IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2021

CORAM

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

C.M.A. No.3461 of 2019
and
CMP.No.20303 of 2019

United India Insurance Co. Ltd.,
Represented by its Manager,
77, Oriental Complex, A.A. Street,
Salem 636 001. .. Appellant

Versus

1. Kamala
2. Savitha
3. Indhuja
4. Subasri
5. Minor Kiruthika
   [Minor rep. by next friend and guardian
   and her mother Kamala]
6. Subbammal
7. C.Ponnurangan .. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30.10.2018 made in MCOP. No. 501 of 2016 on the file of the Motor Accident Claims Tribunal / I Additional District Judge, Tiruppur.

For appellant : Mr.S.Arun Kumar

For respondents
for R1 to R6 : Mr.R.Prabakar

for R7 : Set ex-parte before the Tribunal

J U D G M E N T

(The Judgment of the Court was delivered by R.Subbiah, J)

The appeal is heard through video conferencing.

2. This appeal has been filed by the Insurance Company as against the award dated 30.10.2018 made in MCOP.No. 501 of 2016 on the file of the Motor Accident Claims Tribunal / I Additional District Judge, Tiruppur questioning the quantum of compensation awarded by the Tribunal.

3. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

4. The claim petition was filed by the respondents 1 to 6 herein, who are the wife, daughters and mother of the deceased Palanisamy. It is the case of the claimants that on 17.11.2015 at about 10.20 a.m. the deceased was riding a Moped bearing Registration No.TN-33-AX-4932 on the left side of the Uthukuli to Tiruppur Road. While he was nearing Krishna Nagar Koolipalayam Nall Road, a Tata ACE vehicle bearing Registration No.TN-30-AH-5913, owned by the seventh respondent and insured with the appellant / Insurance Company, came from the opposite direction and dashed against the Moped. In the said accident, the deceased sustained grievous head and facial injuries. Immediately, he was admitted in a Private Hospital, where he took treatment from 17.11.2015 to 19.11.2015. Thereafter, he was shifted to KMCH, Coimbatore on 19.11.2015. In spite of the treatment given to him, he died on 30.11.2015.

5. The further case of the claimants is that at the time of the accident, the deceased was doing milk and butter business in the name of Subashree Dairy Farm and also doing manufacturing job work of Hosiery Goods to SRV Knit Garments, Tiruppur. Apart from that, he was doing agricultural operations. Thus, he was earning not less than Rs.40,000/- per month. Hence, the claimants made a claim for a sum of Rs.50,00,000/- as compensation.

6. The said claim petition was resisted by the Insurance Company by filing a counter denying the manner of accident projected by the claimants in the claim petition. They also denied the avocation and income mentioned in the claim petition. Thus, they sought for dismissal of the claim petition.

7. In order to prove the income on the side of the claimants, the first claimant / wife of the deceased examined

herself as PW1, along with two other witnesses as PW2 & PW3 and marked Exs.P1 to P16. On the side of the Insurance Company, neither any oral evidence was adduced nor documents were marked.

8. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent act of the driver-cum-owner of the Tata ACE vehicle with Registration No.TN-30-AH-5913 insured with the Insurance Company and awarded a total compensation of Rs.38,03,657/-. The breakup details of the amounts awarded by the Tribunal are as follows:

S.No.	Heads under which the amount is awarded by the Tribunal	Amount in Rs.
1.	Loss of Income	29,04,044
2.	Loss of Consortium	2,40,000
3.	Medical Expenses	6,39,613
4.	Funeral Expenses	15,000
5.	Transport Expenses	5,000
	Total	38,03,657

The actual total compensation comes to Rs.38,03,657/-. However, the Tribunal has erroneously arrived the amount at Rs.38,03,613/-.

