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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.821 of 2018

1.Malar
W/o.Kannappan

2.Kathiravan
S/o.Kannappan

3.Janaki
D/o.Kannappan ... Appellants/Petitioners

vs

1.Hakkim
S/o.Sulthan

2.Bajaj Alliance General Insurance
Company Limited,
No.25/26, Prince Towers,
4th Floor, College Road,
Nungambakkam,
Chennai - 600 106. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.02.2017 passed in M.C.O.P.No.188 of 2015 on the file of Motor Accident Claims Tribunal, Special District Judge, (to deal with MCOP Cases)Villupuram.

For Appellants : Mr.A.V.B.Krishnakanth

For Respondents: Ex parte [R1]
Ms.C.Harini
for M/s.M.B.Gopalan Associates [R2]

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

This matter is heard through Video-Conferencing.



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2. For the sake of convenience, appellants herein are referred to as 'Claimants' and second respondent herein is referred to as 'Insurance Company'.

3. Not being satisfied with the quantum of compensation awarded by the Tribunal in and by its judgment and decree dated 16.02.2017 passed in M.C.O.P.No.188 of 2015 on the file of Motor Accident Claims Tribunal, Special District Judge, Villupuram, claimants have filed the present appeal.

4. The brief facts of the case are as follows:

Claimants are wife, son and daughter of deceased Kannappan. The deceased was working as Head Constable. On 07.09.2014 at about 00.30 hours, while the deceased was riding pillion in a two-wheeler bearing Registration No.PY-01-BT-5221 on the Villupuram to Pondy main road and when they were nearing opposite to Jayaram's Sugarcane lands at L.R.Palayam, a Mahindra Logan Car bearing Registration No.TN-32-D-7878 came in a rash and negligent manner and dashed against the two-wheeler. In the impact, the deceased sustained grievous injuries and died. Hence, claimants filed a claim petition seeking compensation in a sum of Rs.70,00,000/- for the death of the deceased.

5. Resisting the claim made by claimants, Insurance Company has filed a detailed counter statement inter alia contending that the accident had not occurred in the manner as projected by claimants. They have also denied the age, occupation and income of the deceased. Thus, they prayed for dismissal of the claim petition.

6. To prove their claim, on the side of claimants, son of the deceased/second appellant was examined as PW-1 and one Saravanan, eye-witness, was examined as PW-2 and 14 documents were marked as Exs.P1 to P14. On the side of Insurance Company, one witness was examined as RW-1 and two exhibits were marked as Exs.R1 and R2.

7. On appreciation of materials and the evidence on record, the Tribunal arrived at a finding that the accident had occurred due to the rash and negligent driving of both vehicles and fixed 80% contributory negligence on the part of the Mahindra Logan Car and 20% on the two-wheeler. On coming to such a finding, the Tribunal directed the Insurance Company, as insurer of the offending vehicle, to pay compensation. The Tribunal awarded a sum of Rs.16,70,944/- as compensation. The break-up details are as follows:



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Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency	19,38,680/-
2.	Loss of consortium	50,000/-
3.	Loss of care and protection (Rs.15,000 each)	45,000/-
4.	Loss of love and affection (Rs.15,000/- each to son and daughter of the deceased)	30,000/-
5.	Funeral expenses	25,000/-
	Total	20,88,680/-
	Less: Contributory negligence (20%)	4,17,736/-
	Compensation payable	16,70,944/-

The said sum of Rs.16,70,944/- was directed to be paid together with interest at 7.5% p.a. from the date of claim petition till the date of realisation.

8. Learned counsel for claimants submits that the Tribunal fixed the monthly income of the deceased at Rs.28,510/- based on Ex.P10 - pay certificate. Considering the fact that the deceased was aged 52 at the time of accident, the Tribunal had chosen to apply multiplier '11'. However, the Tribunal decided to apply split multiplier method and rendered a finding that as the deceased was aged 52 at the time of accident, the remaining period of service would be 6 years and for the remaining 5 years, he would get pension more or less half of the salary. Accordingly, while calculating compensation under the head 'loss of dependency', the Tribunal had taken the monthly salary of the deceased at Rs.28,510/- for six years and taken half of the salary i.e. Rs.14,255/- for the next five years. The approach adopted by the Tribunal is unsustainable. Hence, learned counsel prays this Court to re-calculate the compensation payable under the head 'loss of dependency'. Learned counsel further submits that the amount awarded under the other heads is also on the lower side.

