IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19.04.2021

JUDGMENT DELIVERED ON : 30.04.2021

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. Nos.3695 and 3715 of 2019
and
CMP.Nos.21204 and 21304 of 2019

In C.M.A. No.3695 of 2019

United India Insurance Co. Ltd.,
Rep. by its Manager,
Divisional Office, No.1,
T.K.M. Complex, Katpadi Road, Vellore.
.. Appellant/2nd Respondent

Versus

1. Saroja

2. Vasuki

3. Balu

4. Manjula .. Respondent 1 to 4 / Claimants

5. G.Saravanan .. 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 02.11.2018 made in MCOP.No.579 of 2014 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge, Tirupattur.

For appellant : Mr.S.Arunkumar

For respondents
for RR1 to 4 : Mr.V.Kumaravelan

for R5 : Set ex-parte before the Tribunal

In C.M.A. No.3715 of 2019

United India Insurance Co. Ltd.,
Rep. by its Manager,
Divisional Office, No.1,
T.K.M. Complex, Katpadi Road,
Vellore. .. Appellant/2nd Respondent

Versus

1. Saroja .. 1st Respondent/Claimant

2. G.Saravanan .. 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 02.11.2018 made in MCOP.No.577 of 2014 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge, Tirupattur.

For appellant : Mr.S.Arunkumar

For respondents
for R1 : Mr.V.Kumaravelan

for R2 : Set ex-parte before the Tribunal

COMMON JUDGMENT

R.SUBBIAH, J

The appeals are heard through video conferencing.

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

3. These appeals have been filed as against the award dated 02.11.2018 in MCOP.Nos.577 and 579 of 2014 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Tirupattur. The first appellant/first claimant in both the petitions are the mother of the deceased Arumugam and the grandmother of the deceased Karthikeyan. The claimants 2 to 4 in MCOP.No.579 of 2014 are the brother and sisters of the deceased Arumugam. The first respondent in both the claim petitions is the owner of the Lorry bearing Registration No.TN 23 W 0355 and

the second respondent is the Insurer of the said Lorry.

4. The facts that are necessary to decide the issue in these appeals are as follows:

On 05.10.2014 at about 14.00 hours, the deceased Arumugam, who is the son of the first claimant, was riding a 2 wheeler bearing Registration No.TN 24 S 6180, having his wife and son Karthikeyan as pillion riders, on the extreme left side of Krishnagiri-Dharmapuri Main Road. When they came opposite to Nathakottai HP Petrol Bunk, a Lorry bearing Registration No. TN 23 W 0355, driven by its driver, came behind the two wheeler in a rash and negligent manner and dashed against the vehicle. Due to the impact, all the 3 persons sustained fatal injuries and died on the spot. Hence, the mother of the deceased Arumugam filed 2 claim petitions, viz., MCOP.No.577 of 2014 for the death of her grandson Karthikeyan for a sum of Rs.10,00,000/- and MCOP.No.579 of 2014 for the death of her son Arumugam for a sum of Rs.75,00,000/-.

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

6. A joint trial was conducted and in both the claim petitions, the first claimant examined herself as PW1, besides examining two other witnesses as PW2 & PW3 and marked 17 documents as Ex.P1 to P17. On the side of the Insurance Company, one Deepak Selvamani was examined as RW1 and Ex.R1 was marked.

7. After analysing the entire evidence, the Tribunal came to the conclusion that the accident is the result of rash and negligent driving of the Lorry bearing Registration No.TN 23 W 0355. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.53,55,143/-, as against the claim of Rs.75,00,000/- made in MCOP.No.579 of 2014 for the death of Arumugam, to the first claimant and dismissed the petition as against the claimants 2 to 4. Likewise, the Tribunal awarded a sum of Rs.10,27,000/- as against the claim of Rs.10,00,000/- made in MCOP.No.577 of 2014 for the death of minor Karthikeyan.

