



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1666 of 2018

and

C.M.P.No.8479 of 2019

United India Insurance Co.Ltd.,
Rep by its Divisional Manager,
3rd party claims HUB,
No.81, Katpadi Road, Vellore-4. .. Appellant/Respondent 2

Vs.

1.Ravi
2.Rekha
3.Revathy ...Respondents 1 to 3/Petitioners 1 to 3
4.S.Ravichandiran .. Respondent 4/Respondent 1

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.01.2017 made in M.C.O.P.No.371 of 2015 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.R.Rajarajan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 10.01.2017 made in M.C.O.P.No.371 of 2015 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

2.The appellant is the 2nd respondent in M.C.O.P.No.371 of 2015 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore. The claimants/respondents 1 to 3 filed the above said claim petition



claiming a sum of Rs.20,00,000/- as compensation for the death of one Shanthi, who died in the accident that took place on 14.03.2014.

3. According to claimants, on 14.03.2014 at about 05.30 p.m., the deceased Shanthi was carefully crossing the road, at Ariyur Railway gate near OM Sakthi Koil opposite. At that time, the rider of the two wheeler, viz., Hero Honda SD CD 100 bearing Registration No.TN 33 E 3604 belonging to the 4th respondent, rode the two wheeler in a rash and negligent manner and dashed against the deceased Shanthi. In the said accident, the said Shanthi was thrown out for 10 feet distance and sustained multiple injuries all over her body. Immediately after the accident, the said Shanthi was taken to Government Hospital, Vellore, where first aid was given. In spite of treatment, the said Shanthi succumbed to injuries. The first claimant is the husband and the claimants 2 and 3 are the children of the deceased. The fourth respondent herein is the owner and the appellant is the insurer of the offending vehicle. Alleging that the accident had occurred due to the rash and negligent riding of the rider of the two wheeler, the respondents 1 to 3/claimant filed the said claim petition claiming compensation of Rs.20,00,000/-.

4. The Tribunal, considering the pleadings, oral and documentary evidence, found that at the time of accident, the rider of the two wheeler was minor and no licence was issued to him and held that the accident occurred only due to rash and negligent riding of the rider of the two wheeler belonging to the 4th respondent and directed the appellant, being the insurer of the said vehicle, to pay a sum of Rs.16,36,000/- as compensation to the respondents 1 to 3, at the first instance and thereafter, recover the same from the owner of the two wheeler, the fourth respondent herein.

5. Challenging the quantum of compensation awarded by the Tribunal, the appellant-Insurance Company has come out with the present appeal.

6. The learned counsel appearing for the appellant contended that the respondents failed to prove the age, avocation and income of the deceased by producing valid documents. Though there is no material evidence to prove the income of the deceased, the Tribunal fixed the notional monthly income as Rs.9,000/-. He would further contend that at the time of accident, the deceased was aged about 46 years and the correct multiplier is 13, however, the Tribunal erroneously applied the multiplier '15'. Further, the Tribunal added 30% future



WEB COPY

prospects instead of 25%, hence, it has to be reduced. He would further contend that the Tribunal has awarded Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection, which are also excessive. Hence, the learned counsel seeks for reduction of the award.

7.Per Contra, the learned counsel appearing for the respondents 1 to 3/claimants contended that at the time of accident, the deceased was aged about 40 years and was working as 'Mason' and was earning a sum of Rs.12,000/- per month. In order to prove the same, the claimants have examined P.W.2-Govindammal. But the Tribunal failed to consider her evidence and fixed a meagre sum of Rs.9,000/- as monthly notional income. He would further submit that the Tribunal after considering the age of the deceased, has fixed 30% of the notional income as future prospects. Hence, the learned counsel prays for dismissal of the Civil Miscellaneous Appeal.

8.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the respondents 1 to 3 and perused the entire materials on record.

9.Though the learned counsel appearing for the appellant Insurance Company would contend that in absence of any material, the Tribunal fixed the monthly income as Rs.9,000/-, this Court finds that the Tribunal, on proper appreciation of evidence of P.W.2 and considering the nature of work, has fixed the monthly income.

10.Further, a perusal of the legal heir certificate (Ex.P.6) would show that the daughter of the deceased was aged about 26 years at the time of accident, but the Tribunal without considering the same, fixed the age of the deceased as 40. When a child was aged about 26, the mother of the age may be 45 or 46. Therefore, as per the age of the deceased fixed the multiplier as '13'. Further, this Court by considering the age of the deceased, reduces the future prospects to 25% from 30%. Accordingly, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.11,70,000/- {Rs.11,250/- [Rs.9,000/- + Rs.2,250/- (25% of Rs.9,000/-)] X 12 X 13 X 2/3}. Further, 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 claimants are entitled to Rs.40,000/- each towards loss of consortium and loss of love and affection which comes to Rs.1,20,000/-, hence, the amount awarded by the Tribunal under the head of loss of love and affection and



loss of consortium are modified. Since the Tribunal has not awarded any amount for medical expenses and for loss of estate, this Court awards Rs.15,000/- towards loss of estate and Rs.15,000/- towards medical expenses. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	14,04,000/-	11,70,000/-	Reduced
2.	Loss of love and affection	1,00,000/-	80,000/-	Reduced
3.	Loss of consortium to 1 st respondent	1,00,000/-	40,000/-	Reduced
4.	Loss of estate	-	15,000/-	Granted
5.	Medical expenses	-	15,000/-	Granted
6.	Funeral expenses	25,000/-	25,000/-	Confirmed
7.	Transportation	5,000/-	5,000/-	Confirmed
8.	Damages to cloths and articles	2,000/-	2,000/-	Confirmed
	Total	Rs.16,36,000/-	Rs.13,52,000/-	Reduced by Rs.2,84,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,36,000/- is hereby reduced to Rs.13,52,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, at the first instance and recover the same from the 4th respondent herein, owner of the two wheeler to the credit of M.C.O.P.No.371 of 2015 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore. On such deposit, the respondents 1 to 3



are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

gbi

To

1.The I Additional District and Sessions Court,
Motor Accidents Claims Tribunal, Vellore.

2.The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.D.Bhaskaran, Advocate SR.No.65601

+lcc to Mr.R.Rajaraman, Advocate SR.No.66294

C.M.A.No.1666 of 2018

JPL (CO)
CB(25/02/2022)