IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.NO.4234 OF 2019
AND
C.M.P.NO.23948 OF 2019

The Manager,
Royal Sundaram Alliance
General Insurance Co. Ltd.,
No.1, Club House Road,
Anna Salai, Chennai.

... Appellant/2nd Respondent

.Vs.

1. K.Adam
S/o.Kondaiya

2. Joharana
W/o.K.Adam ... Respondents/Petitioners

3. V.Murugan ... 3rd Respondent/1st Respondent

PRAYER:-

Civil Miscellaneous Appeal (CMA) filed uner Section 173 of the Motor Vehicles Act, against the order and decree dated 03.01.2019 made in M.C.O.P.No.4802 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For appellant : Mr.G.Vasudevan

For respondents : Mrs.A.Subadra
For M/s.M.Malar
For RR-1 & 2

JUDGMENT

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

This Civil Miscellaneous Appeal (CMA) is filed by the Insurance Company as against the Award dated 03.01.2019 made in M.C.O.P.No.4802 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2. It is the case of the respondents 1 and 2/claimants that they are the father and mother of the deceased A.Suresh Babu, who was aged about 27 years at the time accident. On 29.07.2014 at about 12.30 p.m., when the deceased was riding his motor-cycle bearing Registration Mo.TN-11-H-7228 on the Perumbakkam Main Road, Pudhu Nagar, Medavakkam, from West to East, a water tank Lorry bearing Registration No.TN-11-Y-2301, which was coming from behind the said two-wheeler driven by the deceased, dashed on the rear side of the said two-wheeler, as a result of which, the deceased fell down and sustained injuries and died on the spot itself.

3. It is the further case of the claimants (respondents 1 and 2 herein) that at the time of accident, the deceased was working as Senior Analyst in WIPRO and earning a sum of Rs.43,000/- per month. Hence, the claimants have made a claim for Rs.1,01,00,000/- as compensation before the Tribunal.

4. The case of the claimants, was resisted by the Insurance Company by filing counter-statement before the Tribunal, denying the manner in which the accident had occurred, the relationship between the deceased and the claimants, age and avocation of the deceased, etc.

5. In order to prove the claim, on the side of claimants, the father of the deceased was examined as P.W.1, besides an eye witness to the occurrence, was examined as P.W.2 and the Senior Executive of the WIPRO company, was examined as P.W.3 and 16 documents were marked as Exs.P1 to P-16. On the side of Insurance Company, neither any oral evidence, nor any document was marked.

6. The Tribunal,on an analysis of the entire evidence available on record, came to the conclusion that the accident is the result of the rash and negligent driving of the said lorry owned by the third respondent herein, which was insured with the appellant-Insurance Company and passed an Award for a sum of Rs.48,50,000/- with interest @ 7.5% per annum from the date of claim petition till the date of realisation. The break-up details of the amounts awarded by the Tribunal are as follows:

Sl. No.	Heads under which the amounts are awarded by the Tribunal	Amounts awarded (in Rs.)
1	Loss of future dependency	47,60,000
2	Loss of Estate	15,000
3	Funeral expenses	15,000
4	Parental consortium and love and affection	60,000
	Total	48,50,000

7. Challenging the above compensation awarded by the Tribunal, the present appeal is filed by the Insurance Company.

8. Now, it is the submission of the learned counsel appearing for the appellant/Insurance Company that the deceased was a bachelor and the claim was made only by the parents of the deceased. In such a situation, the Tribunal, while calculating the compensation under the head "Loss of future dependency", ought to have deducted 50% towards the personal expenses, whereas the Tribunal deducted only 1/3 from the monthly income of the deceased towards personal expenses. Hence, the amount awarded under the head "Loss of future Dependency", has to be calculated afresh.

9. Per contra, the learned counsel appearing for the claimants (respondents 1 and 2 herein) supported the Award passed by the Tribunal. The learned counsel appearing for the claimants also stated that the monthly salary of the deceased was Rs.31,678/- as per Ex.P-15, which includes the advance bonus, additional allowance and attendance increment, etc. The claimants also produced Form-16 to show that the actual salary of the deceased was Rs.28,112/- per month, whereas, the Tribunal has taken only Rs.25,000/- as the monthly income of the deceased, and therefore, there is no need to reduce the amount by deducting 50% towards personal expenses, and prayed for dismissal of the appeal.