In CMA.No.3695 of 2019 (MCOP No.579 of 2014)

8. It is the submission of the learned counsel for the appellant / Insurance Company that the deceased Arumugam was working as a Pharmacist in the Government Health Centre, Kaveripattinam and earning a sum of Rs.45,000/- per month and

his gross salary was Rs.41,570/- per month. The deceased Arumugam was 48 years at the time of the accident and hence, the Tribunal, by adding 30% towards future prospects with his income, arrived a sum of Rs.54,041/-[41,570 + 12,471] as monthly income. Resultantly, the annual income of the deceased was arrived at Rs.6,48,492/- [54,041 x 12]. Thereafter, the Tribunal, by deducting a sum of Rs.40,226/- towards income tax, arrived at the annual loss of income at Rs.6,08,266/- [6,48,492/- - 40,226]. Since there were 3 dependents at the time of the accident, the Tribunal deducted 1/3 of the amount towards personal expenses of the deceased and arrived at the annual loss of contribution at Rs.4,05,511/- [6,08,266 - 2,02,755]. Considering the age of the deceased being 48 at the time of the accident, the Tribunal by applying multiplier "13", arrived at the "Loss of Dependency" at Rs.52,71,643/- [4,05,511 x 13].

9. Now, it is the grievance of the appellant / Insurance Company that the first claimant / mother of the deceased alone is the Class I legal heir as per the Hindu Law and the claim petition against the other claimants, was dismissed. In such circumstances, the Tribunal ought to have deducted 50% towards personal expenses instead of 1/3. Hence, by deducting 50% towards personal expenses, the "Loss of Dependency" may be re-calculated.

10. That apart, the learned counsel for the Insurance Company submitted that the amounts awarded by the Tribunal under the other heads also need appropriate reduction.

11. Per Contra, the learned counsel for the claimants made submissions supporting the award passed by the Tribunal.

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

13. As contended by the learned counsel for the appellant / Insurance Company, the Tribunal, while calculating the amount under the head "Loss of Dependency", ought to have deducted 50% of the amount towards personal expenses, since the first claimant / mother of the deceased is the lone Class I legal heir of the deceased Arumugam. But, the Tribunal has deducted only 1/3 of the amount towards personal expenses, which resulted in awarding exorbitant sum of Rs.52,71,643/- under the head "Loss of Dependency". Hence, by deducting 50% of the amount towards personal expenses, the amount under the head "Loss of Dependency" has to be re-calculated.

14. Thus, if Rs.41,570/- is taken as monthly income of the deceased, and 30% of the same is added towards future prospects,

the actual monthly income comes to Rs.54,041/-[41,570 + 12,471] and the annual income works out to Rs.6,48,492/- [54,041 x 12].

15. The income tax deduction for the assessment year 2014-15 is as follows:

Income		Percentage of tax		Amount of Tax
Upto 2,50,000		Nil		
2,50,000 to 5,00,000	-	10%	-	25,000
5,00,000 to 6,48,492	-	20%	-	29,698
		Total		54,698

16. Thus, the total tax payable is Rs.54,698/-. After deduction of income tax, the annual income comes to Rs.5,93,794/-. If 1/2 of the amount is deducted towards personal expenses of the deceased, the amount works out to Rs.2,96,897/-. Then, if multiplier "13" is applied, the "Loss of Dependency" comes to Rs.38,59,661/-. Thus, the sum of Rs.52,71,643/- awarded by the Tribunal under the head "Loss of Dependency" is reduced to a sum of Rs.38,59,661/-.

17. As per the oft-quoted judgment of the Hon'ble Supreme Court in National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680], a sum of Rs.40,000/- has to be awarded to each of the legal heirs of the deceased towards "Loss of Love and Affection". However, in this case a sum of Rs.50,000/- was awarded by the Tribunal towards "Loss of Love and Affection", and hence the same is hereby reduced to Rs.40,000/-.

18. Further, 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.35,000/-. Similarly, the sum of Rs.4,500/- awarded by the Tribunal towards "Transportation Expenses" is also on the lower side and hence, the same is enhanced to Rs.10,000/-.

19. The sum of Rs.15,000/- awarded by the Tribunal under the head "Loss of Estate" appears to be just and fair, and hence, the same is confirmed.

