IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.04.2021

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A. No.3907 of 2019
and
CMP.No.22250 of 2019

M/s.United India Insurance Co. Ltd.,
Rep. by its Divisional Office,
Muthaiha Complex, 1170,
Mettur Road, Erode 638 011. .. Appellant

Versus

1. Sree Eswari
2. S.R.M. Rajagopalan
3. S.R.M. Sree Prakash
4. Saraswathi
5. S.K.Ramasamy
6. K.Vinoth

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 19.12.2018 made in MCOP.No.449 of 2017 on the file of the Motor Accident Claims Tribunal / Special District Jude (FAC), Erode.

For appellant : Mr.S.Arunkumar

For respondents
for RR1 to 5 : Mr.K.Varadha Kamaraj
for R6 : Set ex-parte before the Tribunal

J U D G M E N T
(Judgment of the Court was delivered by R.Subbiah, J)

The appeal is heard through video conferencing.

2. Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal / Special District Jude, Erode in MCOP. No. 449 of 2017 dated 19.12.2018, the present appeal has been filed by the Insurance Company.

3. The respondents 1 to 5/claimants are the wife, sons and parents of the deceased Mohanranjan. It is the case of the claimants before the Tribunal that on 26.12.2016 at about 3.00 p.m., while the deceased Mohanranjan was riding a motor cycle bearing Registration No.TN 34 H 2334 on Kandasamy Street, near Style Walk in Erode, a Lorry bearing Reg.No.TN 41 Q 2226, belonging to the sixth respondent and insured with the appellant/Insurance Company, came from the opposite direction being driven by its driver in a rash and negligent manner and dashed against the vehicle driven by the deceased. Due to the impact, the deceased fell down and the Lorry ran over the hip of the deceased. Immediately, the deceased was taken to the Government Hospital, Erode, but, he was declared brought dead.

4. It is the further case of the respondents 1 to 5/claimants before the Tribunal that the deceased was running a Textile Business, doing agriculture on his own land and also working as an operator in Cinema Theater and earning a sum of Rs.50,000/- per month. Due to the sudden demise of the deceased, the claimants not only lost the income of the deceased, but also his love and affection and guidance. Hence, they made a claim for a sum of Rs.60,00,000/- as compensation.

5. The claim petition was resisted by the appellant/Insurance Company by filing a counter statement denying the manner of accident as projected by the claimants in the claim petition. They also denied the avocation and income mentioned in the claim petition. Thus, they sought for dismissal of the claim petition.

6. In order to prove the claim, on the side of the claimants, the first claimant/wife of the deceased examined herself as PW1, besides examining one Karthik Janardhanan, an eyewitness to the accident as PW2 and one Rajagopalan as PW3 and exhibits Exs.P1 to P23 were marked. On the side of the Insurance Company, neither any oral evidence was adduced nor document was marked.

7. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the Lorry bearing Reg.No.TN 41 Q 2226. By coming to such conclusion, the Tribunal, passed an award for a sum of Rs.25,85,000/- as compensation and directed the Insurance Company to pay the above compensation. The break-up details of the amount awarded by the Tribunal under various heads are as follows:

S.No.	Heads under which amounts are awarded	Amounts in Rs.
1.	Compensation fixed as Loss of Income to the petitioners	24,20,000
2.	Compensation towards loss of Love and Affection for Petitioners 2 to 5	1,00,000
3.	Compensation towards funeral expenses	15,000
4.	Compensation towards Consortium	40,000
5.	Compensation towards Transportation	10,000
	Total Compensation	25,85,000

8. It is the contention of the learned counsel for the appellant/Insurance Company that on a perusal of Exs.P22 & P23, it could be seen that along with the deceased, his 2 sons/respondents 2 and 3 were employed as partners in the Textile Business and the profit was shared between them in the ratio of 50% to the deceased and the balance 50% to his sons. The profit earned by them for the financial years 2015-2016 and 2016-2017 are Rs.1,294.50/- and Rs.3,471.50/- respectively. In such circumstances, the Tribunal ought to have fixed the notional income of the deceased at Rs.10,000/-. Instead of doing so, an exorbitant sum of Rs.25,000/- was fixed as monthly income of the deceased, which ultimately resulted in awarding an excessive sum of Rs.24,20,000/- under the head "Loss of Income". Thus, he sought to fix Rs.10,000/- as the notional income per month for the deceased and re-calculate the amount under the head "Loss of Income".