9. Per contra, learned counsel for Insurance Company made his submissions supporting the award passed by the Tribunal.

10. This Court has considered the rival submissions. Perused the materials on record.



11. As rightly contended by learned counsel for claimants, the Tribunal, taking into consideration the age of the deceased at the time of accident i.e. 52, applied split multiplier method and accordingly, awarded compensation. The application of split multiplier method is unsustainable as per the principle laid down by the recent judgment of the Honourable Supreme Court. Therefore, the compensation awarded by the Tribunal under the head 'loss of dependency' is re-calculated as follows:

Monthly Income	:	Rs. 28,510/-	
Add: Future Prospects			
15% of Rs.28,510/-	:	Rs. 4,276/-	

		Rs. 32,786/-	
Less: Personal expenses			
1/3 of Rs.32,786/-	:	Rs. 10,927/-	

		Rs. 21,859/-	
Annual Income			
(21859 * 12)	:	Rs.2,62,308/-	
Multiplier	:	x 11	

Loss of dependency	:	Rs.28,85,388/-	

12. The Tribunal awarded a sum of Rs.50,000/- as compensation to the wife of the deceased/first appellant herein. As per the dictum laid down by the Apex Court in the case of National Insurance Company Limited, Vs. Pranay Sethi and others, reported in 2017 (16) SCC 680, wife of the deceased is entitled to get only Rs.40,000/- under the head "loss of consortium". Hence, the compensation of Rs.50,000/- awarded under such head is reduced to Rs.40,000/-.

13. Similarly, this Court finds that the Tribunal had awarded only Rs.30,000/- (Rs.15,000/- each) under the head "loss of love and affection" to appellants 2 and 3. As per the recent judgment of the Supreme Court reported in CDJ 2020 SC 601 = 2020 ACJ 2131 (SC) = 2020 (2) MWN (Civil) 827 (United India Insurance Company Limited and others Vs. Satinder Kaur @ Satwinder Kaur and others), appellants 2 and 3, being the children of the deceased, are entitled to Rs.40,000/- each towards parental consortium. Hence, the sum of Rs.30,000/- awarded under the head 'loss of love and affection' is enhanced to Rs.80,000/-.

14. Further, this Court finds that a sum of Rs.25,000/- has been awarded towards funeral expenses, which is on the higher side and hence, the same is reduced to Rs.15,000/-. The amount awarded under the head 'loss of care and protection' is hereby confirmed.



15. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Loss of dependency	19,38,680/-	28,85,388/-
2.	Loss of consortium	50,000/-	40,000/-
3.	Loss of care and protection (Rs.15,000 each)	45,000/-	45,000/-
4.	Loss of love and affection (Rs.15,000/- each to son and daughter of the deceased)	30,000/-	80,000/-
5.	Funeral expenses	25,000/-	15,000/-
	Total	20,88,680/-	30,65,388/-
	Less: Contributory negligence (20%)	4,17,736/-	6,13,077/-
	Compensation payable	16,70,944/-	24,52,311/-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.16,70,944/- awarded by the Tribunal is hereby enhanced to Rs.24,52,311/- [Rupees Twenty Four Lakhs Fifty Two Thousand Three Hundred and Eleven only]. The Insurance Company is directed to deposit the compensation of Rs.24,52,311/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. On such deposit being made by Insurance Company, appellants 1 to 3/claimants are permitted to withdraw their respective shares, as apportioned by Tribunal, along with accrued/proportionate interest and costs, less the amount, if any already withdrawn by them, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To

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1.The Special District Judge,
Motor Accident Claims Tribunal,
Villupuram.

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

+1cc to M/s.A.V.B.Krishnakanth, Advocate Sr.12878

C.M.A.No.821 of 2018

ssd[co]
srg 10/11/2021