20. Thus, the total compensation payable to the claimant is re-calculated and tabulated below:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
1	Loss of Dependency	52,71,643	38,59,661
2	Loss of Love and Affection	50,000	40,000
3	Loss of Estate	15,000	15,000
4	Funeral Expenses	15,000	35,000
5.	Transportation Expenses	4,500	10,000
	Total Festival Advance	53,56,143 (-) 1,000 53,55,143	39,59,661 rounded off to 39,60,000

21. The total compensation of Rs.53,55,143/- awarded by the Tribunal is hereby reduced to Rs.39,60,000/-, which shall carry interest at 7.5% p.a. from the date of claim petition till the date of payment. The Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the entire amount in accordance with law before the Tribunal.

In CMA.No.3715 of 2019 (MCOP No.577 of 2014)

22. It is the submission of the learned counsel for the appellant that the deceased Karthikeyan is a minor, aged about 13 years and he was studying 8th Standard at the time of the accident. Hence, the Tribunal by fixing the notional income of the deceased at Rs.6,000/- per month and by adding 50% of the same towards future prospects, arrived at the monthly income of the deceased at Rs.9,000/- [6,000 + 3,000] and the annual income was arrived at Rs.1,08,000/- [9,000 x 12]. Since the deceased is a minor, 50% of his income was deducted towards his personal expenses and the annual contribution was arrived at Rs.54,000/-. Considering the age of the deceased, who was 13 years at the time of the accident, multiplier "18" was applied and the sum of Rs.9,72,000/- was awarded under the head "Pecuniary Loss".

23. It is the only grievance of the Insurance Company that since the deceased was aged about about 13 years at the time of the accident, the correct multiplier to be applied is "5",

however, the Tribunal has taken the multiplier "18" and awarded an exorbitant amount under the head "Pecuniary Loss".

24. Per Contra, the learned counsel for the claimant made submissions supporting the award passed by the Tribunal.

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

26. We find some force in the submissions of the learned counsel for the appellant/Insurance Company, and hence, considering the age of the deceased, multiplier "5" is applied for calculating "Pecuniary Loss". Thus, If a sum of Rs.6,000/- is taken as monthly income of the deceased and multiplier "5" is applied, the "Pecuniary Loss" comes to Rs.3,60,000/- [6,000 x 12 x 5]. Thus, the sum of Rs.9,72,000/- awarded by the Tribunal under the head "Pecuniary Loss" is reduced to a sum of Rs.3,60,000/-.

27. As per the oft-quoted judgment of the Hon'ble Supreme Court in National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680], a sum of Rs.40,000/- has to be awarded to each of the legal heirs of the deceased towards "Loss of Love and Affection". Hence, the sum of Rs.25,000/- awarded by the Tribunal under the head "Loss of Love and Affection" is set aside, instead a sum of Rs.40,000/- is awarded under such head.

28. Since no amount was awarded under the head "Loss of Estate", a sum of Rs.15,000/- is awarded under such head.

29. Further, the amounts awarded by the Tribunal under all the other heads are fair and reasonable, and hence, they are confirmed.

30. Thus, the total compensation payable to the claimant is re-calculated and tabulated below:

S. No.	Heads under which the amount was awarded by the Tribunal	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Pecuniary Loss	9,72,000	3,60,000
2.	Loss of Love and Affection	25,000	40,000
3.	Funeral Expenses	15,000	15,000
4.	Transportation Expenses	15,000	15,000

S. No.	Heads under which the amount was awarded by the Tribunal	Amount awarded by the Tribunal	Amount awarded by this Court
5.	Loss of Estate	15,000	15,000
	Total	10,27,000	4,45,000

31. Thus, the total compensation of Rs.10,27,000/- awarded by the Tribunal is hereby reduced to Rs.4,45,000/-, which shall carry interest at 7.5% p.a. from the date of claim petition till the date of payment. The Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount in accordance with law before the Tribunal.

32. With the above observations and directions, these Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, connected petitions are closed.

Sd/-
Assistant Registrar(P&A)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Special Subordinate Judge,
   The Motor Accident Claims Tribunal,
   Tirupattur.

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

+2ccs to Mr.S.Arunkumar, Advocate, S.R.No.23743, 26949

+2ccs to Mr.V.Kumaravelan, Advocate, S.R.No.26876, 26877

Judgment in
C.M.A. Nos.3695 and 3715 of 2019

SV(CO)
SU(10/11/2021)