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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 04.02.2021

Judgment Delivered on : 23.02.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A. No.1466 of 2020
and
C.M.P.No.10769 of 2020

The New India Assurance Company Limited,
Shevapet (722100),
No.17, Fort Main Road, 2nd Floor,
Salem, Tamil Nadu - 636 002.

.. Appellant

Vs.

1. V.Selvi, W/o Late J.Vasanth Kumar
2. J.Selvam Alice W/o S.Jayapal
3. S.Jayapal, S/o Swaminathapillai
4. F.Prince Leanders, S/o Francis Arokkiyaraj

(R4 Set Exparte in the Lower Court
Hence Notice is dispensed with)

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order and decree dated 08.08.2019 made in M.C.O.P.No.133 of 2018 on the file of the Motor Accident Claims Tribunal, Krishnagiri, Special District Court for Motor Accident Claims Cases, Krishnagiri.

For appellant : Mr.R.Sivakumar

For respondents : Mr.S.Viswanathan for
M/s.Dass and Viswa Associates
for RR-1 to 3

JUDGMENT

This appeal is heard through Video Conferencing.



2. This appeal is filed by the Insurance Company as against the Award and decree dated 08.08.2019 passed in M.C.O.P.No.133 of 2018 on the file of the Motor Accident Claims Tribunal, Krishnagiri, Special District Court for Motor Accident Claims Cases, Krishnagiri.

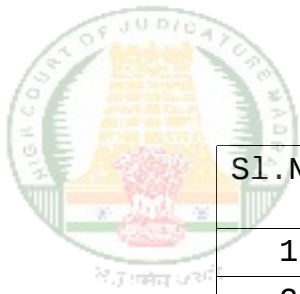
3. Brief facts which are necessary to decide this appeal are as follows:

The respondents 1 to 3 in this appeal are the claimants before the Tribunal, who are respectively the wife, mother and father of the deceased J.Vasantha Kumar. According to the claimants, on 20.10.2015, while the deceased was riding Yamaha Faser bearing Reg.No.TN-70-C-3745 along with his friend Babu as pillion rider on Hosur to Krishnagiri NH Road, a Bajaj Pulsar Bike bearing Registration No.TN-90-1204 was driven by its driver in a rash and negligent manner and dashed against the two-wheeler driven by the deceased. In the said accident, the deceased sustained fatal injuries and died on the spot itself. It is the case of the claimants that the accident had occurred due to rash and negligent driving of the driver of Bajaj Pulsar Bike, owned by the fourth respondent herein and insured with the appellant-Insurance Company. It is stated that the deceased was a Magician by avocation and was also doing fire activities in Jain Farms and Resorts Limited, Bangalore on all Saturdays and Sundays. He was earning not less than Rs.52,000/- per month from his profession which he had contributed to his family. Hence, the claimants have made a claim of Rs.50 lakhs as compensation as against the owner of the Bajaj Pulsar Bike and its insurer.

4. The appellant-Insurance Company resisted the claim petition by filing counter statement before the Tribunal denying the age, occupation and income and prayed for dismissal of the Claim Petition.

5. In order to prove the claim, on the side of the claimants, the wife of the deceased was examined as P.W.1, besides examining two other witnesses as P.Ws.2 and 3 and marked Exs.P-1 to P-23. On the side of the Insurance Company, no oral or documentary evidence was adduced.

6. The Tribunal, on an analysis of the entire evidence available on record, had come to the conclusion that the accident was the result of rash and negligent driving of the driver of the Bajaj Pulsar Bike and thus passed an Award for a total sum of Rs.34,39,880/- as against the claim of Rs.50 lakhs by the respondents 1 to 3/claimants. The award amount was directed to be paid by the appellant/Insurance Company. The break-up details of the amounts awarded by the Tribunal are as follows:



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Sl.No.	Head under which the amount was awarded by the Tribunal	Amount (in Rs.)
1	Loss of dependency	33,59,880
2	Loss of consortium	10,000
3	Loss of Estate	25,000
4	Funeral expenses	15,000
5	Love and affection	30,000
	Total	34,39,880

Challenging the above award of the Tribunal, the Insurance Company has preferred this appeal questioning the liability/quantum of compensation awarded by the Tribunal to pay the compensation to the claimants.

