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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 3144 of 2021
and C.M.P.No. 17770 of 2021

The National Insurance Company Ltd.,
Divisional Office, No.9, Infantry Road,
Near Alankar Theatre, Vellore.

...Appellant/2nd Respondent

Vs

1. Vedhapriya
2. Minor S.Dhanushri
(Represented by her mother 1st respondent)
3. Amudha
4. Sekaran
5. K.Subramani

..1 to 4 Respondents/Petitioners

..5th Respondent/1st Respondent

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 09.03.2021 made in M.C.O.P.No. 213 of 2019 on the file of the Motor Accidents Claims Tribunal (II Additional District Court), Vellore @ Ranipet.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.M.Sivakumar
1 to 4

JUDGMENT

This appeal has been filed by the appellant Insurance Company, challenging the impugned award dated 09.03.2021 passed by the Motor Accident Claims Tribunal, II Additional District Court, Vellore at Ranipet in M.C.O.P. No. of 213 of 2019.

2. The appellant Insurance Company has challenged the impugned award questioning the quantum of compensation awarded by the Tribunal. They have not questioned the liability to pay compensation.



3. The Tribunal under the impugned award directed the appellant Insurance Company to pay the respondents/claimants, the compensation at Rs.58,58,840/- (Rupees Fifty Eight Lakhs Fifty Eight Thousand Eight Forty only) together with interest and costs as detailed hereunder:

Heads	Amount awarded by the Tribunal (Rs.)
Loss of Dependency (Rs.23,740+50%-1/4 th x 12x17)	54,48,840/-
Loss of Consortium - wife	40,000/-
Loss of Love and Affection - 2 nd claimant	50,000/-
Maintenance - minor	2,00,000/-
Loss of Love and Affection - parents	80,000/-
Loss of estate	15,000/-
Funeral Expenses	15,000/-
Transportation	10,000/-
Total Compensation	58,58,840/-

4. The deceased, Surendrakumar was an Executive at Mahindra Finance, Mumbai and was aged 29 years at the time of the accident. In the claim petition, the respondents/claimants, who are the dependants, have pleaded that the deceased was earning Rs.23,740/- per month, for which, they have produced salary certificate of the deceased, which has been marked as Ex.P16, before the Tribunal. The Tribunal has accepted the same and has assessed the monthly income of the deceased as Rs.23,740/- (Rupees Twenty Three Thousand Seven Hundred Forty only).

5. However, the Tribunal has erroneously adopted 50% towards loss of future prospects to the respondents/claimants. The deceased was in probation period. Therefore the Tribunal ought not to have awarded 50% towards future prospects. As per the settled law, the respondents/claimants are entitled only to 40% towards loss of future prospects. Therefore, the same is modified by this Court to 40%, instead of 50%, erroneously awarded by the Tribunal.

6. The Tribunal has also erroneously not deducted any amount towards Income Tax. Since the annual income assessed by



the Tribunal for the deceased is more than Rs.2,50,000/-, in accordance with law, this Court deducts 5% towards Income Tax, i.e., Rs.7432/-.

7. The Tribunal has also erroneously deducted 1/4th towards personal expenses of the deceased. Since the father of the deceased viz., the fourth respondent/claimant cannot be treated as a dependant of the deceased, the correct deduction ought to have been awarded is only 1/3rd. Accordingly, this Court modifies the same to 1/3rd instead of 1/4th, erroneously deducted by the Tribunal.

Therefore, the loss of dependency is arrived as follows:

Rs.23740 (monthly income) + 40% towards future prospects (9496) = Rs.33236 x 12 = Rs.3,98,832 (annual income)

upto Rs.2,50,000/-, no tax. For balance Rs.1,48,832/- 5% income tax i.e., as per slab Rs.7,432/-) Therefore, annual income is Rs.3,98,832 - Rs.7432 = Rs.3,91,400/-

Rs.3,91,400 - 1/3rd towards personal expenses (Rs.1,30,467) =

Rs.2,60,933 x 17 (multiplier) = Rs.44,35,867.00

8. The Tribunal has also erroneously awarded compensation towards maintenance for minor child at Rs.2,00,000/-, who is the 2nd respondent/2nd claimant, who is not legally entitled and the same will have to be set aside by this Court. Accordingly, compensation awarded by the Tribunal towards maintenance for the minor child/2nd respondent at Rs.2,00,000/- is set aside by this Court.

