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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. NO.2088 OF 2016

AND

CMP NO.15213 OF 2016

The Branch Manager,
United India Insurance Co. Ltd.,
Varanasi Towers,
Mission Street,
Bunder,
Mangalore.

....Appellant/2nd Respondent

versus

1. Aswathammal
2. Minor Chennakesavan
3. Minor Anjana Devi @ Anji
(Minors RR2 and 3 are rep. by their
Next Friend & Grand Mother Aswathammal)
4. Venkatesan
5. A. Govardhan Reddy

...Respondents/

Petitioners 1 to 4 and 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 23.12.2014 made in MCOP No.902 of 2013 on the file of the MACT (Special District Judge) at Krishnagiri.

For Appellant : Mrs.I.Malar for
Mr.T.Ravichandran

For Respondents : Mr.M.Sivakumar for R1 to R4
R5 - Refused



JUDGMENT

This appeal has been filed by the appellant / Insurance Company challenging the award dated 23.12.2014 passed by the Motor Accident Claims Tribunal (Special District Court), Krishnagiri in MCOP No.902 of 2013.

2. Heard Mr.T. Ravichandran, learned counsel for the appellant and Mr.M.Sivakumar, learned counsel for the respondents 1 to 4. The 5th respondent remained ex-parte both before the Tribunal and before this Court.

3. This Court has perused and examined the impugned award.

4. The appellant / Insurance Company has challenged the impugned award primarily on the ground that the rider of the two wheeler is responsible for the cause of the accident and hence, the appellant / Insurance Company is not liable to compensate the claim of the respondents / claimants. They have also challenged the quantum of compensation awarded by the Tribunal under the impugned award.

5. The learned counsel for the appellant / Insurance Company on instructions would submit that the Legal Representatives and dependants of the rider of the two wheeler (one of the deceased due to the same accident) had also preferred a separate claim viz., MCOP No.234 of 2014, seeking compensation before the very same Tribunal and an award was passed in their favour directing the appellant / Insurance Company to pay the compensation and in that award, no contributory negligence was fixed on the part of the rider of the two wheeler, who was also one of the deceased.

6. On instructions, she fairly submits that no appeal has been filed by the Insurance Company, as against the findings of the Tribunal on the award (corresponds to MCOP No.234 of 2014) for the death of the rider of the two wheeler (involved in the same accident) holding the appellant / Insurance Company liable to pay the entire compensation to the claimants without fixing any contributory negligence on the part of the rider of the two wheeler.



7. Since, the finding of the Tribunal as regards the contributory negligence of the rider of the two wheeler has not been challenged by the appellant / Insurance Company, the pillion rider who also died in the very same accident for which the respondents / claimants have made a claim in MCOP No.902 of 2013 cannot also be responsible for any contributory negligence. Therefore, the first contention raised by the appellant seeking for a direction to fix contributory negligence on the part of the deceased travelling as a pillion rider is also rejected by this Court.

8. With regard to the second contention raised by the appellant questioning the quantum of compensation, the Tribunal has awarded a compensation of Rs.16,71,500/- to the respondents / claimants under the impugned award as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Future Loss of income	13,77,000/-
Loss of love and affection to the petitioners 1 and 4 (Rs.25000 x 2)	50,000/-
Loss of love and affection for the petitioners 2 and 3 who had lost their father at the age of 4 years and 2 years (1,00,000 x 2)	2,00,000/-
Medical bills Ex.P7 (rounded off Rs.12,500/-)	12,500/-
Transport to Hospital	7,000/-
Funeral expenses	25,000/-
Total	16,71,500/-

9. The accident happened in the year 2012. The deceased was aged 28 years at the time of accident and was a Priest in a Temple. In the claim petition, the respondents / claimants have pleaded that the deceased was earning Rs.12,000/- p.m. at the time of the accident. However, the Tribunal has fixed the same



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at Rs.9,000/- which in the considered view of this Court cannot be considered to be excessive. The Tribunal has also correctly applied the right multiplier of 17 as the deceased was aged 28 years at the time of the accident.

10. The compensation awarded by the Tribunal under the head loss of love and affection at Rs.50,000/- to the respondents 1 and 4, who are the parents of the deceased and Rs.2,00,000/- to the respondents 2 and 3, who are the minor children (aged 4 and 2 years respectively at the time of accident) of the deceased respectively cannot be considered to be excessive.

11. Similarly, the compensation awarded by the Tribunal under the heads transportation at Rs.7,000/- and funeral expenses at Rs.25,000/- cannot also be considered to be excessive.

12. The Tribunal has also awarded a compensation of Rs.12,500/- towards medical expenses, which is supported by medical bills, which were filed as Ex.P7 series, before the Tribunal and the same is confirmed. Therefore, there is no scope for interference with regard to the compensation awarded towards medical expenses also.

13. Thus, the overall compensation is a just compensation and does not call for any interference. Accordingly, the second contention raised by the appellant / Insurance Company questioning the quantum of compensation is also rejected by this Court.

14. For the foregoing reasons, this Court does not find any merit in this appeal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15. The Appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.902 of 2013 on the file of the Motor Accident Claims Tribunal (Special District Court), Krishnagiri, within a period of four weeks from the date of

