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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2021

CORAM

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

C.M.A. NO.1771 OF 2020
AND
CMP.NOS.13037 OF 2020 & 7084 OF 2021

National Insurance Company Ltd.,
No.751, Anna Salai, 3rd Floor
Chennai 600 002

.. Appellant/2nd Respondent

Versus

1. B.Suriya

2. Minor B.Vasanth
   [Minor rep. By his mother B.Suriya]

3. V.Anusuya

4. D.Vadivelu

.. Respondents 1 to 4/Claimants 1 to 4

5. R.Selvi

.. 5th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 03.10.2019 made in MACTOP.No.5552 of 2013 on the file of the Motor Accident Claims Tribunal/II Small Causes Court, Chennai.

For appellant : Mrs.N.B.Sureka

For respondents : Mr.K.Malaikkannu for RR1 to 4
R5 was set ex-parte
before the Tribunal

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JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

The appeal is heard through video conferencing.

2. Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal / II Small Causes Court, Chennai, in MACTOP. No. 5552 of 2013 dated 03.10.2019, the present appeal has been filed by the Insurance Company.

3. The respondents 1 to 4/claimants in this appeal are the wife, minor son and the parents of the deceased Baskar. On 12.07.2013 at about 08.30 hours, while the deceased V.Bhaskar was driving his motorcycle bearing Registration No.TN 03 K 8745 on K.H.Road from North to South, a Lorry bearing Registration No.TN 69 Z 1272, owned by the fifth respondent and insured with the appellant/Insurance Company, came in a rash and negligent manner, being driven by it is driver, in the same direction, and dashed against the motorcycle. Due to the impact, the deceased sustained fatal injuries and died on the spot. It is the further case of the claimants that at the time of the accident, the deceased was working as a skilled worker in S.P.Steel Company, Chennai and earning a sum of Rs.15,000/-. Due to the sudden demise of the deceased, the claimants lost their livelihood. Hence, the claimants have filed the claim petition claiming a sum of Rs.36,00,000/- as compensation for the death of the deceased.

4. Resisting the claim made by the respondents 1 to 4/claimants, the appellant/Insurance Company filed a counter statement inter alia contending that the accident had not occurred in the manner as projected by the claimants. They have also denied the age, avocation and income of the deceased. Thus, they sought for dismissal of the claim petition.

5. In order to prove the claim before the Tribunal, the first respondent/wife of the deceased, examined herself as PW1, besides examining, PW2, viz., Mr.S.Ramesh, an eyewitness to the accident and PW3, Ravikumar. The claimants have also marked Exs.P1 to P16 on their side. On the side of the Insurance Company, one Rema Devi was examined as RW1 and Exs.R1 to R4 were marked.

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6. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Lorry bearing Registration No.TN 69 Z 1272 and awarded a compensation of Rs.36,45,000/-. Further, the Tribunal observed that the material records are insufficient to come to the conclusion as to whether the driver of the said Lorry is possessing valid driving licence or not and directed the Insurance company to pay the above compensation indemnifying the owner of the vehicle and to recover it from the owner of the vehicle. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

S. No.	Amounts awarded under the heads	Amount in Rs.
1.	Loss of Dependency	32,40,000
2.	Loss of Consortium	40,000
3.	Loss of Love and Affection	1,50,000
4.	Parental Consortium	1,00,000
5.	Filial Consortium	1,00,000
6.	Funeral Expenses	15,000
	Total	36,45,000

7. Now, it is the contention of the learned counsel for the appellant/ Insurance Company that at the time of the accident, the driver of the Lorry did not possess a valid driving licence and there is a violation of the policy condition. He further submitted that the appellant/Insurance Company issued a notice, Ex.R2 to the driver as well as the owner of the said Lorry to produce the driving licence and the said notices were received by both of them and acknowledgment cards were marked as Exs.R3 & R4. However, they did not turn up to produce the driving licence of the said Lorry driver. Hence, adverse inference has to be made to the effect that at the time of the accident, the driver of the said Lorry did not possess valid licence. While so, the appellant Insurance Company ought not to have been mulcted with the liability to pay compensation, instead, the owner of the vehicle ought to have been directed to pay the compensation amount to the claimants.