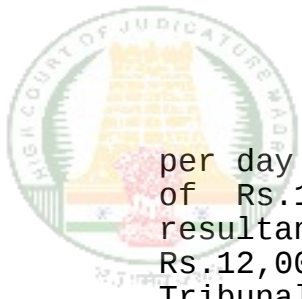
7. It is the contention of the learned counsel for the appellant/Insurance Company that the sum of Rs.33,59,880/- awarded by the Tribunal towards loss of dependency is extremely on the higher side. In this regard, the learned counsel for the appellant submitted that it is the case of the claimants before the Tribunal that the deceased was a Magician by profession and was also doing fire activities in Jain Farms and Resorts Limited, Bangalore, on all Saturdays and Sundays and was earning not less than Rs.52,000/- per month from his profession. In order to substantiate the income of the deceased, no tangible evidence was produced before the Tribunal, except the bald and vague statement of P.W.2 who was working as Project Manager in the said Jain Farms and Resorts Limited.

8. The learned counsel for the appellant/Insurance Company further submitted that the deceased, as a Magician by avocation, cannot have permanent employment. But ignoring this fact, the Tribunal had fixed Rs.20,000/- as the monthly income of the deceased, which is extremely on the higher side. Hence, by fixing a sum of Rs.10,000/- as the monthly income, the amount awarded by the Tribunal under the head "loss of dependency" may be reduced.

9. Per contra, the learned counsel appearing for the respondents 1 to 3/claimants made his submissions supporting the award of the Tribunal.

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

11. We find that P.W.2, who was working as Project Manager in the Company in which the deceased was working, was examined to speak about the income earned by the deceased. In his evidence, he had deposed that the deceased was paid Rs.3,000/-



per day as emoluments. However, the Tribunal had taken only a sum of Rs.1,500/- per day as the income of the deceased and resultantly, for 8 days in a month (Saturdays and Sundays), Rs.12,000/- (1,500 x 8) was fixed by the Tribunal. Further, the Tribunal added Rs.8,000/- towards future prospects and fixed a sum of Rs.20,000/- as the monthly income of the deceased. Considering the cost of living prevailing at the time of accident, we are of the opinion that Rs.20,000/- fixed by the Tribunal as the monthly income of the deceased is very reasonable. Absolutely, we do not find any error in the award of the Tribunal in fixing the said sum of Rs.20,000/- as the monthly income of the deceased to arrive at the loss of dependency at Rs.33,59,880/-. The calculation adopted by the Tribunal to arrive at the said sum of Rs.33,59,880/- is well within the principles laid down by the Apex Court in a catena of decisions.

12. Further, 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, each claimant had to be awarded a sum of Rs.40,000/- under the head "loss of love and affection". However, in the absence of any appeal having been filed by the claimants, we confirm the amount of Rs.30,000/- awarded by the Tribunal under the head "loss of love and affection."

13. As the amounts awarded by the Tribunal under the other heads are just and proper, the same are confirmed.

14. In the result, the present Civil Miscellaneous Appeal filed by the Insurance Company, is dismissed, confirming the award dated 08.08.2019 passed in M.C.O.P.No.133 of 2018 on the file of the Motor Accidents Claims Tribunal, Krishnagiri, Special District Court for Motor Accidents Claims Cases, Krishnagiri. The appellant/Insurance Company is directed to deposit the amount of Rs.34,39,880/- as awarded by the Tribunal with interest at 7.5% per annum from the date of claim petition till the date of payment, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any already deposited. On such deposit being made, the claimants are permitted to withdraw the award amount, along with proportionate/accrued interest, and costs, if any awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar



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To

1. The Special District Judge for Motor Accidents Claims Cases,
Motor Accident Claims Tribunal,
Krishnagiri.

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

+1cc to M/s.Dass & Viswa Associates, S.R.No.11447

+1cc to M/s.R.Sivakumar, Advocate, S.R.No.10637

C.M.A.No.1466 of 2020

RR(CO)
SB(02/09/2021)