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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1457 of 2020

and

C.M.P.No.10669 of 2020

(Through Video Conferencing)

The Branch Manager,
M/s.National Insurance Co., Ltd.,
Salem, Branch III,
Thanthai Periyar Market Complex,
Govindasamy Pillai Street,
Near Old Bus Stand, Salem,
Tamil nadu 636 001
C/o.The Divisional Manager,
National Insurance Co., Ltd.,
No.9, Infantry Road,
Near Alankar Theatre,
Vellore 636 002.

... Appellant/2nd Respondent

vs.

1.Bhagyamma

... 1st Respondent/Petitioner

2.S.Ramakrishnan

... 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal, (Additional District Judge) Hosur in M.C.O.P.No.555 of 2018 dated 04.02.2020.

For Appellant : Mr.S.Arunkumar

For R2 : No Appearance

For R1 : Mr.Pa.Sudesh Kumar

J U D G M E N T

The appellant -Insurance company is aggrieved by the impugned Judgment and decree dated 04.02.2020 passed by the Motor Accident Claims Tribunal (Additional District Judge) Hosur



in M.C.O.P.No.555 of 2018.

2. By the impugned Judgment and decree, the Tribunal has awarded a sum of Rs.18,98,239/- as compensation together with interest at 7.5% per annum, from the date of the claim petition, till the date of deposit, payable by the appellant Insurance Company to the 1st respondent/claimant for the death of Rajesh, who is the deceased son .

3. Aggrieved by the same, the appellant Insurance Company has filed this civil miscellaneous appeal.

4. The brief facts of the case is that the deceased Rajesh met with an accident on 15.12.2007 while he was travelling on the insured Ashok Leyland Bus bearing Reg.No.TN.29.E.3447 belonging to the 1st respondent insured with the 2nd respondent which was driven by its driver allegedly in a rash and negligent manner without following the rules of the road. The deceased Rajesh stood up from his seat while he was speaking on phone, the bus driver applied sudden brake, the deceased Rajesh fell down. Due to the said impact, the deceased Rajesh sustained grievous injuries and later died in the hospital.

5. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.18,98,239/- as compensation, to the 1st respondent-claimant who is the mother of the deceased Rajesh.

6. Assailing the impugned Judgment and Decree, the learned counsel for the appellant submits that the Tribunal erred in considering a sum of Rs.12,000/- as the notional income of the deceased. The 1st respondent has not produced any evidence to prove the avocation and income of the deceased. It is submitted that the accident was of the year 2007 and therefore submits that in the absence of any documentary evidence, the Tribunal should have considered the reasonable income of the deceased for computing the compensation.

7. The leaned counsel for the appellant - Insurance company submits that as per the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, the notional income of the deceased was considered as Rs.6,500/- p. m. for an accident of the year 2007. He further submits that the same may be adopted to this court.

8. The leaned counsel for the 1st respondent claimant submits that the impugned Judgment and decree is well reasoned and required no interference. He further submits that the deceased was also an agriculturist and engaged construction and



supply of materials and earning a sum of Rs.40,000/- p.m. and therefore the Tribunal has considered lesser income of Rs.12,000/- p.m. for awarding the compensation.

9. I have considered the arguments advanced by the learned counsel for the appellant Insurance Company and perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

10. The income of the deceased fixed by the Tribunal appears to be high in absene of any evidence. Considering the fact that the 1st respondent /claimant has not produced any evidence to substantiate the same, the income of the deceased is reduced to Rs.7,500/- from Rs.12,000/- following the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., 2014 (1) TN MAC 459.

11. In view of the above, the compensation awarded by the Tribunal is re-quantified under the various heads as follows:

Head and Calculation	Compensation re-quantified by this Court
Income of the deceased : Rs.7,500/- Add: Future prospectus at 40% : Rs.3,000/- ----- : Rs.10,500/- Less: Personal expenses at 1/2 : Rs. 5,250/- ----- : Rs. 5,250/- ----- Annual Income - (Rs.5,250x12):Rs.63,000/- Multiplier - 18 (63,000 x 18) : Rs.11,34,000/-	Rs.11,34,000/-
Loss of love and Affection	Rs. 40,000/-
Funeral Expenses	Rs. 15,000/-
Medical bills	Rs. 28,839/-
Transportation	Rs.10,000/-
Total	Rs.12,27,839/- rounded off to Rs.12,28,000/-



* Loss of future prospects : Rs.5,18,400/- awarded by the Tribunal as subsumed in Item No.1

12. The appellant - Insurance company is therefore directed to deposit the amount of compensation of Rs.12,28,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of such deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

13. On such deposit, the 1st respondent- claimant is permitted to withdraw the same together with interest and cost, less any amount already withdrawn, by filing suitable application before the Tribunal.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above observations. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

kkd

To:

The Motor Accident Claims Tribunal,
(Additional District Judge) Hosur.

Copy to:

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.25407

C.M.A.No.1457 of 2020
and
C.M.P.No.10669 of 2020

PM(CO)
SU(18/11/2021)