9. Insofar as compensation awarded by the Tribunal to the first respondent/first claimant, who is the wife of the deceased at Rs.40,000/- towards loss of consortium is concerned, the same is a correct assessment and is also in accordance with law. Therefore the same is confirmed by this Court.

10. Insofar as the compensation of Rs.50,000/- awarded by the Tribunal to the second respondent/second claimant, who is the minor daughter of the deceased towards loss of love and affection is concerned, the same is on the higher side and is not in accordance with settled law. Therefore, in accordance with settled law, this Court reduces the compensation towards loss of love and affection to the second respondent/second claimant from Rs.50,000/- to Rs.40,000/-.



11. The Tribunal has correctly awarded compensation of Rs.80,000/- towards loss of parental consortium and therefore, it is confirmed by this Court. The Tribunal has also correctly awarded compensation of Rs.15,000/- each towards loss of estate and funeral expenses, which are in accordance with settled law and therefore the same is confirmed by this Court.

12. However, the Tribunal has erroneously awarded compensation of Rs.10,000/- towards transportation expenses, which the respondents/claimants are not legally entitled to, as it is the fatal accident claim. Hence, the compensation awarded by the Tribunal towards transportation at Rs.10,000/- is set aside by this Court.

13. For the foregoing reasons, compensation awarded by the Tribunal is reduced from Rs.58,58,840/- (Rupees Fifty Eight Lakhs Fifty Eight Thousand Eight Hundred and Forty only) to 46,25,867/- (Rupees Forty Six Lakhs Twenty Five Thousand Eight Hundred and Sixty Seven only) as detailed hereunder.

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Loss of Dependency	54,48,840/ (Rs.23,740+50%- 1/4 th x12x17)	44,35,867/- (Rs.23,740+40% - income tax (Rs.7430/-) -1/3 rd x12x17)	Reduced
Loss of Consortium - wife	40,000/-	40,000/-	Confirmed
Loss of Love and Affection - 2 nd claimant	50,000/-	40,000/-	Reduced
Maintenance - minor	2,00,000/-	Nil	Not granted
Loss of Love and Affection - parents	80,000/-	80,000/-	Confirmed
Loss of estate	15,000/-	15,000/-	Confirmed



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirme d or enhanced or granted
Funeral Expenses	15,000/-	15,000/-	Confirme d
Transportation	10,000/-	Nil	Not granted
Total Compensation	58,58,840/-	46,25,867/-	Reduced

14. Accordingly, this civil miscellaneous appeal is partly allowed by reducing the compensation amount from Rs.58,58,840/- (Rupees Fifty Eight Lakhs Fifty Eight Thousand Eight Hundred and Forty only) to Rs.46,25,867/- (Rupees Forty Six Lakhs Twenty Five Thousand Eight Hundred and Sixty Seven only).

15. The appellant Insurance Company is directed to deposit the compensation amount of Rs.46,25,867/- (Rupees Forty Six Lakhs Twenty Five Thousand Eight Hundred and Sixty Seven 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. 213 of 2019 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. 213 of 2019 to the bank account of the claimant through RTGS within a period of two weeks thereafter. The award amount shall be apportioned among the respondents/claimants as awarded by the Tribunal.

No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rgi/sr



To

1. Motor Accidents Claims Tribunal,
II Additional District Court,
Vellore @ Ranipet.

Copy to

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

+1 CC to Mr.C. Prabakaran, Advocate sr 57248.

C.M.A. No. 3144 of 2021

GSM(CO)
SP(04/01/2022)