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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.670 of 2019
and
C.M.P.Nos.2038 & 7863 of 2019

United India Insurance Company Limited,
Motor Third Party Claims Cell,
No.134, Greams Road, 5th Floor,
Chennai - 600 006.

.. Appellant/2nd Respondent

Vs.

1.N.S.Indrica
2.C.Kinsajenibar
3.Vijayakumar
4.M.Christ Doss .. Respondents/Petitioners/Respondents 1 & 3
(4th respondent impleaded-amendment carried
out as per order dated 21.06.2017 made in
M.P.No.1062 of 2016)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.09.2018 made in M.C.O.P.No.4105 of 2014 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.D.Bhaskaran

For RR 1 & 2 : Mr.U.Chithambaram
for Mr.K.Varadha Kamaraj

For R3 : No appearance

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 12.09.2018 made in M.C.O.P.No.4105 of 2014 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.



3.The appellant is the 2nd respondent in M.C.O.P.No.4105 of 2014 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one C.Victor, who died in the accident that took place on 23.04.2014. The 4th respondent was impleaded in the claim petition and amendment was carried out as per the order dated 21.06.2017 made in M.P.No.1062 of 2016.

4.According to respondents 1 and 2, on 23.04.2014 at about 20.45 hours, while the deceased C.Victor was travelling as a pillion rider in a motorcycle bearing Registration No.TN 18 D 6255 from North to South direction on M.R.H.Road opposite to Adeshwar Metal Godown, the driver of the lorry bearing Registration No.TN 02 J 9909 belonging to 3rd respondent drove the same in a rash and negligent manner without observing the Traffic Rules and without minding the vehicles in the same direction, tried to overtake the motorcycle in which the deceased was travelling as a pillion rider, dashed on the backside of the motorcycle and caused the accident. Due to the said impact, the said C.Victor fell down from the motorcycle on the road and the right wheel of the lorry ran over his head. Due to the same, the said C.Victor, sustained fatal injuries on his head and died on the spot. Therefore, the respondents 1 and 2 filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation against the 3rd respondent and appellant-Insurance Company, being the owner and insurer of the Lorry respectively.

5.The 3rd respondent-owner of the Lorry remained exparte before the Tribunal.

6.The appellant-Insurance Company, being the insurer of the Lorry filed counter statement and denied all the averments made by the respondents 1 and 2. According to the appellant, the driver of the lorry has to be impleaded as necessary party in the claim petition. The respondents 1 and 2 have to prove that the said C.Victor died in the accident involving the lorry bearing Registration No.TN 02 J 9909 belonging to 3rd respondent. The appellant denied the place, date and time of accident and also the fact that the 3rd respondent's lorry was insured with them at the time of accident. The respondents 1 and 2 have to prove that the driver of the lorry belonging to 3rd respondent was possessing valid driving license at the time of accident. The appellant denied the relationship of the deceased with the respondents 1 and 2 and also the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 and 2 is highly excessive and prayed for dismissal of the claim petition.



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7. Before the Tribunal, the 1st respondent examined herself as P.W.1, one Selvakumar, eyewitness to the accident was examined as P.W.2 and one Mathiyas, employer of the deceased was examined as P.W.3 and 18 documents were marked as Exs.P1 to P18. The appellant-Insurance Company did not let in any oral and documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the Lorry belonging to 3rd respondent and directed the appellant to pay a sum of Rs.32,04,000/- as compensation to the respondents 1, 2 and 4.

9. Questioning the quantum of compensation awarded by the Tribunal in the award dated 12.09.2018 made in M.C.O.P.No.4105 of 2014, the appellant has come out with the present appeal.

10. The learned counsel appearing for the appellant contended that the Tribunal failed to note that mere production of Ex.P14 to P18, cannot be presumed that the deceased was employed under P.W.3 and was getting salary. There is no material to show that the deceased was a skilled person and the Tribunal ought to have considered that deceased was only unskilled person. The Tribunal in the absence of materials, erred in fixing a sum of Rs.15,000/- per month as notional income of the deceased for a 19 years old boy. The deceased was a bachelor at the time of accident and the Tribunal ought to have deducted 50% towards personal expenses of the deceased instead of deducting 1/3rd. The sum of Rs.1,50,000/- awarded by the Tribunal for loss of love and affection is excessive and contrary to the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others] and prayed for setting aside the award of the Tribunal.

11. Per contra, the learned counsel appearing for the respondents 1 and 2 contended that at the time of accident, the deceased was aged 19 years, was a Worker in M.L.Industries, Korattur, Chennai - 600 020 and was earning a sum of Rs.20,000/- per month. The respondents 1 and 2 examined one Mathiyas, employer of the deceased as P.W.3 and marked Ex.P6/salary certificate to show that deceased was earning a sum of Rs.20,000/- per month. The Tribunal erroneously did not accept the salary certificate and fixed only a sum of Rs.15,000/- as monthly income of the deceased on the ground that salary was paid by cash and no Bank Statement was produced. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

12. Though notice has been served on the 3rd respondent and

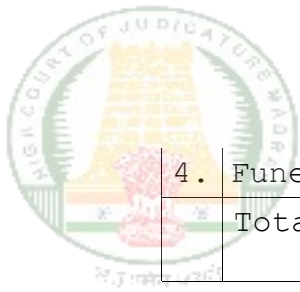


his name is printed in the cause list, there is no representation for him, either in person or through counsel.

13. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 and 2 and perused the entire materials on record.

14. It is the case of the respondents 1 and 2 that at the time of accident, the deceased was aged 19 years, was a Worker in M.L. Industries, Korattur, Chennai - 600 020 belonging to P.W.3. According to respondents 1 and 2, the deceased was earning a sum of Rs.20,000/- per month. In support of their case, the respondents 1 and 2 examined the employer of the deceased as P.W.3 and marked documents Exs.P14 to P18 to show that existence of industries belonging to P.W.3. The respondents 1 and 2 filed Ex.P6/salary certificate of the deceased. Apart from the salary certificate, P.W.3 has not produced the Attendance Register, Salary Register and Payment Voucher. In the absence of these documents, the Tribunal did not accept Ex.P6/salary certificate and fixed a sum of Rs.15,000/- per month as notional income of the deceased. A sum of Rs.15,000/- per month fixed by the Tribunal as notional income of the deceased after not accepting the salary certificate is excessive and the same is reduced to Rs.13,000/- per month. The deceased was a bachelor at the time of accident. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], the Tribunal ought to have deducted 50% towards personal expenses of the deceased instead of deducting $1/3^{rd}$. In view of the above, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.19,65,600/- {Rs.18,200/- [Rs.13,000/- + Rs.5,200/- (40% of Rs.13,000/-)] X 12 X 18 X $\frac{1}{2}$ }. The Tribunal has awarded a sum of Rs.1,50,000/- towards loss of love and affection, which is excessive and the same is reduced to Rs.80,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	30,24,000/-	19,65,600/-	Reduced
2.	Loss of love and affection	1,50,000/-	80,000/-	Reduced
3.	Loss of estate	15,000/-	15,000/-	Confirmed



4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.32,04,000/-	Rs.20,75,600/-	Reduced by - Rs.11,28,400/-

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15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.32,04,000/- is hereby reduced to Rs.20,75,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.4105 of 2014 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the respondents 1, 2 and 4 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.4105 of 2014, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

krk

To

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.6326

C.M.A.No.670 of 2019

AK(CO)
CB(13/09/2021)