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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.4823 of 2019

The Divisional Manager,
National Insurance Company Ltd.,
No.110, 2nd Floor, J.N.Street,
Puducherry

...Appellant/2nd Respondent

Vs.

1. Vembu
2. Jeyapriya
3. Balaji
4. Elangovan ... 1 to 4 Respondents/Petitioners
5. P.Venketachalam ... 5th Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the decree and judgment passed in MACTOP No.355 of 2015, dated 14.09.2018 on the file of the Motor Accident Claims Tribunal, 3rd Additional District Court (FAC), Puducherry.

For Appellant : M/s.N.B.Surekha

For RR1 to 4 : Mr.K.Sasindran

J U D G M E N T

[Judgment of the Court was delivered K.KALYANASUNDARAM, J]

The appeal is heard through video conferencing.

2. This appeal is directed against the judgment and decree, dated 14.09.2018 passed by the Motor Accident Claims Tribunal, III Additional District Court (FAC), Puducherry in MACTOP No.355 of 2015.



3. The facts in nutshell:-

On 14.02.2015 at about 15.50 hours, the deceased Shanmugam was riding his Hero Honda Motorcycle bearing Registration No.PY-01-AU-5414 on Pondicherry-Villupuram Main Road. When he was nearing Hindustan Lever Company Limited, Vadamangalam, a Bus bearing Registration No.PY-01-BV-2939 belonging to the 5th respondent, driven by its driver in a rash and negligent manner, dashed against the deceased. Due to the impact, the deceased sustained grievous injuries and he was immediately taken to the Primary Health Centre, Villianur. Thereafter, he was referred to the Government General Hospital, Puducherry. Eventually, he died on 14.02.2015.

4. His wife and children claimed that the deceased was working as a Driller at Puducherry Agro Service and Industries Corporation Limited and earning Rs.40,000/- per month. The accident had occurred only due to the rash and negligent driving of the fifth respondent's vehicle. Hence, they are entitled to a sum of Rs.80,00,000/- as compensation.

5. The appellant/Insurance Company filed their counter statement disputing the manner of accident as projected by the claimants, age, occupation and income of the deceased and their liability to pay the compensation.

6. To substantiate the case on the side of the claimants, PW1 to PW3 were examined and Exs.P1 to P.24 were marked. On the side of the Insurance Company, RW1 was examined and Exs.R1 and R2 were marked.

7. The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred due to the rash and negligent driving of the driver of the Bus bearing Registration No.PY-01-BV-2939 and awarded a compensation of Rs.42,37,444/- along with the interest at the rate of 7.5% p.a. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

S. No.	Heads under which the amount is awarded by the Tribunal	Amount in Rs.
1.	Loss of Income	39,42,444
2.	Loss of Consortium to the 1 st petitioner	40,000
3.	Loss of Love and Affection 2 to 4 petitioners	2,25,000



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S. No.	Heads under which the amount is awarded by the Tribunal	Amount in Rs.
4.	Loss of Estate	15,000
5.	Towards Funeral Expenses	15,000
	Total	42,37,444

8. The learned counsel for the appellant/Insurance Company would submit that the monthly income taken by the Tribunal for the deceased was on the higher side. Further, the Tribunal failed to see that the deceased was having only another 4 years of service, therefore by applying multiplier 11 arrived at the Loss of Income, is unsustainable. According to the learned counsel, the Tribunal ought to have applied split multiplier.

9. It is the contention of the learned counsel for the respondents 1 to 4/ claimants that the employment and income of the deceased was proved before the Tribunal and on proper appreciation of evidence, the impugned award is passed, hence no interference is required.

10. Perusal of the records reveal that the Industries Corporation Limited, where the deceased was working was running loss, hence, he was paid only 60% of the salary. Ex.P24 pay slip shows that the actual last drawn salary of the deceased was Rs.28,690/-. It is not disputed that the deceased died at the age of 54 years and the proper multiplier is 11. He will retire at 60. The claimants have not let in evidence to show that even after the retirement, the deceased would be earning the same income. So we are of the considered opinion that we have to apply split multiplier method in this case. As per Ex.P24 pay slip, Rs.28,690/- is taken as monthly income of the deceased and by adding 15% towards future prospects, the amount comes to Rs.32,994/- (28,690 + 4,304). After deducting 1/4 towards personal expenses of the deceased, his contribution to the family would be Rs.24,745/- [32,994 - 8,249]. The loss of income for the period in service comes to Rs.17,81,640/- [24,745 x 12 x 6] and for the remaining period, the amount would be Rs.7,42,380/- [12,373 x 12 x 5]. Thus, the total loss of income comes to Rs.25,24,020/- [17,81,640 + 7,42,380].

11. Further, the sum of Rs.2,25,000/- awarded by the Tribunal to the claimants 2 to 4 towards Loss of Love and Affection is set aside, instead a sum of Rs.1,20,000/- is awarded towards Filial Consortium. In addition to that, the sum



of Rs.40,000/- awarded towards consortium to the first claimant; Rs.15,000/- awarded towards funeral expenses; and Rs.15,000/- awarded towards Loss of Estate by the Tribunal, are confirmed. In total, the claimant is entitled to Rs.27,14,020/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Income	39,42,444	25,24,020
2.	Loss of Consortium to the 1 st petitioner	40,000	40,000
3.	Loss of Love and Affection 2 to 4 petitioners	2,25,000	1,20,000
4.	Loss of Estate	15,000	15,000
5.	Towards Funeral Expenses	15,000	15,000
	Total	42,37,444	27,14,020

12. In view of the above modifications, the Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit the above modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first claimant is permitted to withdraw Rs.10,00,000/-; second claimant is permitted to withdraw Rs.7,14,020/-; claimants 3 and 4 are permitted to withdraw Rs.5,00,000/- each; together with proportionate interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR



pvs
To

1.The III Additional District Court (FAC),
Puducherry/ Motor Accident Claims Tribunal-I,
Tiruvallur.

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

+1cc to M/s.N.B.Surekha, Advocate Sr.61424
+1cc to M/s.K.Sasindran, Advocate Sr.61672

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srg 07/02/2022