



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 2444 of 2021
and CMP No.13913 of 2021

United India Insurance Co.Ltd.,
Motor Third Party Claims Hub,
No.134, Silingi Buildings,
4th Floor, Greaves Road, Chennai -6 ...Appellant/2nd Respondent
Vs

1.Jayanti Nahak
2.Prahalad Nahak ..1st & 2nd Respondents/1st & 2nd Petitioners
3.S.Kannabiran ..3rd Respondent/1st Respondent
4.A. Ravikumar ...4th Respondent/3rd Respondent

Prayer: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 13.11.2019 in M.C.O.P.No.2557 of 2016 on the file of Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.P.Sankaranarayanan
For R.1 & R.2 : Mr.Amar D.Pandiya
For R.3 & R.4 : Unclaimed

JUDGMENT

This appeal has been filed by the appellant Insurance Company, challenging the award dated 13.11.2019, passed by the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai in MCOP No.2557 of 2016.

2. The appellant Insurance Company has challenged only the quantum of compensation awarded by the Tribunal under the impugned award. According to them, the compensation awarded by the Tribunal is excessive. They have not questioned their liability to pay compensation. Therefore, the findings given by the Tribunal as regards the Insurance Company's liability has become final.



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3. The Tribunal has awarded a total compensation of Rs.25,10,000/- (Rupees Twenty Five Lakhs Ten thousand only) to the respondents/claimants as detailed hereunder:-

Heads	Amount awarded by the Tribunal (Rs.)
Loss of Dependency	22,95,000/-
Loss of Love and Affection	1,00,000/-
Filial Consortium	1,00,000/-
Funeral Expenses	15,000/-
Total Compensation	25,10,000/-

4. The deceased Pramod Kumar Nahak was aged 26 years and was working as a Store Assistant in a private concern viz., M/s U.R.C Construction Pvt Ltd. He died on 09.10.2015, as a result of an accident caused by a vehicle, insured with the appellant Insurance Company. The cause of the accident has not been disputed by the appellant Insurance Company.

5. In the claim petition, the respondents/claimants, who are the dependants of the deceased have pleaded that the deceased was earning a sum of Rs.15,000/-per month in M/s U.R.C Construction Pvt Ltd, Chennai.

6. The Tribunal has accepted the statement of the respondents/claimants and accordingly, fixed the notional monthly income of the deceased at Rs.15,000/- (Rupees Fifteen thousand only). No documentary evidence was produced by the respondents/claimants before the Tribunal to prove that the deceased was earning a sum of Rs.15,000/- per month. This Court is of the considered view that even though no contra evidence was produced by the appellant Insurance Company to disprove the statement of the respondents/claimants that the deceased was earning a sum of Rs.15,000/- at the time of the accident, the Tribunal ought to have assessed the notional monthly income of the deceased based on the evidence available on record as well as the year of the accident.

7. Since no documentary evidence was produced by the respondents/claimants before the Tribunal to prove the monthly income of the deceased, this Court, after giving due consideration to the avocation of the deceased, reduces the notional monthly income of the deceased to Rs.13,500/- (Rupees Thirteen thousand five hundred only) instead of Rs.15,000/-, erroneously fixed by the Tribunal.



8. As seen from the evidence available on record, the respondents/claimants have also not examined the employer of the deceased and since the Tribunal has erroneously accepted the statement of the respondents/claimants that the deceased was earning a sum of Rs.15,000/- per month at the time of the accident, this Court reduces the monthly income of the deceased to Rs.13,500/- (Rupees Thirteen thousand five hundred only).

9. The Tribunal, under the impugned award, has erroneously awarded 50% towards loss of future prospects to the respondents/claimants, which they are not legally entitled to. Since the deceased was working in a private concern and was aged 26 years, the Tribunal ought to have awarded only 40% towards loss of future prospects. Accordingly, this Court modifies the same to 40% instead of 50% erroneously fixed by the Tribunal.

10. The Tribunal has rightly adopted the correct multiplier of "17" since the deceased was aged at 26 years at the time of accident, which is confirmed by this Court.

11. Since the deceased was bachelor, the Tribunal has rightly deducted 50% towards his personal expenses which is confirmed by this Court. Therefore, this Court reassess the pecuniary loss to Rs.19,27,800/- (Rs.18,900/- (13,500 + 5400 (40%)) x 12 x 17) instead of Rs.22,95,000/- erroneously fixed by the Tribunal.

12. The Tribunal has erroneously awarded a higher compensation of Rs.1,00,000/- (Rupees One Lakh only) towards loss of love and affection. As per the settled law, the claimants, who are the parents of the deceased are entitled only Rs.80,000/- (Rupees Eighty thousand only) together. Accordingly, this Court reduces the compensation towards loss of love and affection to Rs.80,000/- (Rupees Eighty thousand only). instead of Rs.1,00,000/- (Rupees one lakh only), erroneously fixed by the Tribunal.

13. The Tribunal has erroneously awarded a compensation of Rs.1,00,000/- (Rupees One Lakh only) towards loss of Consortium, which the respondents/ claimants are not legally entitled to, as they have already been awarded compensation towards loss of love and affection. Therefore, the compensation of Rs.1,00,000/- awarded by the Tribunal towards Consortium is hereby set aside.

14. The Tribunal has awarded a sum of Rs.15,000/- (Rupees Fifteen thousand only) towards funeral expenses which is a just compensation and it is confirmed by this Court.



15. The Tribunal has erroneously failed to award any compensation towards loss of estate, to which, the claimants are legally entitled to in accordance with settled law. Therefore, this Court awards a sum of Rs.15,000/- (Rupees Fifteen thousand only) to the respondents/claimants towards loss of estate.

16. For the foregoing reasons, the compensation awarded by the Tribunal is modified as under by reducing from Rs.25,10,000/- (Rupees Twenty five lakhs ten thousand only) to Rs.20,37,800/- (Rupees Twenty lakhs thirty seven thousand eight hundred only).

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Loss of Dependency	22,95,000/-	19,27,800/-	Reduced
Loss of Love and Affection	1,00,000/-	80,000/-	Reduced
Filial Consortium	1,00,000/-	-	Set aside
Funeral Expenses	15,000/-	15,000/-	Confirmed
Loss of Estate	-	15,000/-	Granted
Total Compensation	25,10,000/-	20,37,800/-	Reduced

17. Accordingly, the civil miscellaneous appeal is partly allowed by reducing the award amount from Rs.25,10,000/- to Rs.20,37,800/- (Twenty Lakhs Thirty Seven thousand eight hundred only).

18. The appellant Insurance Company is directed to deposit the compensation amount of Rs.20,37,800/- (Twenty Lakhs Thirty Seven thousand eight hundred only) awarded by this Court, after deducting the amount already deposited if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, to the credit of M.C.O.P.No.2557 of 2016 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.6565 of 2014 to the bank account of the claimant through RTGS within a period of one week thereafter.



No costs. Consequently, connected miscellaneous petition is closed.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sr

To

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

Copy to
The Section Officer,
V.R.Section, High Court,
Madras - 104.

+1 CC to Mr. Amar D. Pandiya, Advocate sr 52888
+1 CC to Mr.P.Sankaranarayanan, Advocate sr 52951.

C.M.A.No. 2444 of 2021

MG(CO)
SP(19/11/2021)