10. We find that the Tribunal, by fixing Rs.25,000/- as the monthly income and deducting 1/3 towards personal expenses, thereby, adopting "17" multiplier, had awarded a sum of Rs.47,60,000/- under the head "Loss of future Dependency". As contended by the learned counsel appearing for the appellant/Insurance Company, the Tribunal, while calculating the compensation under the head "loss of dependency", ought to have deducted 50% of the amount towards the personal expenses, since the deceased was a bachelor. In the instant case, the Tribunal had deducted only 1/3 towards the personal expenses. We are of the opinion that as per Form-16, the actual salary of the

deceased was Rs.28,112/-. Accordingly, if Rs.28,112/- is taken as the monthly income of the deceased, the annual loss of income works out to Rs.3,37,344/-. If 50% of the same is added towards future prospects, the total loss of income works out to Rs.5,06,016 (3,37,344 + 1/2 of 3,37,344). The income tax deductible as per Form-16 is Rs.26,203/-. If this amount is deducted, the balance amount being the actual loss of income works out to Rs.4,79,813/- (5,06,016 - 26,203). If 50% of this amount is deducted towards personal expenses, the balance amount works out to Rs.2,39,907/-. If multiplier 17 is applied to this case, the actual loss of dependency works out to Rs.40,78,419/- (2,39,907 x 17). Hence, the sum of Rs.47,60,000/- awarded by the Tribunal under the head "Loss of dependency" is hereby reduced to Rs.40,78,419/-.

11. Further, we find that the Tribunal had awarded only Rs.60,000/- towards parental consortium and loss of love and affection totally. As per the decision of the Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi, reported in 2017 (16) SCC 680, a sum of Rs.40,000/- to each of the claimants, has to be awarded, i.e. Rs.40,000 x 2 = Rs.80,000/-. Thus, while setting aside the award passed by the Tribunal under the common head of parental consortium and loss of love and affection at Rs.60,000/-, this Court awards the said amount of Rs.80,000/- under the head of Loss of Love and Affection.

12. It is seen from the Award of the Tribunal that a sum of Rs.15,000/- each, respectively, was awarded towards Loss of Estate and Funeral Expenses, which are reasonable and the same are hereby confirmed.

13. Further, the Tribunal had not awarded any amount towards transportation charges and this Court, taking into consideration the facts, awards a sum of Rs.15,000/- towards transportation charges.

14. Accordingly, the break-up details of the amounts awarded by this Court, in comparison with the Award passed by the Tribunal, are as follows:

Sl. No.	Heads under which the amounts are awarded	Amounts awarded by the Tribunal (in Rs.)	Amounts awarded by this Court (in Rs.)
1	Loss of Dependency	47,60,000	40,78,419
2	Loss of Estate	15,000	15,000
3	Funeral expenses	15,000	15,000

Sl. No.	Heads under which the amounts are awarded	Amounts awarded by the Tribunal (in Rs.)	Amounts awarded by this Court (in Rs.)
4	Loss of love and affection	60,000	80,000
5	Transportation charges	--	15,000
	Total	48,50,000	42,03,419 rounded off to Rs.42,03,500/-

Thus, the total compensation awarded by the Tribunal at Rs.48,50,000/- is hereby reduced to Rs.42,03,500/- with 7.5% interest.

15. In the result, the appeal is partly allowed, with a direction to the appellant/Insurance Company to pay a sum of Rs.42,03,500/- (Rupees forty two lakhs three thousand and five hundred only) with 7.5% interest per annum from the date of claim petition till the date of deposit. Such amount shall be deposited before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amounts, if any, already deposited by the Insurance Company. On such deposit, the claimants (respondents 1 and 2 herein) are permitted to withdraw the entire compensation with accrued interest, after adjusting the amounts if any already withdrawn by them. The apportionment of shares between the claimants, as adopted by the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal. C.M.P. is closed.

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   Chief Judge, Court of Small Causes,
   Chennai.

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

+1cc to M/s.M.Malar, Advocate, S.R.No.25427

C.M.A.NO.4234 OF 2019

PM(CO)
PBS/27/10/2021