IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.NO.3883 OF 2011

United India Insurance Co.Ltd.,
Chennai -13 .. Appellant/3rd Respondent

..Vs..

1. K.K.Varghese

2. Sophyamma

3. Sibu Varghese

4. V.Lakshmanan

5. M/s.Western Agencies (Madras) P.Ltd.,
   No.109/7, Angappa Naicker Street,
   Chennai – 600001.

.. Respondents/Petitioners/
Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.08.2010, made in M.C.O.P. No.66 of 2008, on the file of the Chief Judicial Magistrate Court, The Motor Accidents Claims Tribunal, Coimbatore.

For Appellant : Mr.S.Arunkumar
For Respondents: Mr.A.Muthukumar – R1 & R3

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 03.08.2010, made in M.C.O.P. No.66 of 2008, on the file of the Chief Judicial Magistrate Court, The Motor Accidents Claims Tribunal, Coimbatore.

2.The appellant is the 3rd respondent in M.C.O.P. No.66 of 2008, on the file of the Chief Judicial Magistrate Court, The Motor Accidents Claims Tribunal, Coimbatore. The respondents 1 to 3/claimants who are the parents and brother filed the said claim petition, claiming a sum of Rs.45,00,000/- as compensation for the death Sonu Varghese him in the accident that took place on 12.08.2007.

3. Brief facts of the case is that at the time of the accident, the deceased was walking inside the port and going towards the ship belonged to the Indian Navy namely INS BARATANG after lunch. At that time, the driver of the Ashok Leyland Tipper Lorry bearing registration number TN04 9434 drove the same in a rash and negligent mannter andhit the deceased and ran over him. The deceased was walking on the extreme end of the road. Only because of the rash and negligent driving of driver of the Tipper Lorry/4th respondent herein, the accident was taken place. Immediately the colleagues of the deceased brought him to The Port Trust Hospital, Chennai, where he declared died. Hence the parents and the unmarried brother have filed a claim petition before the tribunal, claiming a sum of Rs.45,00,000/- as compensation. The tribunal after considering the oral and documentary evidence, has fixed the liability on the driver of the Tipper Lorry and directed to pay compensation to by the driver of the lorry and Insurance company jointly. Aggreived by the said award passed by the tribunal, the Insurance Company has preferred the present appeal.

4.The learned counsel appearing for the appellant-Insurance Company submitted that at the time of the accident the deceased Sonu Varghese, without minding the flow of traffic in the road, suddenly tried to cross the road and as he failed in that attempt, he hit against the lorry , hence the accident had taken place. Without considering the same, the tribunal has fixed the liablity on the insurance company. Further the learned counsel raised a ground that the mulitiper adopted by the tribunal is not correct and has not deducted the income tax payable to the deceased as per the settled principles of law laid down by the Hon'ble Supreme Court in Sarlavarma's case. Therefore the compensation awarded by the tribunal needs interference by this Court. The learned counsel for the appellant further submitted the parents alone can be considered as Dependants to the deceased, therefore the compensation awarded by the tribunal to the brother of the deceased/3rd respondent is liable to be set aside.

5. The learned counsel appearing for the claimants/ respondents 1 to 3 herein submitted that the deceased was working as Mechanical Engineer in Indian Navy, therefore, the

tribunal by considering all the documents marked by the claimants in exhibits A1 to A17 and the evidence adduced by the them, has awarded a compensation of sum of Rs. 19,30,000/-. The leanred counsel appearing for the respondents 1 to 3/claimants accepted the deduction of income tax from the actual salary determined by the tribunal and further submitted that the tribunal has not considered the future prospects while calculating the loss of income to the deceased, therefore same may be added.

6.Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1& 3/claimants and perused the materials available on record.

7.Before the Tribunal, the 1st respondent/1st claimants examined himself as P.W.1, and examined other witnesses as PW2 & PW3 and marked 17 documents as Exs.A1 to A17. No witnesses and documents were marked on the appellant side.

8.From the materials available on record, it is seen that the claimants have marked the documents Ex.P13 to P17 inrespect of salary of the deceased. The tribunal by consideringthe Ex.P16 /Sixth Pay Commission Report, has fixedthe monthly income fo the deceased at Rs.11,650/- and deducted 1/4th towards personal expenses of the deceased and arrived the monthly income at Rs.8570/-. The Insurance company had not produced any contra evidence to disprove the said claim of the claimants. Therefore, this Court confirms the monthly income determined by the tribunal. As per Ex.P4/Postmorterm Report, the age of the deceased at the time of the accident was 29 years, the tribunal has also fixed the same age, but had wrongly taken the multiplier 18. The correct multiplier to be adopted as per the Saralaverma's Case for the age group of 29 years is 17.

9. Regarding deduction of income tax, as per the principles laid down by the Hon''ble Supreme Court in Saralavarma's Case, the actual income of the deceased less income tax should be the starting point for calculating the compensation. As calculated above, the actual annual income of the deceased is Rs.2,09,700/- and by deducting a sum of Rs.16,940/- towards income tax and deducting 50% towards personal and living expenses and adopting muliplier, the loss of income is modified by this Court at Rs.16,38,460/- (2,09,700-16,940 – x1/2 x 17)

10. Further, considering the claimants who lost their child and brother, this Court is inclined to enhance the compensation awarded by the tribunal under the head 'Loss of Love and Affection' from Rs.30000/- to Rs.1,20,000/- (Rs.40,000/- x 3) and Funeral expenses from Rs.5,000/- to Rs.15,000/-. Further, it is seen that the tribunal has not awarded any amount under

the head 'Loss of Estate', hence a sum of Rs.15,000/- is granted under the said head. The sum awarded at Rs.5000/- towards 'Transport Expenses' is confirmed. Thus the compensation awarded by the tribunal is modified by this Court as follows;

Heads	Compensation awarded by the Tribunal Rs.	Compensation modifiedby this Court Rs.
Loss of Income	18,90,000/-	16,38,460/-
Loss of Love and Affection	30,000/-	1,20,000/- (40,000x 3)
Loss of Estate	...	15,000/-
Funeral Expenses	5,000/-	15,000/-
Transportation	5,000	5,000
Total	19,30,000/-	17,93,460/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.19,30,000/- awarded by the tribunal is reduced to Rs.17,93,460/-together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. From the modified amount, the 3rd respondent is entitled only a sum of Rs.40,000/- along with interest. Insofar as compensation to the claimants/respondents 1 & 2, the apportionment shall be as fixed by the tribunal.

12. It is represented by the learned counsel appearing for the appellant/Insurance Company that already 50% of the award amount has been deposited before the tribunal. In view of the same, the appellant/insurance company is directed to deposit the remaining compensation amount modified by this Court along with interest, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw the compensation as modified by this Court along interest and costs, as stated above, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate Court,
   (Motor Accidents Claims Tribunal),
   Coimbatore

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.4803
+1cc to Mr.A.Muthukumar, Advocate, S.R.No.4474

C.M.A.No.3883 of 2011

AK-I(CO)
CS/26/10/2021