9. Countering the submissions, the learned counsel appearing for the claimants submitted that, apart from the Textile Business, the deceased was also doing agriculture on his own land and earning income. He was also working as an operator in Cinema Theater and receiving salary. Therefore, it is not as if the deceased was earning income only from the Textile Business. In such circumstances, the sum of Rs.25,000/- fixed by the Tribunal as monthly Income, cannot be found fault with. Thus, he sought to confirm the order passed by the Tribunal.

10. This Court considered the submissions made on either side and perused the materials available on record.

11. Since the present appeal has been filed by the Insurance Company questioning the quantum of compensation awarded by the

Tribunal, we are not traversing on the other aspects of the award passed by the Tribunal.

12. On a perusal of the records, it is seen that the claimants have not produced any documents to prove that the deceased was working as an Operator in Cinema Theatre. As contended by the learned counsel for the appellant/Insurance Company, on a perusal of Exs.22 and 23, it is seen that the profit from the Textile Business for the financial years 2015-16 and 2016-17 are only Rs.1,294.50 and Rs.3,471.50 respectively. When the profit was very meagre from the Textile Business and that too, when the profit has to be shared between the deceased and his sons at 50%, fixation of Rs.25,000/- as monthly income of the deceased is not proper. However, we find that the claimants have marked Ex.P9 (series), which would show that the deceased was owning land and making income through agriculture. Hence, it is appropriate to fix a sum of Rs.18,000/- as monthly income of the deceased, which would be just and fair.

13. Thus, if a sum of Rs.18,000/- is fixed as monthly income of the deceased and 10% of the same is added towards future prospects, monthly loss of income comes to Rs.19,800/- [18,000 + 1,800]. Considering the number of dependents of the deceased is 5, 1/4 of the amount is to be deducted towards personal expenses of the deceased. If so, it comes to Rs.14,850/- [19,800 - 4,950]. Resultantly, the annual loss of income comes to Rs.1,78,200/- [14,850 x 12]. Considering the age of deceased being 54 years at the time of the accident, the correct multiplier to be applied is "11". If so applied, the amount comes to Rs.19,60,200/- [1,78,200 x 12]. Thus, the sum of Rs.24,20,000/- awarded by the Tribunal under the head "Loss of Income" is hereby reduced to Rs.19,60,200/-.

14. Further, the Tribunal has awarded a total sum of Rs.1,00,000/- towards "Loss of Love and Affection". However, as per the judgment of National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680], a sum of Rs.40,000/- has to be awarded to each of the legal heirs of the deceased towards "Loss of Love and Affection". Therefore, even in the absence of any appeal by the claimants, the sum of Rs.1,00,000/- awarded by the Tribunal under the head "Loss of Love and Affection" is modified, instead a sum of Rs.1,60,000/- is awarded under such head by awarding Rs.40,000/- to each of the claimants.

15. The amounts awarded by the Tribunal under all the other heads are just and fair and hence, they are confirmed.

16. Thus, the total compensation payable to the respondents 1 to 5/ claimants is re-calculated and tabulated below:

S. No	Heads under which amounts are awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
1.	Compensation fixed as Loss of Income to the petitioners	24,20,000	19,60,200
2.	Compensation towards loss of Love and Affection for Petitioners 2 to 5	1,00,000	1,60,000
3.	Compensation towards funeral expenses	15,000	15,000
4.	Compensation towards Consortium	40,000	40,000
5.	Compensation towards Transportation	10,000	10,000
	Total Compensation	25,85,000	21,85,200

17. In the result, the total compensation of Rs.25,85,000/- awarded by the Tribunal is hereby reduced to Rs.21,85,200/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective shares. The apportionment of shares as fixed by the Tribunal to the claimants is hereby confirmed.

18. With the above observations and directions, the Civil Miscellaneous Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Motor Accident Claims Tribunal,
Special District Jude(FAC), Erode.

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.25262

C.M.A. No.3907 of 2019
and
CMP.No.22250 of 2019

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