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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. NO.1546 OF 2020
AND
CMP.NO.11466 OF 2020

The Cholamandalam MS General Insurance
Company Limited,
No.64, 1/97, South Car Street,
Thiruchencode, Thiruchencode HO,
Namakkal District,
Tamil Nadu State and
74/22, F-11, 3rd Floor,
HV Arcade, Near Big Bazaar,
Bangalore Road, Hosur 635 109.

.. Appellant/
2nd Respondent

Versus

1. A.Antony Samy
2. A.Rejinamary
3. A.Antony Selva Santanam
4. Minor A.Salamon Raj
(Minor rep. by natural guardian and
his father the first respondent herein)
5. M.Venkatesh
6. V.Rajendra

.. Respondents/
Petitioners/Respondents 1 & 3

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 19.09.2019 made in MCOP.No.138 of 2018 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Hosur.

For appellant	:	Mr.M.B.Raghavan
For respondents	:	
for RR1 to 4	:	Mr.D.Baskar
for RR5 & 6	:	Set ex-parte before the Tribunal



J U D G M E N T

(The Judgment of the Court was delivered by S.KANNAMMAL, J)

The appeal is heard through video conferencing.

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2. Questioning the quantum of compensation awarded by the Motor Accident Claims Tribunal / Additional District Judge, Hosur, in MCOP.No.138 of 208, dated 19.09.2019, the present appeal has been filed by the Insurance Company. The respondents 1 to 4 herein/claimants are the parents and the brother of the deceased, fifth respondent herein is the owner of the TATA Van bearing Registration No.KA 24 O 02123 and the sixth respondent is the driver of the said vehicle.

3. It is the case of the respondents 1 to 4 / claimants that on 23.12.2017, the deceased Anand Velanganni was riding a two wheeler bearing Registration No.PY 01BG 5619 on Bangalore-Hosur Road with his friend one Peralagan in pillion. While they were nearing Jalagandeswarar Road Junction, a TATA Van bearing Registration No.KA 24 O 02123 came in the opposite direction in a rash and negligent manner and dashed against the two wheeler. Due to the impact, the deceased died on the spot itself.

4. It is the further case of the respondents 1 to 4 / claimants that the deceased was working as a welder and earning a sum of Rs.25,000/-. Due to his sudden demise, the family was left in lurch. Hence, they made a claim for a sum of Rs.95,00,000/- as compensation.

5. The said claim was resisted by the appellant / Insurance Company by filing a counter denying the manner of accident projected by the claimants in the claim petition. They also denied the avocation and income mentioned in the claim petition. Thus, they sought for dismissal of the claim petition.

6. In order to prove the claim on the side of the claimants, first claimant / father of the deceased examined himself as PW1, besides examining one Manikkavasagam as PW2 and 11 documents were marked as Exs.P1 to P11. On the side of the Insurance Company, neither any oral evidence was adduced nor documents were marked.

7. The Tribunal after analysing the entire evidence, came to the conclusion that the accident occurred due to the rash and negligent driving of the sixth respondent/driver of the said TATA Van, which is insured with the appellant/Insurance Company. By coming to such conclusion, the Tribunal has passed an award for a total sum of Rs.38,64,000/- and directed the appellant/Insurance Company to pay the said compensation



indemnifying the owner of the vehicle. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

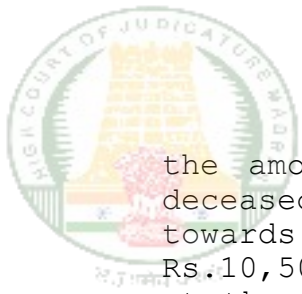
S.No.	Compensation awarded by the Tribunal under the heads	Amount in Rs.
1.	Loss of Dependency	27,00,000
2.	Loss of Love and Affection	40,000
3.	Transportation	9,000
4.	Funeral Expenses	15,000
5.	Loss of Estate	20,000
6.	Future Prospects	10,80,000
	Total	38,64,000

