IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:	02.12.2021
DELIVERED ON:	14.12.2021

CORAM

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

C.M.A. No.2095 of 2021

1.Lalitha
2.Vanaja
3.Thanigachalam
4.Janakiraman ...Appellants/Claimants

Vs.

1.Abdul Azeez
2.The Manager
United India Insurance Company Limited
Motor Third Party Claims Office. … Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, as amended against the Judgment and Decree passed in M.A.C.T.O.P.No.114 of 2019 dated 08.01.2021 on the file of the Motor Accidents Claims Tribunal, No.1, Special District Court, Thiruvallur.

For Appellants : Mr.M.L.Ramesh

For Respondents : Mr.D.Bhaskaran for R2
No appearance for R1

J U D G M E N T

[Judgment of the Court was delivered by V.SIVAGNANAM, J]

This Civil Miscellaneous Appeal has been filed as against the Judgment and Decree passed in M.C.O.P.No.114 of 2019 dated 08.01.2021 on the file of the Motor Accidents Claims Tribunal, No.1, Special District Court, Thiruvallur.

2.For the sake of convenience, parties are referred to as per their ranking in the claim petition.

3.It is the case of the claimants that on 10.02.2018, at 19.00 hours when the deceased was proceeding from Uthukottai to Senjiyagaram Village in the two wheeler bearing Registration No.TN 20 AF 9639, a two wheeler bearing Registration No.TN 02 BF 5619 proceeding in the same direction, hit against the vehicle belongs to the deceased. Due to the accident, the deceased sustained grievous injuries all over the body and and died in the hospital.

4.The 1st claimant is the wife of the deceased; 2nd claimant is the daughter; 3rd and 4th claimants are sons of the deceased. Alleging that the accident had taken place due to the rash and negligent driving of the rider of the two wheeler bearing Registration No.TN 02 BF 5619, the claimants laid a petition, claiming compensation of Rs.1,00,00,000/-.

5.Resisting the claim petition, the Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation.

6.To substantiate the case, on the side of the claimants PWs1 and 2 were examined and Exs.P1 to P14 were marked. On the side of the Insurance Company, Rws1 to 3 were examined and Exs.R1 to 3 were marked.

7.The Tribunal, after considering the oral and documentary evidence held that the accident had occurred due to the negligence of the rider of the two wheeler bearing Registration No. TN 02 BF 5619 and awarded a compensation of Rs.13,40,000/- along with the interest at the rate of 7.5% p.a., from the date of presentation of the petition till the date of realization. Further, the Tribunal directed the respondents 1 and 2 to pay the award amount jointly and severally. Assailing the award, the claimants are before this Court with this Civil Miscellaneous Appeal.

8.The learned counsel for the appellants/claimants, Mr.M.L.Ramesh, would submit that the accident had happened due to the negligence on the part of the rider of the 1st respondent vehicle bearing Registration No. TN 02 BF 5619. Further, the Tribunal erred in fixing the monthly income of the deceased on assumption as Rs.20,000/- and failed to consider the Income Tax Return filed by the claimants, at the time of trial, which is marked as Ex.P.10 to P12. The Tribunal failed to award a proper and reasonable amount under the head of 'Loss of love and affection' to the daughter and sons of the deceased and also failed to award any amount under the head of 'medical expenses'.

Thus, the claimants pleaded to enhance the award amount.

9.The learned counsel appearing for the Insurance Company supported the award passed by the Tribunal and further contended that the age of the deceased was 63 years at the time of the accident and hence, he is not entitled for future prospectus. He would further submit that though the deceased is a LIC agent by profession his monthly commission from LIC may vary, as per the number of policies he is getting from the customer. As per the decision laid down in the case of Pranay Sethi, the Tribunal has rightly fixed the monthly income of the deceased as Rs.20,000/- and rightly arrived the amounts awarded under other heads. Hence, he pleaded to dismiss the appeal.

10.Heard the learned counsels appearing on either side and perused the materials available on record.

11.A perusal of records would show that the deceased was aged about 63 years at the time of accident. He is a LIC agent by profession and as per the claimants, monthly income of the deceased is Rs.1,00,000/-, in order to prove the same, the claimants produced the Exs.P.11 series Form 16(A). It reflects the following facts:-

"It was filed in the year of 1991-2010. From 2005 – 2006 the income of the deceased mentioned as Rs.82,400/- and 2007 – 2008 the income of the deceased mentioned as Rs.1,09,230/- and in the year of 2008 – 2009 the income of the deceased mentioned as Rs.1,69,110/- and in the year of 2010 – 2011 the income of the deceased mentioned as Rs.2,36,860/-."

12.Further, it is an admitted fact that after the death of the deceased, the claimants are continued to receive the commission amount from LIC. The Tribunal rightly observed that the deceased received commission of Rs.50,000/-, Rs.30,000/- and Rs.20,000/- as monthly income on various months. Though the deceased received some amount as monthly income from LIC in the form commission, it is not a regular one and it may vary from time to time, as per the number of policies. Once the policy ends, the agent wont get the commission from LIC. Under these circumstances, the Tribunal has rightly fixed the monthly income of the deceased as Rs.20,000/-.

13.The learned counsel for the claimants relied upon the decision of the Hon'ble Supreme Court in the case of Malarvizhi and Ors. Vs. United India Insurance Company Limited & Anr, wherein, on the basis of the income tax return for the year 1997 – 1998, income of the deceased was fixed and not for the periods 1999 – 2000 and 2000 – 2001, which reflected a reduction in the annual income of the deceased. It was accepted by the Apex Court. But in the case on hand, admittedly, the deceased was a LIC agent. Apart from the commission from LIC, no income was reflected in his income tax returns. Therefore, the decision relied on by the learned counsel for the appellant is not helpful.

14.We have considered the award amount granted under other heads and we do not find any infirmity or illegality in the award passed by the Tribunal. Further, this Court finds no reason to interfere with the award of the Tribunal in M.C.O.P.No.114 of 2019 dated 08.01.2021 on the file of the Motor Accidents Claims Tribunal, No.1, Special District Court, Thiruvallur, and hence, the same is confirmed.

15.Accordingly, this Civil Miscellaneous Appeal is dismissed as devoid of merits. Award passed by the Tribunal The Insurance Company/2nd respondent is directed to deposit the entire 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 judgment. Thereafter, the 2nd respondent shall recover the same from the 1st respondent, as Pay and Recovery. On such deposit, the claimants are permitted to withdraw the award amount less the amount already withdrawn, if any, together with proportionate interest and costs. The apportionment fixed by the Tribunal is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal, No.1
Special District Court, Thiruvallur.

Copy to:The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.M.L.Ramesh, Advocate SR.No.66657
+1cc to Mr.D.Bhaskaran, Advocate SR.No.66430

C.M.A. No.2095 of 2021

KV(CO)
CB(07/01/2022)