IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.1292 of 2020
and
C.M.P.No.9149 of 2020

United India Insurance Company Ltd.,
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai - 600 006. ... Appellant/2nd Respondent

Vs

1.Tamilvaanan
2.T. Chandra
3.Vijayarekha
4.Nithya ...Respondent 1 to 4/Petitioners
5.K. Sekar ...5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 08.11.2019 made in M.C.O.P.No.6579 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub Court-2/Court of Small Causes), Chennai.

For Appellant : Mr. D. Bhaskaran

For Respondents : Mr.F.Terry Chella Raja, for R1 to 4

J U D G M E N T

The Insurance Company challenges the award of Rs.19,66,400/- as compensation, for the death of Muthukumaran aged 29 years, in the motor accident that occurred on 27.08.2016.

2. According to the claimants, the deceased was riding his motorcycle bearing Reg.No.TN-18-AZ-1089 and proceeding towards Mayilai Ranganatan Street. The driver of the auto bearing Reg.No.TN-09-AM-9460, which was owned by the 1st respondent and insured with the 2nd respondent, drove the vehicle in a rash and negligent manner, in opposite direction and hit against the

deceased. As a result of the impact, the deceased was thrown off the motorcycle and sustained fatal injuries.

3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimants. It was also the further contention that the deceased himself had contributed to the motor accident. It was also contended that the driver of the auto did not have a valid driving license and the owner/ 1st respondent allowed the driver to drive the auto inspite of the knowledge of the fact that he has no license. The monthly income claimed at Rs.20,000/- was also excessive. To sum up, the Insurance Company contend that the quantum of compensation claimed is very high and is not in proposition to the loss that would have been caused by the accident.

4. Before the Tribunal, father of the deceased was examined as PW1, one Manivannan, eye witness to the accident was examined as PW2 and one Balakrishnan, with whom the deceased was working as a driver was examined as PW3. Exs.C1 to C21 were marked. The Insurance Company on its side examined one Manikandan, Assistant in the Regional Transport Office as RW1 and one Senthilvel, its employee as RW2. Exs.R1 to R6 were marked.

5. Upon consideration of the evidence on record, the Tribunal concluded that the accident had occurred due to the rash and negligent driving of the driver of the auto bearing Reg.No.TN-09-AM-9460 owned by the 1st respondent. The Tribunal fixed the quantum of compensation at Rs.19,66,400/- under the following heads:-

Loss of dependency	- Rs.18,56,400/-
Loss of estate	- Rs. 15,000/-
Funeral expenses	- Rs. 15,000/-
Loss of love and affection	- Rs. 80,000/-
Total	- Rs.19,66,400/-

6. Terming the said compensation as excessive, the Insurance Company has come up with this appeal.

7. I have heard Mr.D.Bhaskaran, learned counsel appearing for the Insurance Company and Mr.F.Terry Chella Raja, learned counsel appearing for the respondents/ claimants.

8. Mr.D.Bhaskaran, learned counsel appearing for the Insurance Company would vehemently contend that having disbelieved the evidence, regarding the income of the deceased, the Tribunal ought not to have adopted Inflation Index to fix the monthly income of the deceased at Rs.13,000/-. He would further contend that because of fixing of the monthly income at Rs.13,000/-, the Tribunal granted a higher compensation. He would also submit that the Hon'ble Supreme Court itself had not adopted fixing of monthly income based on Inflation Index for a cleaner in Syed Sadiq vs. Divisional Manager, United India Insurance Company reported in 2014 (1) TNMAC 459. According to Mr.D.Bhaskaran, the Tribunal was therefore in error in adopting Inflation Index for fixing the monthly income of the driver. On the other heads of compensation, Mr.D.Bhaskaran, has no quarrel. It is also seen that the Tribunal has awarded pay and recovery since the driver of the auto did not possess a valid license.

9. Contending contra Mr.F.Terry Chella Raja, learned counsel appearing for the claimants would submit that even assuming that adoption of Inflation Index for fixing the monthly income is incorrect, the quantum of monthly income arrived at Rs.13,000/- for a driver is just and reasonable and does call for interference at the hands of this Court.

10. The accident had occurred on 27.08.2016. Considering the period of accident and the fact that the deceased had a valid driving license and was working as a driver, fixing income at Rs.13,000/- per month does not appear to be on the higher side. The Tribunal has adopted 40% increase for future prospects and had deducted 50% towards personal expenses. I do not see any illegality or irregularity in the procedure adopted by the Tribunal in arriving at the loss of dependency.

12. Mr.D.Bhaskaran, is also unable to point out any error on the quantum. Once I conclude that the Tribunal cannot be faulted with for fixing monthly income at Rs.13,000/- de hors the method adopted by it, to reach the said figure, I do not think, I could interfere with the award.

13. In view of the above, I do not think there is any scope for reducing the amount awarded. Hence, the appeal fails and it is accordingly dismissed. It is made clear that pay and recovery granted by the Tribunal will be available to the Insurance Company. The Insurance Company is directed to deposit the balance amount within a period of four (4) weeks from the

date of receipt of a copy of the order. On such deposit the claimants are permitted to withdraw the same. No costs. Consequently, the connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

dsa

To

The Special Sub Court-2/
Court of Small Causes,
Chennai.

Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.M.Malar, Advocate Sr.63308

C.M.A.No.1292 of 2020

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srg 28/12/2021