced to Rs.40,000/- by this Court instead of Rs.1,00,000/- fixed by the Tribunal.

8. Filal consortium fixed by the Tribunal at Rs.80,000/- is confirmed by this Court since the dependants are only the mother and the son.

9. With regard to the funeral expenses fixed by the Tribunal at Rs.25,000/-, it is an erroneous assessment as the maximum amount that can be paid towards funeral expenses as per Pranay sethi's judgment referred to supra is Rs.15,000/-. Accordingly, the funeral expenses fixed by the Tribunal at Rs.25,000/- is reduced to Rs.15,000/- by this Court.

10. The Tribunal has awarded a compensation of Rs.10,000/- towards loss of estate, which is low and it has to be enhanced in accordance with the Pranay Sethi's to Rs.15,000/-. Accordingly, the loss of estate is enhanced to Rs.15,000/- instead of Rs.10,000/- fixed by the Tribunal.

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11. Since it is a fatal accident claim, the respondents / claimants are not entitled to transport costs, but however, the Tribunal has erroneously granted a sum of Rs.5,000/- towards transportation, which has to be set aside by this Court. Accordingly, this Court sets aside the same.

12. Accordingly, the total compensation awarded by the Tribunal has to be reduced.

13. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount reduced by this Court (Rs.)
Loss of dependency	12,32,010/-	11,70,000/-
Loss of consortium	1,00,000/-	40,000/-
Filal consortium (Rs.20,000/- x 4)	80,000/-	80,000/-
Loss of estate	10,000/-	15,000/-
Transport charges	5,000/-	-
Funeral expenses	25,000/-	15,000/-
Total	14,52,010/-	13,20,000/-

14. In the result, the appeal filed by the appellant/ Insurance Company, stands partly allowed by reducing the compensation from Rs.14,52,010/- to Rs.13,20,000/- as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

15a. The appellant/Insurance Company is directed to deposit the modified award amount (Rs.13,20,000/-), as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.224 of 2012 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur, within a period of four weeks from the date of receipt of a copy of this Judgment. It is made clear that the appellant/Insurance Company is permitted to withdraw excess amount, if any paid by them.

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15b.On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents/claimants, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter.

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Sd/-
Assistant Registrar(I)

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Sub Assistant Registrar

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To

1. The Principal District Judge,
   Motor Accident Claims Tribunal,
   Perambalur.

2. The Section Officer,
   V.R.Section
   High Court of Madras,
   Chennai - 104.

+1cc to Mr.A.A.Venkatesan, Advocate, S.R.No.34828

CMA.No.1659 of 2015

AK-II(CO)
CS/16/09/2021

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