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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2070 of 2016

and

C.M.P.No.15127 of 2016

The Divisonal Manager,
The New India Assurance Co.Ltd.
Bharathi Road,
Cuddalore - 1.

...Appellant/2nd Respondent

Vs

1. Mohaned Sabeer
2. Sajira Begam
3. Minor. Shameerabanu
4. Minor. Mohamed Shameer

(Minor 3 & 4 represented by their guardian/Mother Shajira Begum)

...Respondents 1 to 4/Petitioners

5. D.T. Kaliyaperumal Naidu5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, 1988, against the Judgement and Decree passed in M.C.O.P.No.11 of 2014 on 30.09.2015 on the file of the learned Motor Accident Claims Tribunal (II, Additional District Judge) of Chidambaram, at Cuddalore District.

ForAppellant : Mr.J.Chandran

For Respondents : No appearance.

JUDGEMENT

Though the names of the respondents have been printed, when the matter is called today, none appeared.

2. Insurance Company is the appellant herein. They are challenging the quantum of compensation. The M.C.O.P. was filed by the parents of the deceased Bachelor boy viz., Shajahan aged about 17 at the time of the accident. As per Ex.P1 & Ex.P2, the factum of accident is not disputed. However, the two wheeler was driven by the deceased while he was major and he is not having



any driving licence to drive the two wheeler. The Tribunal appears to have lost the sight of this fact.

3. As contended by Mr.Chandran, learned counsel for the appellant Company negligent at the rate of 20% is to be fixed on the part of the deceased by orders of this Court in C.M.A.Nos.624 & 2413 of 2016, dated 13.04.2018, passed by Justice Mr.N.KIRUBAKARAN and Justice Mr.R.PONGIAPPAN. Accordingly, on the point of negligence, 80% has been fixed on the part of the appellant / Insurance Company and 20% has been fixed on the part of the deceased.

4. On the point of quantum of compensation, the trial Court has rightly fixed Rs.4,000/- as a Notional Income. However wrongly granted 50% for future expenses and hence it is modified as 40 % for Future Expenses. Accordingly, the Notional Income of the deceased is fixed at Rs.5,600/-. The deceased is a Bachelor and hence, deduction of 50% has been adopted. Accordingly, the loss of income is Rs.2800/- $(Rs.5,660/- \times 1/2) \times 12 \times 16 = Rs.5,37,600/-$ The love and affection is refixed at Rs.40,000/- for the individual and the same is reduced to Rs.80,000/-. Dispute does not arise in respect of the amount awarded under loss of fees paid in the School and hence the compensation awarded under the said item is hereby confirmed. The amount awarded towards Funeral Expenses is reduced to Rs.15,000/- and an amount of Rs.15,000/- is awarded towards Loss of Estate and amount towards Ambulance is hereby confirmed. Since the negligent is fixed at 80 : 20, the award passed by the Tribunal stands modified to that extent. Hence, the modified amount is as follows:

S.No.	Description	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of Dependency	Rs.5,76,000/-	Rs.5,37,600/-
2	Love and Affection	Rs.1,00,000/-	Rs.80,000/-
3	Loss of fees paid in the school	Rs.1,05,000/-	Rs.1,05,000/-
4	Ambulance	Rs.5,000/-	Rs.5,000/-
5	Funeral Expenses	Rs.25,000/-	Rs.15,000/-
7	Loss of Estate	---	Rs.15,000/-
	Total	Rs.8,11,000/-	Rs.7,57,600/- with 7.5% interest



5. In the result:-

(i) This Appeal is partly allowed. Consequently, connected Miscellaneous Petition is closed.

(ii) The appellant-New India Assurance Company is directed to deposit the entire compensation, including interest at 7.5 % from the date of claim petition till the date of payment, and costs, as awarded by the Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgement, after deducting the amount, if any already deposited.

(iii) On such deposit, the claimant is permitted to withdraw the compensation amount in accordance with law. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Kmm

To

The II Additional District Judge,
The Motor Accident Claims Tribunal,
Chidambaram, at Cuddalore District.

+1cc to Mr.J.Chandran, Advocate Sr.875

C.M.A.No.2070 of 2016

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srg 30/09/2021