



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.118 of 2016

&

CMP.No.1086 of 2016

United India Insurance Co. Ltd,
Office at No.235, Gandhi Market Road,
Arni Town, Tiruvannamalai District.

... Appellant/2nd Respondent

..Vs..

1.Andal
2.Valli
3.Sugandaradevi
4.Palani
5.Kumaravel
6.N.Appasamy
(R6-Set Exparte before the Tribunal)

... Respondents/Petitioners 1 to 5 & 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 12.06.2015 made in MCOP.No.177 of 2010 on the file of the MACT at Arni.

For Appellant : Mrs.I.Malar

For Respondents 1 to 4 : No appearance

R5 : Deceased

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the Award dated 12.06.2015 passed by the Motor Accident Claims Tribunal, Arni in MCOP.No.177 of 2010.



2. Heard Mrs.I.Malar, learned counsel for the Appellant/Insurance Company. Despite service of notice and their names having been printed in the cause list today, there is no representation on the side of the respondents 1 to 4. As seen from the proof of service filed by the Appellant, the fifth respondent is dead. Since the fifth respondent is the son of the first respondent and the second to fourth respondent are his siblings, the respondents 1 to 4 are brought on record as legal representatives of the deceased fifth respondent. The sixth respondent has remained exparte both before the Tribunal as well as this Court.

3. The Appellant/Insurance Company has challenged the impugned award as according to them, the quantum of compensation awarded by the Tribunal is excessive and not in accordance with law. The details of the impugned Award are as follows:

Heads	Award Amount (Rs.)
Loss of Income	4,15,896/-
Loss of consortium	25,000/-
Funeral expenses	10,000/-
Transportation	2000/-
Loss of amenities	1,000/-
Total	4,53,896/-

4. Learned counsel for the Appellant/Insurance company drew the attention of this Court to the claim petition filed by the respondents 1 to 5/ claimants and would submit that since the claim was filed under section 163A of the Motor Vehicles Act, the Tribunal ought to have granted compensation only in accordance with Second Schedule of the said Act. However, according to her, arbitrarily, the Tribunal has granted a huge compensation of Rs.4,53,896/- to the respondents 1 to 5/claimants.

5. Admittedly, the claim petition has been filed by the respondents 1 to 5 / claimants only under section 163A of the Motor Vehicles Act where the claimants need not prove any negligence. Section 163A being a social security provision, providing for a distinct scheme, where under only those whose annual income is upto Rs.40,000/- per annum can take the benefit thereof. The compensation is paid under section 163A of the Act on Structured formula basis provided under the Motor Vehicles Act. The annual income should not exceed Rs.40,000/-



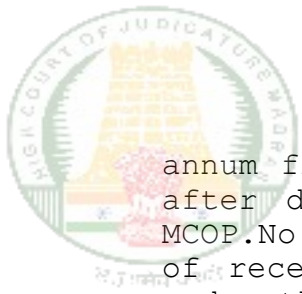
under section 163A of the Act.

6. In the case on hand, the deceased was aged 70 years at the time of the accident, as per the postmortem certificate which was marked as exhibit, before the Tribunal. Therefore, the correct multiplier applicable is 5 whereas the Tribunal has erroneously fixed the multiplier as 13. The respondents 1 to 5/claimants are the wife and children of the deceased and since they are five in number, as per the second schedule, $1/3^{\text{rd}}$ will have to be deducted towards personal expenses of the deceased. As seen from the impugned award, the Tribunal has not assessed the compensation as per second schedule of the Act but has assessed the compensation as if it was a claim made under section 166 of the Motor Vehicles Act. If the Tribunal had rightly adopted the multiplier of 5 and the annual income was taken as Rs.40,000/- and deducted $1/3^{\text{rd}}$ towards personal expenses of the deceased, the loss of dependency payable to the respondents 1 to 5/claimants will be only Rs.1,33,333/- calculated as $40,000 \times 5 - 1/3$.

7. The Tribunal has not awarded the compensation towards loss of estate, funeral expenses and loss of consortium as per Schedule-II of the Act. Since the claim has been made only under Section 163A of the Motor Vehicles Act, the Tribunal ought to have assessed the compensation towards loss of estate, funeral expenses and loss of consortium only as per Schedule-II of the Motor Vehicles Act but instead has assessed the compensation as if it was a claim under Section 166 of the Motor Vehicles Act. Hence, the assessment made by the Tribunal under various other heads has to be set aside and instead the respondents 1 to 5/claimants are entitled to only Rs.1,42,833/- instead of Rs.4,53,896/- fixed by the Tribunal as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of dependency	1,33,333/- (40000 x 5 -1/3)
Loss of Estate	2,500/-
Funeral Expenses	2,000/-
Loss of consortium	5,000/-
Total	1,42,833/-

8. For the foregoing reasons, the impugned Award dated 12.06.2015 is hereby set aside and the Appeal is allowed by directing the Appellant Insurance Company to deposit Rs.1,42,833/- together with interest at the rate of 7.5% per



annum from the date of claim till the date of deposit and costs after deducting the amount already deposited to the credit of MCOP.No.177 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount together with accrued interest to the bank account of the respondents 1 to 4 as per the ratio apportioned by the Tribunal through RTGS within a period of one week thereafter. Since the fifth respondent is dead during the pendency of this Appeal, his share of award amount shall be transferred to the bank account of the respondents 1 to 4 in equal ratio. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nl

To

1. The Motor Accident Claims Tribunal,
Arni.
2. The Section Officer
V.R.Section, High Court of Madras.

C.M.A.No.118 of 2016

CP(CO)
SU(25/10/2021)