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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.4389 of 2019
and C.M.P.No.24955 of 2019

National Insurance Co. Ltd.,
2nd Floor, Maruti Complex,
F-215, Omalur Main Road,
Post Box No.27,
Salem 636 004.

.. Appellant/2nd Respondent

Vs.

1.Annakkizhi

.. 1st Respondent/1st Petitioner

2.Parvathy

.. 2nd Respondent/2nd Petitioner

3.Parameswari

.. 3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.06.2018, made in M.C.O.P. No.266 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankagiri.

For Appellant : Mr.R.Kishore
for M/s. S.Vadivel

For Respondents : Mr.S.P.Yuaraj (For R1 & R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 25.06.2018, made in M.C.O.P. No.266 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankagiri.

2.The appellant is the 2nd respondent in M.C.O.P. No.266 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankagiri. The respondents 1 & 2/claimants filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Dhanasekar, who died in the accident that took place on 12.03.2013.



3. According to the respondents 1 & 2, on the date of accident, when the deceased was riding the Motorcycle bearing Registration No.TN-52-C-5727 on the extreme left side of the Magudanchavadi to Konganapuram main road at Anna Nagar, near Palanisamy Hotel, in Sankari Taluk along with his friend Vijayakumar as pillion rider, the driver of a Tata Mini Lorry bearing Registration No.TN-30-AC-8868 belonging to the 3rd respondent, came from opposite direction in a rash and negligent manner at uncontrollable speed and dashed on the Motorcycle driven by the deceased and caused the accident. The accident occurred only due to rash and negligent driving by the driver of the Mini Lorry belonging to the 3rd respondent. Hence, the respondents 1 and 2 filed the claim petition claiming compensation against the 3rd respondent as owner and appellant as insurer of the said vehicle.

4. The 3rd respondent, owner of the Mini Lorry, remained exparte before the Tribunal.

5. The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 & 2 in the claim petition. According to the appellant, the accident occurred only when the deceased who was riding the Motorcycle in a rash and negligent manner, suddenly crossed the road and hit against the Mini Lorry belonging to the 3rd respondent and caused the accident. Had the deceased observed the road traffic and followed the traffic rules, the accident would have been avoided. Hence, the deceased himself contributed negligence for the accident and driver of the Mini Lorry is not responsible for the accident. In any event, the driver of the Mini Lorry did not possess valid driving license to ply the vehicle at the time of accident. The respondents 1 and 2 have to prove the age, avocation and income of the deceased and manner of accident to claim compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1, examined eye witness as P.W.2, co-worker of the deceased as P.W.3 and marked 10 documents as Exs.P1 to P10. The appellant examined Junior Assistant of R.T.O, Salem as R.W.1 and marked 2 documents as Exs.R1 & R2.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Mini Lorry belonging to the 3rd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.32,80,000/- as compensation to the respondents 1 & 2.

8. Questioning the quantum of compensation granted by the Tribunal in the award dated 25.06.2018, made in M.C.O.P. No.266



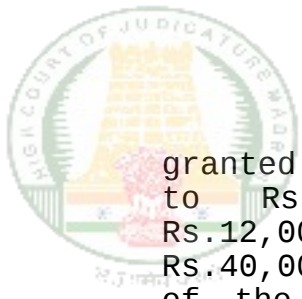
of 2013, the appellant - Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that in the absence of any evidence by the respondents 1 and 2 to prove the avocation and income of the deceased, the Tribunal erroneously fixed a sum of Rs.15,000/- per month as notional income. The Tribunal ought not to have awarded compensation under both the heads viz., loss of consortium and loss of love and affection to the 1st respondent. The amounts awarded by the Tribunal towards loss of love and affection and loss of consortium are excessive and prayed for reducing the compensation awarded by the Tribunal.

10. Per contra, the learned counsel appearing for the respondents 1 and 2 contended that the deceased was working as a JCB Operator at SBNNIC Company and doing Milk Vending business and was earning a sum of Rs.15,000/- per month. The Tribunal considering the evidence of P.W.1 & P.W.3 - wife and co-worker of the deceased respectively, fixed the monthly income of the deceased as Rs.15,000/- and granted compensation. The total compensation awarded by the Tribunal is not excessive, warranting interference by this Court and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 and 2 and perused the materials available on record.

12. From the materials on record, it is seen that it is the case of the respondents 1 and 2 that the deceased was working as a JCB Operator at SBNNIC Company and doing Milk Vending business and was earning a sum of Rs.15,000/- per month. The respondents 1 and 2 did not produce the driving license of the deceased to prove the same. P.W.3 in his evidence has deposed that the deceased was doing milk vending business and was earning a sum of Rs.3,000/- per month. The respondents 1 and 2 failed to give details about the income earned from the said business of the deceased. In the said circumstances, the Tribunal excessively fixed a sum of Rs.15,000/- per month as notional income of the deceased. The accident is of the year 2013. Considering the date of accident and nature of work, the notional income of the deceased fixed by the Tribunal is reduced to Rs.12,000/- per month. The deceased was aged 22 years at the time of accident. The Tribunal, considering the age of the deceased, following the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], rightly granted 40% enhancement towards future prospects. There are two dependants of the deceased. Hence, deducting 1/3rd towards personal expenses of the deceased and applying the multiplier '18', the amount



granted by the Tribunal towards loss of dependency is modified to Rs.24,19,200/- {[Rs.12,000/- + Rs.4,800/- (40% of Rs.12,000/-)] x 12 x 18 x 2/3}. In addition to granting a sum of Rs.40,000/- towards loss of consortium to the 1st respondent/wife of the deceased, the Tribunal erroneously awarded a sum of Rs.1,00,000/- under the head, loss of love and affection. The 1st respondent is only entitled to a sum of Rs.40,000/- towards loss of consortium. Hence, the amount of Rs.1,00,000/- awarded by the Tribunal towards loss of love and affection to the 1st respondent is set aside. The Tribunal awarded an excess amount of Rs.75,000/- to the 2nd respondent/mother of the deceased towards loss of love and affection. Hence, the same is reduced to Rs.40,000/-. The amounts granted by the Tribunal under other heads are just and reasonable and hence, the same are 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	30,25,000/-	24,19,200/-	Reduced
2.	Loss of consortium to 1 st respondent	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection to 1 st respondent	1,00,000/-	-	Set aside
4.	Loss of love and affection to 2 nd respondent	75,000/-	40,000/-	Reduced
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Loss of estate	15,000/-	15,000/-	Confirmed
7.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	32,80,000/-	25,39,200/-	Reduced by Rs.7,40,800/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal at Rs.32,80,000/- is modified to Rs.25,39,200/- 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 award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.266 of 2013. On such deposit, the respondents 1 and 2 are permitted to withdraw their share of the



award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount, lying in the credit of M.C.O.P. No.266 of 2013, if the entire award amount has already been deposited by them. It is made clear that if the respondents 1 & 2 have already withdrawn the award amount, the appellant-Insurance Company is not entitled to recover the same from the respondents 1 & 2. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Sankagiri.

+1CC to M/s.S.Vadivel, Advocate, SR.No.5670

+1CC to Mr.S.P.Yuaraj, Advocate, SR.No.4896

C.M.A. No.4389 of 2019

VBA(CO)

B.VC (07/09/2021)