9. Now, it is the submission of the learned counsel for the Insurance Company that, before the Tribunal, it is the case of the claimants that the deceased was doing milk and butter business in the name of Subashree Dairy Farm, manufacturing job work of Hosiery Goods to SRV Knit Garments, Tiruppur and also doing agricultural operations and earning Rs.40,000/- per month. But absolutely, no documentary evidence was produced by the claimants to show that the deceased was earning income through the above businesses. Even assuming that the above businesses were run by the deceased, the said businesses would be also available to the family after his demise. The claimants also did not produce any evidence to show that the family members are not carrying on the said businesses. But the Tribunal, without considering these aspects, fixed an exorbitant sum of Rs.30,000/- as monthly income of the deceased. Thereafter, by adding 10% towards future prospects, worked out the loss of dependency at Rs.33,000/. Then, by deducting 1/3 towards personal expenses, the total monthly income arrived by the Tribunal was Rs.22,000/-. Resultantly, the annual income was

arrived at Rs.2,64,000/- [22,000 x 12]. Further, by applying multiplier "11", the total "Loss of Income" was arrived at Rs.29,04,044/-. In the absence of any proof to show that the deceased was earning income from the above said business, the Tribunal ought not to have fixed a sum of Rs.30,000/- as monthly income, instead by fixing a sum of Rs.15,000/- as monthly income, the amount awarded by the Tribunal could be modified.

10. Per contra, the learned counsel appearing for the claimants made his submission supporting the award passed by the Tribunal.

11. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

12. At the outset, it is to be mentioned that the Insurance Company has filed this appeal only questioning the quantum of compensation awarded and therefore, we are not dealing with the other aspects of the award.

13. As pointed by the learned counsel for the appellant / Insurance Company, no documentary evidence was produced by the claimants to show that the deceased was earning income through the three businesses said to have been carried on by him. The only document marked by them is a certificate of payment made by S.R.V.Knit Garments to the deceased Palanisamy. In the absence of any document to prove the income of the deceased, the sum of Rs.30,000/- fixed by the Tribunal as monthly income of the deceased, is on the higher side. Under such circumstances, we are of the opinion that, by fixing a sum of Rs.19,000/- as monthly income of the deceased, calculation could be made under the head "Loss of Income" to arrive at a just and proper compensation. Hence, the sum of Rs.30,000/- fixed as the monthly income of the deceased by the Tribunal, is hereby reduced to Rs.19,000/-. As the age of the deceased was 52 years at the time of the accident, if 10% of the said amount is added towards future prospects, the amount comes to Rs.20,900/- [19,000 x 10%] and the annual income works out to Rs.2,50,800/- [20,900 x 12]. Considering the age of the deceased being 52, if multiplier "11" is applied, the amount comes to Rs.27,58,800/- [250800 x 11]. Since the claimants are 6 in number, 1/4 of the amount is to be deducted towards personal expenses of the deceased, then the amount works out to Rs.20,69,100/- [27,58,800 – 6,89,700], which is the "Loss of Income". Thus, the sum of Rs.29,04,044/- awarded by the Tribunal under the head "Loss of Income" is hereby reduced to Rs.20,69,100/-.

14. The sum of Rs.15,000/- awarded by the Tribunal under the head "Funeral Expenses" appears to be on the lower side, and as such, the same is hereby enhanced to Rs.20,000/-.

15. Considering the long duration of treatment underwent by the victim, the sum of Rs.5,000/- awarded under the head "Transport Expenses" is hereby enhanced to Rs.20,000/-.

16. The amounts awarded by the Tribunal under the other heads are just, fair and reasonable, and therefore, they are hereby confirmed.

17. The total compensation is re-determined as mentioned below:

S. No.	Heads under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Income	29,04,044	20,69,100
2	Loss of Consortium	2,40,000	2,40,000
3	Medical Expenses	6,39,613	6,39,613
4	Funeral Expenses	15,000	20,000
5	Transport Expenses	5,000	20,000
	Total	38,03,657	29,88,713 rounded of to (30,00,000)

18. Thus, the total compensation of Rs.38,03,657/- awarded by the Tribunal is hereby reduced to Rs.30,00,000/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The Insurance Company is directed to deposit the total compensation amount awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1,2,3,4 and 6 are permitted to withdraw their respective shares. Insofar as the minor claimant 5 is concerned, her share shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till she attains majority and the interest accrued thereon shall be withdrawn by the first claimant / mother once in three months. The apportionment of shares as fixed by the Tribunal to the claimants is hereby confirmed.

19. With the above observations and directions, the Civil Miscellaneous Petition is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

1. The I Additional District Judge,
   Tiruppur.

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

+1cc to Mr.S.Arunkumar, Advocate SR.No.4806
+1cc to Mr.R.Prabakar, Advocate SR.No.4792

C.M.A. No.3461 of 2019
and
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SR II(CO)
GN(07/12/2021)