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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1.3.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.2810 of 2013
and M.P.No.1 of 2013

United India Insurance Co. Ltd.,
Naduvila Village, Vaikom,
Kottayam, Kerala ...3rd Respondent/Appellant

..Vs..

1. M.Dhandapani
2. D.Palaniammal ...Claimants/Respondents 1 & 2
3. K.K.Rajan
4. Sujatha Rajan ...Respondents 1&2/Respondents 3&4

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 9.11.2012 made in M.C.O.P.No.48 of 2011 on the file of Subordinate Court (Motor Accidents Claims Tribunal), Udumalpet.

For Appellant : Mr.S.Arun Kumar

For Respondents : No appearance

JUDGMENT

Brief facts of the claimant's case is as follows:

It is the case of the claimant that on 23.9.2010 at about 12.20 p.m. the deceased Prakash was walking with his friends in the extremely left side of Udumalpet to Pollachi road, when they reached near Primier Mill gate, third respondent herein drove the Cruiser jeep bearing registration No.KL 05 V 8505 in a rash and negligent manner with high speed, without following the traffic rules and hit the deceased Prakash, thereby caused accident, resulting in the deceased Prakash sustained fatal injuries all over the body. The deceased Prakash was taken to Government hospital, Udumalpet, but the injured Prakash died on the way to hospital. The Udumalpet police registered a case in Cr.No.4974 of 2010 under Section 279, 304(A) of I.P.C. The parents of the deceased have filed a claim petition before the Tribunal, claiming Rs.10,00,000/- as compensation from the appellant and the respondents 3 & 4.



2. The third respondent herein remained exparte before the tribunal. To prove the case of the claimants, P.W.1 and 2 were examined and Ex.P1 to P8 were marked. On the side of the appellant, Rough sketch was marked as Ex.R1. No witness was examined on the side of the appellant.

3 The Tribunal, based on the oral and documentary evidence adduced by both sides, came to a conclusion that due to rash and negligent driving of the insured vehicle by the third respondent herein the accident occurred and held that the appellant/Insurance Company is liable to pay Rs.5,20,000/- as total compensation along with interest at the rate of 7.5% p.a from the date of petition till realization to the claimants. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Amount in Rs.
Loss of income to the family 4000 x 2/3 x 12 x 15	4,80,000/-
Love and affection	30,000/-
Funeral expenses	10,000/-
Total :	5,20,000/-

4. Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

5. The learned counsel appearing for the appellant/Insurance Company submitted that the deceased was minor at the time of accident, the tribunal has erroneously fixed Rs.4000/- as monthly income of the deceased which is excessive and the multiplier adopted by the tribunal is also unsustainable in law. Further, the award passed under other heads also improper and the same is required to be modified.

6 In the light of the decision of the Hon'ble Supreme Court in the case of Rajkumar Vs. Ajay Kumar & another [2011 (1) SCC 343] the deceased was a minor, school going student at the time of accident and considering the age of the parents, this Court is of the view that the respondents/claimants are entitled Rs.30,000/- p.a. as notional income of the minor child. Considering the age of the deceased, Multiplier adopted by the tribunal is also perfectly correct. Tribunal has not awarded any amount towards loss of estate. Therefore, this Court is of the view that the award passed by the tribunal is required to be modified as follows:



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Heads	Compensation Awarded by the tribunal Rs.	Compensation modified by this Court Rs.
Loss of income to the family Rs.30,000/- x 15	4,80,000/-	4,50,000/-
Love and affection	30,000/-	30,000/-
Loss of consortium Rs.10,000/- each	--	20,000/-
Funeral expenses	10,000/-	10,000/-
Loss of estate	--	10,000/-
Total :	5,20,000/-	5,20,000/-

The compensation awarded by the tribunal is modified to the aforesaid extent. Except the above modification, the award passed by the tribunal is confirmed.

7. The appellant/Insurance Company already deposited entire award amount with interest before the tribunal and the 50% of the award amount with accrued interest has already been withdrawn by the respondents/claimants. Therefore, the respondents/claimants are permitted to withdraw remaining 50% of the award amount with accrued interest by filing appropriate application.

8. In fine, the Civil Miscellaneous Appeal is dismissed with the above modification. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (Accounts)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Court,
(Motor Accidents Claims Tribunal),
Udumalpet.



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

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Civil Miscellaneous Appeal
No.2810 of 2013

GP (CO)
PR (20/10/2021)