



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1312 of 2020
and C.M.P.No.9453 of 2020

The New India Assurance Company Limited
No.45, Moore street
3rd party cell, Chennai-1. ... Appellant /2nd Respondent

Vs.

1.S.Vasu ...1st Respondent/1st Respondent
2.Sabitha
3.Unborn Baby (minor)
(2nd minor rep by mother and next friend
guardina 2nd respondent Sabitha)
4.Alamelu
5.Arumugam ... Respondents 2
to 5/Petitioners 1 to 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 30.10.2019 made in M.C.O.P.No.7659 of 2016 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Ms.C.Sangamithirai

For R2 to R4 : Mr.K.Varadhakamaraj

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the award dated 30.10.2019 made in M.C.O.P.No.7659 of 2016 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.7659 of 2016 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. The respondents 2 to 5 filed the said claim petition claiming a sum of Rs.80,00,000/- as compensation for the death of one A.Suresh, who died in the accident that took place on 16.10.2016.



3. According to the respondents 2 to 5, on the date of accident i.e., on 16.10.2016 at about 13.40 hours, while the deceased Suresh was riding in his motorcycle along with his sister Amulu from his home to Maruthalambakkam at ESI to Ponnai Main Road, near Lalapet checkpoint opposite to Vanitha fancy stores, the driver of the lorry belonging to the 1st respondent, who was coming in the opposite direction, drove the same in a rash and negligent manner, dashed against the said Suresh and caused the accident. In the accident, the said Suresh sustained fatal injuries and died in the hospital. Therefore, the respondents 2 to 5 have filed the above claim petition claiming compensation against the 1st respondent, owner of the lorry and the appellant/Insurance Company.

4. 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 lorry belonging to the 1st respondent and directed the appellant/Insurance Company being insurer of the said lorry to pay a sum of Rs.41,00,000/- as compensation to the respondents 2 to 5.

5. To set aside the said award dated 30.10.2019 made in M.C.O.P.No.7659 of 2016, the appellant/Insurance Company has come out with the present appeal.

6. Though the learned counsel appearing for the appellant/Insurance Company raised grounds with regard to liability fastened on the appellant, at the time of arguments, she restricted her arguments only with regard to quantum of compensation awarded by the Tribunal.

7. The learned counsel appearing for the appellant/Insurance Company contended that the respondents 2 to 5 have stated that the deceased Suresh was aged 26 years at the time of accident and was earning a sum of Rs.25,000/- per month by working as a building contractor. The Tribunal erred in granting 50% enhancement towards future prospects and erred in applying multiplier '18'. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

8. Per contra, the learned counsel appearing for the respondents 2 to 5 contended that the deceased Suresh was earning a sum of Rs.25,000/- per month and the Tribunal without considering the same, fixed only a meagre sum of Rs.15,000/- per month as notional income of the deceased. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.



9. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 2 to 5 and perused the entire materials on record.

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10. It is the contention of the respondents 2 to 5 that the deceased Suresh was aged 26 years at the time of accident. They have not filed any document to prove the age of the deceased and they have not proved that the age given in Ex.P2/Death certificate was not furnished by them. In view of the same, as per the age mentioned in the claim petition, the age of the deceased is fixed as 26 years at the time of accident. The correct multiplier applicable is '17'. The Tribunal granted 50% enhancement towards future prospects, which is excessive. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC) [National Insurance Co. Ltd. v. Pranay Sethi and others], the respondents 2 to 5 are entitled to 40% enhancement towards future prospects. The respondents 2 to 5 claimed that the deceased Suresh was earning a sum of Rs.25,000/- per month by working as a building contractor. They failed to substantiate the said contention. In the absence of any material evidence, the Tribunal fixed a sum of Rs.15,000/- per month as notional income of the deceased. There are four dependants of the deceased. The Tribunal rightly deducted 1/4th towards personal expenses. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.32,13,000/- (Rs.15,000/- + 6000 [Rs.15,000/- X 40%] X 12 X 17 X 3/4). The amounts awarded by the Tribunal under all 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 or reduced
1.	Loss of dependency	36,45,000	32,13,000	Reduced
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Loss of love and affection	1,50,000	1,50,000	Confirmed
4.	Parental consortium	2,00,000	2,00,000	Confirmed
5.	Filial consortium	50,000	50,000	Confirmed



6.	Funeral expenses	15,000	15,000	Confirmed
	Total	41,00,000	36,68,000	Reduced by Rs.4,32,000/-

11. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.41,00,000/- awarded by the Tribunal is hereby reduced to Rs.36,68,000/- 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 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. On such deposit, the respondents 2, 4 and 5 are permitted to withdraw their respective share of the award amount now determined by this Court as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share amount of the minor/3rd respondent is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 2nd respondent, being mother of the minor/3rd respondent, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.7659 of 2016 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai, if any, already deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
II Judge,
Small Causes Court, Chennai.

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



+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.9872
+1cc to Mrs.C.Sangamithirai, Advocate, S.R.No.10038

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VBM(CO)
CB(24/09/2021)

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