IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.2679 of 2016
and
CMP No.19160 of 2016

United India Insurance Co. Ltd.,
No.73, Chittoor road,
1st Floor,
Tiruthani - 631 209. ...Appellant/2nd Respondent

versus

1. N.Rajeswari
2. M.C.Gomathi
3. C. Yeswini (minor)
rep. by her mother and next friend
N.Rajeswari 1st respondent herein
4. M.Sundarammal
5. P.Ganesan
6. T.R.Subramani ...Respondents/Petitioner 1 to 4, Respondents 1 to 3

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 18.04.2016 made in MCOP No.8069 of 2013 on the file of the Motor Accidents Claims Tribunal, (II Court of Small Causes), Chennai.

For Appellant : Mr.D. Bhaskaran
For Respondents : Mr.K.Suryanarayan
Minor rep. by R2

JUDGMENT

This appeal has been filed by the Insurance Company challenging the award dated 18.04.2016 passed by the Motor Accident Claims Tribunal, (II Court of Small Causes), Chennai in MCOP No. 8069 of 2013.

2. The appellant / Insurance Company has challenged the impugned award on the following grounds :

a) The Tribunal has erred in taking Income Tax returns which was filed after the death.

b) the claimants have not examined a Chartered Accountant and have also not marked Profit and Loss Account, Balance Sheet and account books

c) The Tribunal has erred in taking 30% future prospects.

d) The Tribunal failed to consider the fact that the 2nd respondent / 2nd claimant is a married daughter and therefore ought to have deducted 1/3rd towards personal expenses of the deceased but has erroneously deducted 1/4th.

e) the award of Rs.5,75,000/- granted by the Tribunal towards conventional damages is also highly excessive.

3. The Tribunal under the impugned award directed the appellant / Insurance Company to the respondents / claimants a compensation of Rs.42,32,000/- for the death of M.Chiranjeevulu caused by a vehicle insured with the appellant on 14.07.2013.

4. The details of the compensation awarded by the Tribunal are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of Pecuniary Benefits	36,57,000/-
Loss of Love and affection	4,00,000/-
Loss of Consortium	1,00,000/-
Loss of Estate	50,000/-
Funeral expenses	25,000/-
Total compensation	42,32,000/-

5. The deceased Mr. M.Chiranjeevulu was aged 47 years at the time of the accident, which happened on 14.07.2013, which is not disputed by the appellant. He was a Plumbing and Borewell Contractor. The respondents / Claimants have filed the Income Tax returns for the assessment years from 2010-11 to 2013-14, which has been marked as Ex.P7 before the Tribunal.

6. As seen from the Income Tax returns of the deceased filed by the respondents / claimants for the assessment year 2013-14, the gross income of the deceased was Rs.3,24,732/- and the Tribunal has accepted the same and has fixed the gross income at Rs.3,24,732/-. The Tribunal has deducted 10% towards Income tax

and fixed the net income of the deceased at Rs.2,92,259/- rounded off to Rs.2,92,300/-. Only based on the Income Tax Returns, the Tribunal has rightly assessed the gross income of the deceased at Rs.3,24,732/-. No contra evidence has been produced by the appellant / Insurance Company before the Tribunal to disprove the claim of the respondents / claimants that the deceased was earning gross income of Rs.3,24,732/- during the assessment year 2013-2014. The Tribunal has rightly accepted the gross income of the deceased at Rs.3,24,732/- and therefore, there is no scope for interference by this Court with regard to the same and this Court accepts the findings of the Tribunal.

7. The deceased was a Plumbing and Borewell Contractor at the time of the accident and his income varies from year to year, as seen from the Income Tax returns. As per the decision of the Hon'ble Supreme Court in the case of the National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 16 SCC 680, the Tribunal ought to have fixed the loss of future prospects at 25%, but has erroneously fixed the same at 30% and accordingly this Court reduces the loss of future prospects to 25% instead of 30% fixed by the Tribunal.

8. The second respondent / second claimant is a married daughter and therefore cannot be treated as a dependant of the deceased. Hence, the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased. No evidence has also been placed by the respondents / claimants to prove that the second respondent / second claimant is a dependant of the deceased. Therefore, this Court is of the considered view that the Tribunal ought to have adopted 1/3rd towards personal expenses of the deceased instead of 1/4th under the impugned award. Accordingly, this Court modifies the deduction to 1/3rd instead of 1/4th made by the Tribunal.

9. The Tribunal has rightly applied the correct multiplier of 13 for the deceased who was aged 47 years at the time of the accident and after deducting an amount of Rs.15,915/- towards Income tax, the loss of pecuniary benefits awarded to the respondents / claimants under the impugned award is reduced to Rs.33,80,000/- from Rs.36,57,000/- as awarded by the Tribunal.

10. The Tribunal has also awarded a higher compensation towards conventional damages which is not in accordance with the decision of the Hon'ble Supreme Court in the case of the National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 16 SCC 680

11. The Tribunal has awarded a compensation of Rs.1,00,000/- towards loss of consortium, which has to be reduced to

Rs.50,000/-. The Tribunal has also awarded a compensation of Rs.4,00,000/- towards loss of love and affection to the respondents / claimants, which has to be reduced to Rs.1,40,000/- (on adhoc basis) as per the decision of Pranay Sethi as referred to supra.

12. The Tribunal has also awarded a higher compensation to the respondents / claimants towards loss of estate at Rs.50,000/- which has to be reduced to Rs.15,000/- as per the settled law. Similarly the Tribunal has awarded a higher compensation towards funeral expenses at Rs.25,000/- which has to be reduced to Rs.15,000/- as per the settled law.

13. The Tribunal has failed to award any compensation towards transportation cost and this Court awards a compensation of Rs.10,000/- under the said head.

14. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount reduced by this Court (Rs.)
Loss of Pecuniary Benefits	36,57,000/-	33,80,000/-
Loss of Love and affection	4,00,000/-	1,40,000/-
Loss of Consortium	1,00,000/-	40,000/-
Loss of Estate	50,000/-	15,000/-
Funeral expenses	25,000/-	15,000/-
Transportation cost	-	10,000/-
Total	42,32,000/-	36,00,000/-

15. In the result, the appeal filed by the appellant / Insurance Company, stands partly allowed by reducing the compensation from Rs.42,32,000/- to Rs.36,00,000/- as indicated above. No costs.

16a. The appellant / Insurance Company is directed to deposit the reduced award amount, as assessed by this Court 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.8069 of 2013 on the file of the Motor Accidents Claims Tribunal, (II Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. It is made clear that the appellant / Insurance Company is permitted to withdraw excess amount, if any paid by them.

16b.On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents 1,2 and 4 /claimants 1,2 and 4, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter. Insofar as the share of the third respondent / minor claimant is concerned, the same shall be deposited in Fixed deposit in any one of the Nationalized Banks, till she attains the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank. If the third respondent / minor claimant has attained the age of majority, it is open to her to file formal petition before the Tribunal to get her share of apportionment.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

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

Copy to

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

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.26273

C.M.A. No.2679 of 2016

NMI[co]
NSK 16/09/2021