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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.3084 of 2014

The New India Assurance Co.Ltd.,
Rep.by its Divisional Manager,
46, Moore Street, Regina Mansion
First floor,
Chennai - 600 001.

... Appellant/2nd Respondent

Vs.

1. Abdul Jameel
2. Mariam Beevi ...Respondents 1 & 2/Petitioners
3.Mallika Beevi ...3rd Respondent/1st Respondent
(3rd Respondent remained exparte and notice dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.01.2012 made in M.A.C.T.O.P.No.238 of 2009 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Mannargudi.

For Appellant : M/s.M.Krishnamoorthy

For Respondents
1 & 2 : No appearance

R3 : Exparte

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2. This Civil Miscellaneous Appeal has been filed challenging the liability, negligence and quantum of compensation granted by the Tribunal in the award dated 03.01.2012 made in M.A.C.T.O.P.No.238 of 2009 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Mannargudi.



3. The appellant is the 2nd respondent in M.A.C.T.O.P.No.238 of 2009 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Mannargudi. The respondents 1 & 2 filed the above said claim petition, claiming a sum of Rs.7,72,000/- as compensation for the death of their daughter viz., Banu @ Ramzan Beevi, who died in the accident that took place on 29.05.1999.

4. On 29.05.1999 at about 12:15 a.m., the claimants' daughter deceased Banu @ Ramzan Beevi travelled from Chennai Air Port to Atthikadai Village in TATA Sumo bearing Registration No.TN50 7567, suddenly an unknown vehicle grazed the insured TATA Sumo on its right side by overtaking and pushed the vehicle to the left side of the road into a fence causing fatal and grievous injuries to the occupants of the car which resulted in the death of three persons including the deceased Banu @ Ramzan Beevi. The driver of the said car died in the spot. The deceased Banu @ Ramzan Beevi was working as a house maid at Singapore. She was the only bread winner of whom the respondents 1 and 2 herein are dependants. At the time of accident, the deceased was aged 27 years and thereby, earning a sum of Rs.6,000/- per month. Hence the claim petition.

5. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the car owned by 3rd respondent and directed the appellant to pay a sum of Rs.6,60,000/- as compensation to the respondents 1 and 2 and thereafter recover from the third respondent.

6. Questioning the quantum of compensation awarded by the Tribunal in the award dated 03.01.2012 made in M.C.O.P.No.238 of 2009, the appellant has come out with the present appeal.

7. The appellant/Insurance Company filed counter statement and denied all the averments made by the claimants. According to the appellant, the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle. The income of the deceased, whether the claimants are the legal heirs and cause of death of the deceased are not proved. Even in the FIR, it has been stated that only due to the negligent driving of the car driver, the accident was taken place and no witness has been examined and no documents have been marked which is highly doubtful and the averments in the FIR are all fabricated one. Therefore, the appellant is not liable to pay any compensation to the respondents 1 & 2. The respondents 1 & 2



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have to prove the age, avocation and income of the deceased by producing valid documents. The respondents 1 & 2 have to prove that they are the legal heirs of the deceased by producing valid legal heirship certificate. In any event, the quantum of compensation claimed by the respondents 1 & 2 are highly excessive and prayed for dismissal of the claim petition.

8. Before the Tribunal, the first respondent examined himself as P.W.1 and second respondent was examined as P.W.2 and one Anbalagan was examined as P.W.3. and marked five documents as Exs.P1 to P5. On the side of the appellant/Insurance Company, Sankar was examined as R.W1 and one Exhibit was marked and one Court side witness as C.W.1.

9. The learned counsel appearing for the appellant contended that the Tribunal, in the absence of materials, erred in fixing a sum of Rs.3,000/- per month as notional income of the deceased for a 27 years old girl. The deceased was a bachelor at the time of accident and the Tribunal ought to have deducted 50% towards personal expenses of the deceased and ought to have applied multiplier "17" instead of "18" and prayed for setting aside the award of the Tribunal.

10. The main ground is that the claimants have approached this Court after eight years of accident and that in the FIR it has been stated that unknown vehicle has grazed TATA Sumo on the right side and in the process of over taking the vehicle to the left side of the road has caused fatal and grievous injuries to the occupants of the car. It is further submitted that there is no evidence more so documentary evidence to establish the accident and no witness has been examined, which is highly doubtful and the averments in the FIR have been made true.

11. Though notice has been served on the respondents and their names have been printed in the cause list, there is no representation for them, either in person or through counsel.

12. It is the case of the respondents 1 and 2 that their deceased daughter was aged 27 years and was working as a maid at Singapore. According to respondents 1 and 2, the deceased was earning a sum of Rs.6,000/- per month. In the absence of any document, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the deceased. The deceased was a bachelor at the time of accident. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], the



Tribunal ought to have deducted 50% towards personal expenses of the deceased. In view of the above, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.4,28,400/- {Rs.4,200/- [Rs.3,000/- + Rs.1,200/- (40% of Rs.3,000/-)] X 12 X 17 X $\frac{1}{2}$ }. The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses and Rs.1,000/- towards transportation and Rs.6,000/- towards expectation of future long life of the deceased. The Tribunal failed to award any amount towards love and affection. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	6,48,000/-	4,28,400/-	Reduced
2.	Loss of love and affection (1 st and 2 nd respondents)	-	20,000/-	Enhanced
3.	Transport charges	1,000/-	1,000/-	Confirmed
4.	Funeral expenses	5,000/-	5,000/-	Confirmed
5.	Expectation of future long life of the deceased	Rs.6,000/-	-	Nil
6.	Loss of estate	-	5,000/-	Enhanced
	Total	Rs.6,60,000/-	Rs.4,59,400/-	Reduced by Rs.2,00,600/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,60,000/- is hereby reduced to Rs.4,59,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of two weeks from the date of receipt of a copy of this judgment, to the credit of M.A.C.T.O.P.No.238 of 2009 on the file of the Motor Accidents



Claims Tribunal, (Subordinate Judge) at Mannargudi. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.A.C.T.O.P. No.238 of 2009, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petitions are closed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Subordinate Court, Mannargudi.

Copy to

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

C.M.A.No.3084 of 2014

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