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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4606 of 2019

and

C.M.P.No.26104 of 2019

M/s. Bharti AXA General Insurance Company Limited,
First Floor, The Ferns Icon,
Survey No.28, Doddanekundi,
Bangalore - 560 037.
Karnataka State.

..Appellant/2nd Respondent

Vs.

1.R.Santhosh

2.R.Sathiya

3.Minor.R.Thamaraikannan

(Minor 3rd respondent represented
by his Next Friend and Mother
Santhosh, 1st respondent herein)

4.Pappayee @ Pappa

..Respondents 1 to 4 / Petitioners

5.S.Ravishankar

..5th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.03.2019 made in M.C.O.P.No.523 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

For Appellant : Mr.S.Arunkumar

For RR 1 to 4 : M/s.T.Gayathri
for Mr.C.Kulanthaivel

For R5 : No Appearance



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 quantum of compensation granted by the Tribunal in the award dated 29.03.2019 made in M.C.O.P.No.523 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

3.The appellant is the 2nd respondent in M.C.O.P.No.523 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari. The respondents 1 to 4 filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one S.Rajendran, who died in the accident that took place on 07.10.2013.

4.According to respondents 1 to 4, on 07.10.2013 at about 05.00 P.M., while the deceased S.Rajendran was driving his TVS XL Super moped bearing Registration No.TN 52 5126 near Konganapuram pirivu and crossing the Konganapuram to Idappadi Main Road from left side to right side, the driver of the Mahindra Xylo car bearing Registration No.TN 52 E 6564, who was driving the car from Konganapuram to Idappadi, drove the same in a rash and negligent manner and dashed against the TVS XL Super moped driven by the said S.Rajendran and caused the accident. In the accident, the said S.Rajendran was thrown out on the road and sustained multiple grievous injuries all over his body. Immediately after the accident, the said S.Rajendran was taken to Government Mohan Kumaramangalam Medical College Hospital, Salem. In spite of treatment, the said S.Rajendran succumbed to injuries on 08.10.2013. Therefore, the respondents 1 to 4 filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of the said S.Rajendran against the 5th respondent and appellant-Insurance Company, being the owner and insurer of the car respectively.

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 5th respondent and directed the appellant to pay a sum of Rs.19,85,000/- as compensation to the respondents 1 to 4.

6.Questioning the quantum of compensation awarded by the Tribunal in the award dated 29.03.2019 made in M.C.O.P.No.523 of 2013, the appellant has come out with the present appeal.

7.The learned counsel appearing for the appellant contended that the respondents 1 to 4 failed to prove the alleged employment, income and payment of salary of the deceased. The age of the deceased is 51 years as per the driving license



produced by the respondents 1 to 4 and the correct multiplier applicable is '11' but the Tribunal erroneously applied multiplier '13'. The Tribunal erroneously granted 25% enhancement towards future prospects contrary to the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]. The amount awarded towards loss of love and affection is also contrary to the judgment of the Hon'ble Apex Court and prayed for setting aside the award passed by the Tribunal.

8.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the date of birth of the deceased is 03.02.1963 and the date of accident is 07.10.2013. On the date of accident, the deceased has completed 50 years 8 months and 4 days and the Tribunal took the completed years and granted 25% enhancement as per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC). The deceased has completed 50 years and 8 months and the Tribunal rightly granted 25% enhancement towards future prospects. The multiplier '13' applied by the Tribunal is also correct and the total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

9.Though notice has been served on the 5th respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

10.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 4 and perused the entire materials on record.

11.It is the case of the respondents 1 to 4 that the deceased was aged 50 years and pleaded so in the claim petition and filed driving license of the deceased as Ex.P6. The Tribunal considering the date of birth of the deceased i.e., 03.02.1963 mentioned in Ex.P6/driving license, fixed the age of the deceased as 50 years as he has completed only 50 years on the date of accident. The Tribunal granted 25% enhancement towards future prospects and applied multiplier '13'. As per Ex.P6/driving license of the deceased, he completed 50 years 8 months. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), cited supra, the respondents 1 to 4 are entitled to only 10% enhancement towards future prospects. The multiplier applicable 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] is '13'. The further contention of the learned counsel appearing for the appellant that the respondents 1 to 4 have not proved the employment and payment of salary is concerned, the Tribunal did not accept the evidence of P.W.3/employer and Ex.P13/salary



certificate and fixed only a sum of Rs.12,000/- per month as notional income of the deceased taking into consideration the fact that the deceased was a Heavy Vehicle Driver at the time of accident. The accident is of the year 2013 and the notional income fixed by the Tribunal is not excessive. Thus, by granting 10% enhancement towards future prospects and applying multiplier '13', the amount awarded by the Tribunal towards loss of dependency is modified to Rs.15,44,400/- {Rs.13,200/- [Rs.12,000/- + Rs.1,200/- (10% of Rs.12,000/-)] X 12 X 13 X $\frac{3}{4}$ }. From the award of the Tribunal, it is seen that the Tribunal has awarded a sum of Rs.1,50,000/- towards loss of love and affection to respondents 1 to 4 in addition to a sum of Rs.40,000/- granted by the Tribunal to the 1st respondent towards loss of consortium. The 1st respondent is not entitled to any amount towards loss of love and affection except loss of consortium. The amount awarded by the Tribunal towards loss of love and affection is excessive and the respondents 2 & 3, who are the daughter and son of the deceased and the 4th respondent-Mother of the deceased are entitled to a sum of Rs.30,000/- each towards loss of love and affection. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. 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	17,55,000/-	15,44,400/-	Reduced
2.	Loss of consortium to 1 st respondent	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection to respondents 2 to 4	1,50,000/-	90,000/-	Reduced
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
6.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.19,85,000/-	Rs.17,14,400/-	Reduced by Rs.2,70,600/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,85,000/- is hereby reduced to Rs.17,14,400/- 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 award amount now determined by this Court, along with proportionate interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.523 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari. On such deposit, the respondents 1, 2 & 4 are permitted to withdraw their respective share of the award amount, now determined by this Court, as per the ratio of apportionment made by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor 3rd respondent is directed to be deposited in any one of the Nationalized Banks, till the minor 3rd respondent attains majority. On such deposit, the 1st respondent, being the Mother of the minor 3rd respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 3rd respondent. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.523 of 2013, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sankari.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.17512
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.17471

C.M.A.No.4606 of 2019

VBM(CO)
RGA(11/10/2021)