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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA. No.338 of 2013 AND
M.P.No.1 of 2013

ICICI Lombard General Insurance Co. Ltd.,
Coimbatore.

... Appellant/2nd Respondent

..VS..

1.Subramanian

2.Singaravel

3.Raja ...Respondents 1 to 3/Petitioners

4.Kannan ... 4th Respondent/1st Respondent
(R-4 Set exparte)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 07.12.2011 made in M.A.C.T.O.P.No.299 of 2007 on the file of Principal District Judge (Motor Accidents Claims Tribunal), Perambalur.

For Appellant : Ms.R.Sree Vidhya

For Respondent No.1 & 2 : Notice served

Respondent No.3 & 4 : Notice unserved

JUDGMENT

Dissatisfied with the judgment and decree, dated 07.12.2011, passed by the tribunal awarding compensation of Rs.3,10,000/- along with interest at the rate of 7.5% per annum, the Appellant/ Insurance Company is before this Court to set aside the judgment and decree by the tribunal.

2. It is the case of the claimants that on 07.12.2006 at about 03.15 p.m, the deceased - Ponnusamy was walking extreme left side of the road in the mud portion on Thittakudi to Ariyalur Main Road, near water tank at Vayalapadi from north to south direction. A Tipper lorry bearing no. TN-30-L-4636, which came from north to south, driven by its driver in



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a rash and negligent manner hit the deceased from backside. Due to the accident, the deceased sustained multiple injuries and immediately taken to Government Hospital at Perambalur and admitted as an inpatient. In spite of effective treatment the deceased died on 26.12.2006. The claimants being legal heirs of the deceased filed a claim petition before the tribunal, claiming compensation of Rs.4,00,000/- for the death of Ponnusamy.

3. Before the Tribunal, witnesses P.W.1 & P.W.2 were examined and Exhibits P1 to P6 were marked on the side of the claimants whereas No witnesses were examined and No documents were marked on the side of the respondents.

4. After analyzing both oral and documentary evidences, the Tribunal has held that due to rash and negligent driving on the part of the driver of the Tipper Lorry bearing no. TN-30-L-4658, the accident had occurred and being insurer of the said vehicle, the Insurance company is liable to pay compensation to the claimants. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Amount in Rs.
Loss of Income (Rs.4,500/- x 12 - 1/3rd) x 8 Multiplier	2,88,000/-
Love & Affection (Rs.5,000/- x 3)	15,000/-
Transportation	5,000/-
Funeral Expenses	2,000/-
Tot al	3,10,000/-

5. The learned counsel for the appellant/insurance company submitted that the tribunal erred in awarding compensation by adopting multiplier method by fixing monthly income at Rs.3000/-. The learned counsel further submitted that the tribunal failed to note that the deceased was more than 60 years and there is no proof for his earning and job. The compensation awarded by the tribunal under heads are also without any basis and the same is liable to be set aside.

6. Heard the learned counsel appearing for the appellant/ Insurance Company and perused the materials available on record. Though notice served on the appellants 1 & 2, none appeared on their behalf.

7. The main contention raised by the learned counsel for the appellant/insurance company is with regard to the multiplier method adopted by the tribunal for calculating loss



8. It is seen from the award, though PW1 in his chief examination stated that the deceased earned Rs.200/-per day, the tribunal has fixed the notional income at Rs.4500/- and deducted 1/3 towards personal and living expenses, which comes to Rs.3000/-. As per Ex.P2/Postmortem certificate, the tribunal fixed the age of the deceased as 55, by applying multiplier 8, calculated the loss of income at Rs.2,88,000/- (4500x1/3 x 12x 8). According to this Court, the said compensation awarded by the tribunal is reasonable. The tribunal has also awarded a sum of Rs.5,000/- to the 1st claimant/1st respondent herein towards love and affection, a sum of Rs.5,000/- towards transport expenses and Rs.2000/- towards Funeral expenses.

9. Taking into consideration the undisputed fact that the accident had occurred only due to the said accident and the same was not disputed by the appellant/insurance company and also taking note of the fact that the age of the deceased was 55 years at the time of the accident, this Court is of the view that the compensation awarded by the tribunal at Rs.3,10,000/- as against the claim of Rs.4,00,000/- is reasonable and does not require modification.

10. The appellant/Insurance Company shall deposit the entire compensation amount along with interest as awarded by the tribunal, less the amount already deposited, if any, within a period of six weeks, from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3 /claimants are permitted to withdraw the compensation, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is dismissed to the aforesaid extent. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Principal District Judge
(Motor Accidents Claims Tribunal),
Perambalur.



2. The Section Officer,
V.R.Section, Madras High Court,
Chennai-104.

+1cc to Mrs.R.Sree Vidhya, Advocate SR.No.17110

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PVS (CO)
HS (13/09/2021)