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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM

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

C.M.A. No.2296 of 2021 &
C.M.P.No.12752 of 2021
(Heard through VC)

M/s.Reliance General Insurance Co. Ltd.,
No.6, 6th Floor, Haddows Road,
Nungambakkam, Chennai - 600 006. ... Appellant/
2nd Respondent

Vs.

1.M.Jayachithra
2.Minor M.Karthikeyan
3.Minor M.Akshaya,
Minor 2 and 3 are rep by their
Next friend and NF M.Jayachitra,
4.Dhanalakshmi
All are residing at No.312,
Nethaji Street, Kakkanji Colony,
Vyasarpadi, Chennai - 600 039.
5.B.Arunkumar ... Respondents/Claimants
...5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 18.12.2019 made in M.C.O.P.No.4816 of 2015, on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.K.Vardha Kaamaraj
for R1 to R3

No appearance for R4 and R5
(Notice served)



J U D G M E N T

Judgment of the Court was delivered by V.SIVAGNANAM. J.

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This appeal arises out of the Judgment and award passed by the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, in M.C.O.P.No.4816 of 2015, wherein the Tribunal has awarded compensation of Rs.33,40,000/-.

2. The facts in brief necessary for disposal of the appeal would run thus:-

The respondents 1 to 4 / claimants are the legal heirs of one Muralimani, who died in a road accident. On 13.05.2015 at about 07.00 p.m., the said Muralimani was as a pedestrian proceeded to cross the road from west to east bypass road, Maduravoyal. At that time a Pulsar Motorcycle bearing registration No.TN-19-Q-3018 proceeded from north to south direction rode by its rider in a rash and negligent manner and hit against the deceased. In the impact, the deceased was thrown out and sustained multiple fatal injuries all over his body. Immediately, the deceased was taken to Government Hospital, Tambaram, and he was died on the same day. Alleging that the accident had taken place due to the rash and negligent riding of the rider of the two wheeler, which was insured with the appellant-Insurance Company, the claimants laid a petition, claiming compensation of Rs.50,00,000/-.

3. Resisting the claim, the appellant M/s.Reliance General Insurance Co. Ltd., filed their counter disputing the manner of accident, age, occupation and income of the deceased and its liability to pay the compensation. The accident had occurred due to the rash and negligent act of the deceased who was not in a sound state of mind who was precariously walking along the road, posing a danger to the motorists was solely responsible for the alleged accident. Since the deceased was a tortfeasor, the Insurance Company cannot be made liable to pay compensation.

4. Before the Tribunal, on behalf of the claimants 2 witnesses were examined and 7 documents were marked. On appreciation of evidence adduced by the parties, the Tribunal held that the occurrence occurred due to the negligence of the driver of the Pulsar Motorcycle bearing registration No.TN-19-Q-3018 and awarded compensation of Rs.33,40,000/- along with interest at the rate of 7.5% p.a. Questioning the award, the present appeal has been filed.



5. The primary submission of the learned counsel for the Insurance Company is that in the absence of proof towards alleged avocation and earning, ought not to have fixed a sum of Rs.15,000/- per month as income and therefore, Rs.28,35,000/- awarded under the head of 'loss of dependency' is extremely on the higher side, and hence, the same needs appropriate reduction. The learned counsel drew the attention of this Court to the amounts awarded under the heads of loss of consortium, parental consortium, filial consortium and loss of love and affection. The learned counsel argued that though the Tribunal has awarded a sum of Rs.40,000/- under the head of loss of consortium, it still, went one step further and awarded a sum of Rs.2,00,000/- for parental consortium and a sum of Rs.25,000/- for filial consortium. Then again, the Tribunal has awarded a sum of Rs.2,25,000/- under the head of love and affection. Therefore, the learned counsel submitted that the interference of this Court is required to reduce the compensation.

6. The learned counsel for the claimants on the other hand supported the Judgment and Decree passed by the Tribunal and prayed that the Civil Miscellaneous Appeal be dismissed.

7. This appeal has been filed only challenging the quantum, hence, the other issues need not be dealt with herein.

8. The main contention of the learned counsel for the appellant is that without any valid proof, the Tribunal has fixed the notional income of Rs.15,000/- per month, which is exorbitant. In the case on hand, the Tribunal by relying on the evidence of P.W.1, the wife of the deceased, fixed the income of the deceased as Rs.15,000/- per month. Considering the cost of living prevalent at the time of the accident, this Court is of the view that a sum of Rs.15,000/- fixed as monthly income of the deceased is on the higher side, hence, the same is reduced to Rs.12,000/-. At the time of accident, the deceased was aged about 38 years and therefore, by adding 40% towards future prospects, the monthly salary of the deceased is arrived at Rs.16,800/-. Since the dependants are four in numbers, 1/4th of the amount is deducted towards personal expenses and the contribution to his family comes at Rs.12,600/-. As per the decision in the case of Sarala Verma and others vs. Delhi Transport Corporation [2009 (6) SCC 121], the proper multiplier would be "15" and therefore, the loss of income is assessed as Rs.22,68,000/- [12,600 x 12 x 15]. In addition to that, this Court is inclined to modify the award passed by the Tribunal under the conventional heads.



9. The Tribunal has not awarded any amount towards loss of Estate and hence, this Court awards Rs.15,000/- under the head of Loss of Estate; Further, the sum of Rs.2,25,000/- awarded by the Tribunal under the head of "loss of love and affection" and a sum of Rs.2,00,000/- awarded by the Tribunal under the head of "Parental Consortium" are hereby set aside. As per the decision of the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), the first respondent / first claimant is entitled to a sum of Rs.40,000/- under the head of "consortium" and the claimants 2 to 4 / respondents 2 to 4 are entitled to a sum of Rs.40,000/- each (in total Rs.1,20,000/-) under the head of "Filial Consortium". Rs.15,000/- awarded by the Tribunal under the head of 'funeral expenses' is confirmed. Hence, the compensation awarded by the Tribunal to the appellants is re-quantified as follows:-

Heads	Rs.
Loss of dependency	Rs.22,68,000/-
Consortium to the first respondent	Rs. 40,000/-
Filial Consortium (Respondents 2 to 4)	Rs. 1,20,000/-
Funeral expenses	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-
Total	Rs.24,58,000/-

Hence, the award amount is reduced to Rs.24,58,000/- from Rs.33,40,000/-.

In total, the claimants are entitled to Rs.24,58,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

10. 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 major claimants are permitted to withdraw their share of the modified award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn, if any. The share of the minor claimants shall be deposited in any one of the nationalized banks in a fixed deposit till they attain majority. The interest accruing on the minors deposit is permitted to be withdrawn by the mother of



the minor claimants, viz., Jayachitra, the first respondent herein, once in three months. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1. The II Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.

+lcc to Mr.S.Arunkumar, Advocate SR.No.63617

+lcc to Mr.K.Varadhakamaraj, Advocate SR.No.63117

C.M.A. No.2296 of 2021 &
C.M.P.No.12752 of 2021

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