



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM  
and  
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.1936 of 2020  
and  
C.M.P.No.14305 of 2020

United India Insurance Co. Ltd.,  
W-122, III Avenue, Anna Nagar,  
Chennai - 40 (Branch Code 011 200) ...Appellant/ 2<sup>nd</sup> Respondent

Vs.

1.M.Sundari  
2.Seetha Mohan  
3.Sala Mohan  
4.M.Vignesh  
(Declared as major in M.P.No.3824/2014 by order dated  
06.11.2014) ..Respondent 1 to 4/ Claimants 1 to 4

5.M/s Bavani Transport,  
Rep. by its Partner,  
No.240, Vellore Road, Katpadi Taluk,  
Vellore District - 632 008. ...5<sup>th</sup> Respondent/1<sup>st</sup> Respondent

6.S.Karthikeyan ... 6<sup>th</sup> Respondent/ 3<sup>rd</sup> Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 03.12.2019 made in MCOP No.2902 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.K.S.V.Prasad (for R1 to R4)  
No appearance for R5 and R6

JUDGMENT

[Judgment of the Court was delivered by V.SIVAGNANAM, J.]

This appeal arises out of the order passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in MCOP No.2902 of 2013 dated 03.12.2019.



the claimants is that on 30.06.2012 at 23.15 hours, the deceased Mohan was riding a motorcycle bearing Reg.No.TN-01-AM-7278 from Ambattur Estate Wavin Road from east to west, near Tata Motors showroom. At that time, a Tipper Lorry bearing Reg.No.TN-23-BB-3976 driven by its driver in a rash and negligent manner, dashed against the deceased vehicle. In the impact, the deceased was thrown out from his motorcycle on the road and the wheels of the Tipper lorry crushed his skull, his body and sustained fatal injuries and died on the spot. The first claimant is the wife of the deceased and the claimants 2 to 4 are their daughters and son. Alleging that the accident had taken place due to the rash and negligent driving of the Tipper Lorry, the claimants laid a petition, claiming compensation of Rs.42,57,113/-.

3.Resisting the claim, the appellant Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation. It was also contended that the claim is excessive.

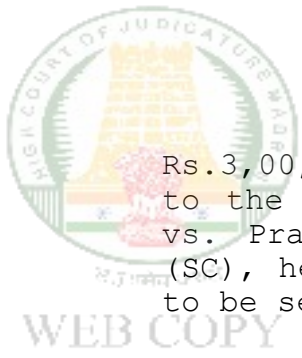
4.To substantiate the case, on the side of the claimants, P.Ws.1 to 4 were examined and Exs.P.1 to Ex.P.27 were marked. On the side of the appellant/Insurance Company, R.W.1 was examined and Exs.R.1 to R3 were marked.

5.The Tribunal, after considering the oral and documentary evidence held that the driver of the Tipper lorry was responsible for the accident and awarded compensation of Rs.41,67,375/- to the claimants under the following heads:-

| Heads                      | Rs.         |
|----------------------------|-------------|
| Loss of Dependency         | 36,12,375/- |
| Loss of Consortium         | 40,000/-    |
| Loss of Love and Affection | 2,00,000/-  |
| Parental consortium        | 3,00,000/-  |
| Funeral Expenses           | 15,000/-    |
| Total                      | 41,67,375/- |
| Rounded off                | 41,67,400/- |

6.Assailing the award, the appellant Insurance Company has filed the present appeal. These appeals have been filed only challenging the quantum, hence, the other issues need not be dealt with herein.

7.The learned counsel for the appellant Insurance Company has contended that the award is on the higher side by wrongly fixing excessive monthly income of Rs.30,875/- and it requires reduction. He would further contend that the Tribunal erred in awarding Rs.2,00,000/- towards love and affection and



Rs.3,00,000/- towards parental consortium, which is contrary to the Judgment rendered in National Insurance Company Ltd., vs. Pranay Sethi and others reported in 2017(2) TNMAC 609 (SC), hence, the amount awarded under the above said heads are to be set aside.

8.Per contra, the learned counsel appearing for the respondents/claimants that the impugned Judgment and Decree awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

9.This Court carefully considered the submissions of the learned counsel for the appellant Insurance Company and the learned counsel appearing for the respondents/claimants and perused the materials available on record.

10.Though the learned counsel appearing for the appellant has contended that the amount awarded under the head of loss of dependency is on the higher side, on perusal of the records, we find that the Tribunal, on proper appreciation of evidence of P.W.1, the first claimant and Ex.P.6 and Ex.P.26 Salary Certificates, has fixed the monthly income and multiplier by following the decision in the case of Sarala Verma and others vs. Delhi Transport Corporation and another reported in 2009 TN MAC 1 and National Insurance Company Ltd., vs. Pranay Sethi and others (cited supra). Therefore, we are of the view that the amount awarded under the head of loss of dependency is reasonable and hence, it is confirmed. Since the children are majors, the amount awarded under the head of loss of love and affection and parental consortium are set aside. As per the decision of the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), the claimants are entitled to Rs.40,000/- each towards consortium, which comes to Rs.1,60,000/-. Rs.15,000/- is awarded for loss of estate. Rs.15,000/- awarded for funeral expenses is unaltered. Hence, the compensation awarded by the Tribunal to the appellants is re-quantified as follows:-

| Heads                        | Rs.         |
|------------------------------|-------------|
| Loss of dependency           | 36,12,375/- |
| Loss of consortium 40000 x 4 | 1,60,000/-  |
| Funeral expenses             | 15,000/-    |
| Loss of Estate               | 15,000/-    |
| Total                        | 38,02,375/- |
| Rounded Off                  | 38,02,400/- |

11.In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The appellant Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any,



within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the award amount, equally, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

skn

To

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

Copy To:

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

+2cc to Mr.K.S.V.Prasad, Advocate, S.R.No.49586

C.M.A.No.1936 of 2020  
and

C.M.P.No.14305 of 2020

NMI (CO)  
SB(22/11/2021)