IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2021

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2509 of 2016
and
C.M.P.No.17782 of 2016

United India Insurance Co Ltd.,
Moor TP Hub, 4th Floor,
Sillingi buildings, 134, Greams Road,
Thousand Lights, Chennai-6. ...Appellant/2nd Respondent

Vs.

1.V.Lakshmi
2.V.Lovaraju
3.D.Nagamani
4.S.Manga ..Respondents 1 to 4/Petitioners
5.D.Rajendran ...5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the Decree and Judgement dated 14th March, 2016 passed in M.C.O.P.No.4822 of 2013, Motor Accidents Claims Tribunal/Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mr.G.Udayasankar
For R1 to R4 : Mr.R.Kalai Arasan
For R5 : Exparte

O R D E R

This appeal has been filed by the Insurance Company challenging the award dated 14.03.2016 passed by the Motor Accidents Claims Tribunal/Chief Judge, Court of Small Causes, Chennai, in M.C.O.P.No.4822 of 2013.

2. The Appellant / Insurance Company has challenged the award only on the ground that the quantum of compensation awarded by the Tribunal to the claimants/respondents 1 to 4 is excessive. The Tribunal under the impugned award directed the appellant / Insurance Company to pay the claimants / respondents 1 to 4 a sum of Rs.8,75,200/- together with interest and cost as detailed hereunder;

1	For Loss of dependency: (9200 x 3/4 x 12 x 9)	Rs.7,45,200/-
2	For Loss of Consortium	Rs. 50,000/-
3	For Loss of Love and Affection	Rs. 50,000/-
4	Funeral Expenses	Rs. 25,000/-
5	Transport Expenses	Rs. 5,000/-
	Total Amount	Rs.8,75,200/-

3. The deceased L.Veeraraju was an ironing man aged 49 years at the time of accident which happened on 28.06.2013. In the claim petition, the claimants/respondents 1 to 4 who are the wife and three children of the deceased have pleaded that the deceased was earning Rs.600/- per day. However, the Tribunal has fixed the notional monthly income of the deceased at Rs.8,000/-.

4. Before the Tribunal, the claimants/respondents 1 to 4 have filed 5 documents which were marked as Exs.P1 to P5 and two witnesses were examined on their side namely Lakshmi, the wife of the deceased as PW.1 and an eyewitness to the accident as PW.2. On the side of the Appellant/Insurance Company, neither any document was filed nor any witness examined before the Tribunal.

5. Eventhough the Appellant/Insurance Company had contended that the fixation of notional monthly income of the deceased at Rs.8,000/- is excessive, before the Tribunal the appellant/Insurance Company had not produced any contra evidence before the Tribunal with regard to their contention.

6. The accident happened in the year 2013. The deceased was aged 49 years at the time of accident and the claimants have pleaded that the deceased was an Ironing man. After giving due consideration to the year of accident, this Court is of the considered view that the fixation of the notional monthly income of the deceased by the Tribunal at Rs.8,000/-, cannot be considered to be excessive as alleged by the Appellant/Insurance Company. Hence, the same is confirmed.

7. The learned counsel for the Appellant/Insurance Company would contend that the daughter D.Nagamani is married and the son V.Lovaraju is aged 28 years and he is an adult and he is not a dependent of the deceased and hence, the Tribunal has erroneously deducted 1/4th towards personal expenses of the deceased. According to him, the correct calculation in accordance with settled law is 1/3rd. Eventhough, the learned

Counsel for the Appellant / Insurance Company contends the same, as seen from the materials and evidence available, there is no evidence placed on record by the Appellant / Insurance Company before the Tribunal to prove that V.Lovaraju and D.Nagamani, the son and daughter of the deceased respectively are not the dependants of the deceased.

8. A consistent stand has been taken by the claimants/respondents 1 to 4 before the Tribunal that they are the dependants of the deceased and even in the cross examination of the claimants' witnesses, there is no admission on their part that they were not the dependants of the deceased. While that be so, the contention of the learned counsel for the Appellant/Insurance Company that the Tribunal has erroneously deducted $1/4^{th}$ towards personal expenses of the deceased instead of $1/3^{rd}$ cannot be accepted by this Court. Therefore, the finding of the Tribunal with regard to deduction towards personal expenses of the deceased is also confirmed by this Court.

9. The Tribunal has awarded a total compensation of Rs.8,75,200/- as detailed supra which in the considered view of this Court cannot be held to be excessive. Hence, there is no merit in this appeal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. The Appellant Insurance company is directed to deposit the entire award amount as awarded by the Tribunal after deducting the amount already deposited if any together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit to the credit of MCOP.No.4822 of 2013 within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the Tribunal shall transfer the respective share of award amount lying to the credit of MCOP.No.4822 of 2013 to the bank account of the claimants/respondents 1 to 4 as per the ratio apportioned by the Tribunal through RTGS within a period of one week thereafter. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal/Chief Judge,
Court of Small Causes, Chennai.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.N.M. Muthurajan, Advocate sr 30951.
+1 CC to Mr.G.Udayasankar, Advocate sr 30979.

AKII(CO)
SP(13/09/2021)