8. Now, the main contention of the learned counsel for the appellant/Insurance Company is that other than the salary certificate, no other supporting documents such as salary slip and bank documents, were produced by the claimants to prove the income of the deceased. However, the Tribunal by fixing a sum of Rs.25,000/- as monthly income of the deceased, awarded exorbitant amounts under the heads "Loss of Dependency" and "Future Prospects". Instead, the Tribunal by fixing a sum of Rs.12,000/- as notional monthly income of the deceased, ought to have calculated the amounts under such heads. He further submitted that the amounts awarded by the Tribunal under all the other heads are also on the higher side and the same needs proper reduction.

9. Per contra, the learned counsel for the claimants made his submissions supporting the award passed by the Tribunal.

10. It is the main contention of the learned counsel for the appellant / Insurance Company that without any supporting documents such as salary slip and bank documents, fixing a sum of Rs.25,000/- as monthly income of the deceased is on the higher side. We find some force in the said submission of the learned counsel for the Insurance Company and hence, we are not inclined to fix the amount of Rs.25,000/- as monthly income of the deceased. At the same time, considering the avocation of the deceased and also taking note of the cost of living prevailing at the time of the accident, i.e., in the year 2017, the Tribunal ought to have fixed monthly of the deceased at Rs.15,000/- notionally.

11. Thus, if Rs.15,000/- is taken as monthly income of the deceased and 40% of the same is added towards future prospects,



the amount works out to Rs.21,000/- [15,000 + 6,000]. As the deceased was a bachelor, if 1/2 of the income is deducted towards personal expenses, the loss of income comes to Rs.10,500/-. Considering the age of the deceased being 22 years at the time of the accident, if multiplier "18" is applied, the actual Loss of Dependency comes to Rs.22,68,000/- [10,500 x 18 x 12]. While calculating the amount under the head "Loss of Dependency" as Future Prospects is included, there is no need to award any amount separately under the head "Future Prospects".

12. Further, as per the off-quoted judgment of the Honourable Supreme Court in Pranay Sethi case, a sum of Rs.40,000/- has to be awarded to each of the legal heirs of the deceased towards "Love and Affection". Hence, the total sum of Rs.40,000/- awarded by the Tribunal towards Loss of Love and Affection to the claimants is set aside, instead a sum of Rs.1,60,000/- is awarded under such head by awarding a sum of Rs.40,000/- to each of the claimants.

13. The sum of Rs.15,000/- awarded towards "Funeral Expenses" appears to be on the lower side and hence the same is hereby enhanced to Rs.40,000/-.

14. The amounts awarded under all the other heads appears to be fair and reasonable, and hence the same is confirmed.

S. No.	Heads under which the amount was awarded by the Tribunal	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of Dependency	27,00,000	22,68,000
2.	Loss of Love and Affection	40,000	1,60,000
3.	Transportation	9,000	9,000
4.	Funeral Expenses	15,000	40,000
5.	Loss of Estate	20,000	20,000
6.	Future Prospects	10,80,000	-
	Total	38,64,000	24,97,000 rounded of to Rs.25,00,000 /-

15. The total compensation of Rs.38,64,000/- awarded by the Tribunal to the claimants is hereby reduced to Rs.25,00,000/-, which shall carry interest at 7.5% from the date of claim



petition till the date of payment. The Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed. On such deposit, the claimants 1 to 3 are permitted to withdraw their respective shares. Insofar as the minor claimant 4 is concerned, his share shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Bank and it shall be renewed periodically till he attains majority and the interest accrued thereon shall be withdrawn by the first claimant/ his father once in three months.

16. With the above observations and directions, the Civil Miscellaneous Appeals is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

1. Additional District Judge,
The Motor Accident Claims Tribunal,
Hosur.

C.M.A. No.1546 of 2020
and CMP.No.11466 of 2020

KK (CO)
PM/11/11/2021