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8. With regard to the quantum of compensation, the learned counsel for the appellant/Insurance Company submitted that the Tribunal has fixed Rs.15,000/- as monthly income of the deceased, which was extremely on the higher side. In support of such contention, the learned counsel for the appellant relied upon the deposition of PW3, Mr. Ravikumar, Proprietor of S.P.Steel Company, Chennai. PW3 has specifically deposed that he paid a salary of Rs.3,000/- per week to the deceased and if so, the monthly income of the deceased would come to only Rs.12,000/-. Therefore, the sum of Rs.15,000/- fixed as monthly income of the deceased by the Tribunal is not correct. Hence, he prayed that Rs.12,000/- may be fixed as monthly income of the deceased by modifying the award of the Tribunal.

9. The learned counsel for the appellant/Insurance Company also submitted that the Tribunal, while calculating the amount towards future prospects, had added 50% of the salary of the deceased, which is incorrect. The deceased was not a permanent employee under PW3, therefore, he would contend that only 40% has to be added towards future prospects. Hence, by fixing the monthly income of the deceased at Rs.12,000/- and by adding 40% towards future prospects, the amount awarded under the head “Loss of Dependency” has to be reduced.

10. In reply, the learned counsel for the respondents 1 to 4/claimants submitted that it is incorrect to state that the appellant was receiving Rs.12,000/- per month. Apart from the weekly income of Rs.3,000/-, the deceased was receiving a bonus of Rs.3,000/- every year and also special payment. Hence, the sum of Rs.15,000/- fixed by the Tribunal cannot be said to be exorbitant. Further, the learned counsel submitted that the deceased was a permanent employee of S.P.Steel Company, Chennai, and hence, 50% of the income added by the Tribunal towards future prospects, is correct. Thus, he prayed to confirm the order passed by the Tribunal.

11. This Court considered the rival submissions and perused the materials available on record.

12. Insofar as the liability is concerned, we find that the Insurance Company has issued notice calling upon the driver as well as the owner of the Lorry to produce the driving licence of the said Lorry driver, but they have not produced the same

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and hence, adverse inference has to be made to the effect that the driver of the said Lorry did not have valid licence at the time of accident. Therefore, this Court is of the view that the Insurance Company shall pay the compensation amount to the claimants at first instance and thereafter, they recover the same from the owner of the said Lorry. The Tribunal has also given liberty to the appellant to pay the compensation amount to the claimants to recover it from the owner of the lorry. At the same time, merely because the driver of the lorry did not produce a valid licence, it will not deprive the claimants to get the compensation from the appellant Insurance Company. In such circumstance, the Tribunal has rightly given liberty to the appellant to recover the amount, which does not call for any interference by this Court.

13. So far as the quantum is concerned, it is the contention of the learned counsel for the Insurance Company that the deceased was receiving only a sum of Rs.3,000/- per week as per the testimony of his employer, PW3. While so, the Tribunal fixed a sum of Rs.15,000/- per month as income of the deceased, which is not proper. On the other hand, it is the submission of the learned counsel for the claimants that, apart from the sum of Rs.12,000/-, the deceased was receiving bonus of Rs.3,000/- every year and also special payments and in such circumstances, the sum of Rs.15,000/- fixed by the Tribunal cannot be said to be incorrect.

