



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA.No.3737 of 2008
and M.P.No. 1 of 2008

The Divisional Manager,
United India Insurance Co.Ltd.,
Ranipet, Vellore District

...Appellant/2nd Respondent

..vs..

1. K.Govindaraj
S/o. Kannuswamy Padaiyatchi

2. Baby Ammal
W/o. K.Govindaraj

3. P.Kanagadurka
W/o. S.N.Banarji

...Respondents/Petitioners/1st Respondent

(R3 was set exparte before the Tribunal)

Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.03.2008 in M.C.O.P.No. 458 of 2002 on the file of the Motor Vehicles Accident Claims Tribunal, Cheyyar at Thiruvannamalai District.

For Appellant : Mr.D.Bhaskaran
For Respondents: No Appearance

JUDGMENT

The matter is heard through "Physical hearing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 26.03.2008 in M.C.O.P.No. 458 of 2002 on the file of the Motor Vehicles Accident Claims Tribunal, Cheyyar.

2.The appellant is the 2nd respondent before the tribunal . The respondents 1 & 2 have filed the said claim petition, claiming a sum of Rs.16,00,000/- as compensation for the death occurred in the road accident that took place on 22.09.2002.



3. It is the case of the respondents 1 & 2/claimants that on 22.09.2002 the deceased G.Senthilkumar was driving his Maruthi Van bearing Reg.No. TN03-J-6867, while he was proceeding from Chennai to Madurai at Konerikuppam, at the time a lorry bearing Reg.No. AP31-T-7767 driven by its driver in a rash and negligent manner and dashed against the Maruthi Van. Due to the impact the Maruthi Van was totally damaged and the driver of Maruthi Van G.Senthil Kumar and another person namely T.Prabha died on the spot. Other persons travelled in the Maruthi Van sustained grievous injuries. The said accident had happened only due to the rash and negligent driving on the part of the driver of the lorry bearing Reg.No. AP31-T-7767. The parent of the deceased filed claim petition claiming a sum of Rs.16,00,000/- as compensation for the death of their son. The tribunal upon analysing the oral and documentary evidence, has concluded that the accident had occurred only due to the rash and negligence on the part of the driver of the lorry bearing Reg.No. AP31-T-7767 and directed the Appellant/Insurance Company to pay a sum of Rs.5,37,000/- as compensation to the claimants. The compensation awarded by the tribunal under various heads is as follows;

Heads	Compensation awarded by the tribunal Rs.
Loss of income	5,12,000/-
Loss of Love and Affection	20,000/-
Funeral Expenses	5,000/-
Total	5,37,000/-

5. The learned counsel for the appellant/Insurance Company has submitted that the deceased was unmarried and aged about 29 years at the time of accident and as such, the mother aged above 50 years and father aged above 55 years. Without following the decision of the Hon'ble Supreme Court, the tribunal has wrongly adopted 16 years multiplier. Therefore, the award of the tribunal is liable to be set aside.

6. Heard the learned counsel for the appellant/Insurance Company and perused the document available on record.

7. Before the Tribunal, on the side of the claimants, the 1st claimant was examined as P.W.1 and marked eleven documents Ex.P1 to P11. On side of the respondents, no witnesses and documents were marked.



8. The sole ground raised by the learned counsel for appellant/Insurance company is that the tribunal has not followed the principles laid down by the Hon'ble Supreme Court and ought to have deducted 50% of the total income towards personal and living expenses, but the tribunal has deducted only 1/3 of the total income. It is seen from the award that the tribunal has not added future prospects, therefore as per the decision of the Hon'ble Supreme Court in Pranay Sethy's Case 40% of the total income has to be added towards future prospects. Since the age, monthly income of the deceased was not disputed by the parties, this Court by applying the ratio laid down by the Hon'ble Supreme Court, calculated the loss of income of the deceased, which comes to Rs.5,37,600/- ($4000 \times 1/2 + 40\% \times 12 \times 16$). The said amount is higher than the compensation awarded by the Tribunal. The difference amount of compensation under the said head comes to Rs. 25,600/-.

9. In view of the fact the appellant/Insurance has not disputed the total compensation awarded by the tribunal under various heads and notice was not served on the respondents 1&2/claimants, this Court feels that the said difference amount will not give much raise in the total compensation awarded by the tribunal. Accordingly, this Court confirms the compensation awarded by the tribunal.

10. In the result, the Civil Miscellaneous Appeal is dismissed. The judgment and decree dated 26.03.2008 passed by the tribunal in M.C.O.P.No 458 of 2002 is confirmed.

11. The appellant /Insurance Company is directed to deposit the entire compensation amount along with interest as awarded by the tribunal, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 & 2/claimants are permitted to withdraw the compensation as modified by this Court along interest and costs as per the apportionment fixed by the tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar



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To

1. The Motor Vehicles Accident Claims Tribunal,
Cheyyar.

2. The Section Officer,
VR Section,
High Court, Madras.

+1 CC to Mr.D.Bhaskaran, Advocate sr 12445.

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AD(CO)
SP(24/11/2021)