14. On a perusal of records, it is seen that PW3, Proprietor of S.P.Steel Company, Chennai has deposed that the deceased was working as a Skilled Worker in his company and earning Rs.3,000/- per week with an yearly bonus of Rs.3,000/-. Thus, if Rs.3,000/- is taken as weekly income of the deceased, the annual income comes to Rs.1,56,000/- [3,000 x 52] and if the bonus amount of Rs.3,000/- is added, the actual annual income comes to Rs.1,59,000/-. Then, the monthly income works out to Rs.13,250/-. Further, as the deceased was working in a Private Company, it is appropriate to add 40% of his income towards future prospects.

15. Thus, if a sum of Rs.13,250/- is taken as monthly income of the deceased and 40% of the same is added towards future prospects, it works out to Rs.18,550/- [13,250 + 5,300]. Since the total dependents of the deceased are 4, one forth of

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the amount should be deducted towards personal expenses from the monthly income of the deceased and if so deducted, the amount comes to Rs.13,913/- [18,550 – 4,637]. Considering the age of the deceased being 32 years at the time of the accident, if multiplier “16” is applied, the “Loss of Dependency” comes to Rs.26,71,296/- [13,913 x 16 x 12]. Thus, the sum of Rs.32,40,000/- awarded by the Tribunal under the head “Loss of Dependency” is hereby reduced to Rs.26,71,296/-.

16. As per the oft-quoted judgment of National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680], a sum of Rs.40,000/- has to be awarded to each of the legal heirs of the deceased towards "Loss of Love and Affection". However, in this case Rs.50,000/- was awarded by the Tribunal to each of the claimants, which resulted in awarding an exorbitant sum of Rs.1,50,000/- under the head "Loss of Love and Affection". Hence, the sum of Rs.1,50,000/- awarded by the Tribunal under the head “Loss of Love and Affection” is set aside, instead a sum of Rs.1,20,000/- is awarded under such head, by awarding a sum of Rs.40,000/- to each of the claimants 2 to 4.

17. Since a sum of Rs.1,20,000/- is awarded under the head of “Loss of Love and Affection” to the claimants, there is no need to award any amounts separately under the heads “Parental Consortium” and “Filial Consortium”, Accordingly, the sum of Rs.1,00,000/- awarded by the Tribunal under each of such heads are set aside.

18. Since no amount is awarded under the head “Transportation Expenses” a sum of Rs.15,000/- is awarded under such head. Similarly, another sum of Rs.25,000/- is awarded under the head “Loss of Estate”.

19. Thus, the total compensation payable to the claimants are re-calculated and tabulated below:

S. No.	Amounts awarded under the heads	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
1.	Loss of Dependency	32,40,000	26,71,296
2.	Loss of Consortium	40,000	40,000

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S. No.	Amounts awarded under the heads	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
3.	Loss of Love and Affection	1,50,000	1,20,000
4.	Parental Consortium	1,00,000	-
5.	Filial Consortium	1,00,000	-
6.	Funeral Expenses	15,000	25,000
7.	Transportation Expenses	-	15,000
8.	Loss of Estate	-	25,000
	Total	36,45,000	28,96,296 rounded of to 29,00,000

20. In effect, the total compensation of Rs.36,45,000/- awarded by the Tribunal is hereby reduced to Rs.29,00,000/-, 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, 3 and 4 are permitted to withdraw their respective shares. Insofar as the minor claimant 2 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 mother once in three months. It is made clear that the appellant/Insurance company is permitted to pay the compensation amount to the claimants and thereafter, recover it from the owner of the Lorry bearing Registration No.TN 69 Z 1272 since there is a violation to the condition of the Insurance Policy.

21. With the above observations and directions, the Civil Miscellaneous Appeal is partly allowed. No costs.

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Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(Accounts)

// True Copy //

Sub Assistant Registrar

pvs

To

1. The Motor Accident Claims Tribunal
II Small Causes Court, Chennai

2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mrs.N.B.Sureka, Advocate, S.R.No.24824

+1cc to Mr.K.Malaikkannu, Advocate, S.R.No.24619

C.M.A. No.1771 of 2020

RSV(CO)
RLP(25/10/2021)

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