



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.4276 of 2019
and
C.M.P.No.24176 of 2019

United India Insurance Co. Ltd.,
No.134, Silinghu Buildings,
No.66, Grems Road,
Chennai - 600 006.

... Appellant/2nd Respondent

Vs.

1.Senthamarai
2.Muniappan
3.Dhanush
4.Keerthikumar
(Minors 2 to 4 rep.by their mother and
Next friend Mrs.Senthamarai)
5.Baby
6.Munisamy
7.Subramani

... Respondents/Petitioners/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 26.02.2019 made in MCOP No.6669 of 2016 on the file of Motor Accident Claim Tribunal, (IV Court of Small Causes, Chennai).

For Appellant :Mr.A.Dhiraviyanathan

For Respondents :M/s R.J.Radhika (for R1 to R6)
No appearance for R7

JUDGMENT

[Judgment of the Court was delivered by V.SIVAGNANAM, J.]

This appeal arises out of the order passed by the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai in MCOP No.6669 of 2016 dated 26.02.2019.



2.This is the case of the fatal accident. The case of the claimants is that the deceased Palani being a cleaner of a Private Bus bearing Reg.No.TN-23-AJ-8299, on 14.08.2016 at 05.15 hours, he has assisted the driver of the said bus for taking reverse of Vandalur to Minjur 400 feet road, on Nemilicherry over-bridge. At that time, the driver of the bus has suddenly drove the bus in a rash and negligent manner, endangering public safety with high speed, dashed against the deceased. As a result of which, the deceased sustained fatal injuries and died in the hospital. The first claimant is the wife of the deceased and the claimants 2 to 4 are their sons and the claimants 5 and 6 are the parents. The appellant herein is the insurer of the bus. Alleging that the accident had taken place due to the rash and negligent driving of the bus, the claimants laid a petition, claiming compensation of Rs.30,00,000/-.

3.Resisting the claim, the appellant Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation. It was also contended that the claim is excessive.

4.To substantiate the case, on the side of the claimants, P.Ws.1 and 2 were examined and Exs.P.1 to Ex.P.17 were marked. On the side of the appellant/Insurance Company, no witness was examined and no document has been produced.

5.The Tribunal, after considering the oral and documentary evidence held that the driver of the bus was responsible for the accident and awarded compensation of Rs.29,89,200/- to the claimants under the following heads:-

Heads	Rs.
Loss of Contribution to the family	24,19,200/-
Loss of Love and Affection	5,00,000/-
Loss of Estate	15,000/-
Consortium	40,000/-
Funeral Expenses	15,000/-
Total	29,89,200/-

6.Assailing the award, the appellant Insurance Company has filed the present appeal. This appeal has been filed only challenging the quantum, hence, the other issues need not be dealt with herein.



7.The learned counsel for the appellant Insurance Company has contended that the award is on the higher side by wrongly fixing excessive monthly income of Rs.12,000/- and it requires reduction. He would further contend that the Tribunal erred in awarding Rs.24,19,200/- towards loss of contribution to the family; Rs.5,00,000/- towards loss of love and affection; Rs.15,000/- towards loss of estate; Rs.40,000/- towards consortium and Rs.15,000/- towards funeral expenses. He would further contend that the Tribunal has granted an exorbitant sum of Rs.1,00,000/- each to the claimants, which is contrary to the decision of the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), wherein a sum of Rs.40,000/- alone granted towards spousal, parental and filial consortium. Hence, the amount awarded under the head of love and affection is to be set aside.

8.Per contra, the learned counsel appearing for the respondents/claimants argued that the impugned Judgment and Decree awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

9.This Court carefully considered the submissions of the learned counsel for the appellant Insurance Company and the learned counsel appearing for the respondents/claimants and perused the materials available on record.

10.A perusal of the impugned award would show that the Tribunal has granted Rs.5,00,000/- towards loss of love and affection. As contended by the learned counsel for the appellant Insurance company, it is contrary to the decision of the Hon'ble Apex Court in case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others (cited supra). Therefore, as per the above said decision, the claimants are entitled to Rs.40,000/- each towards consortium and love and affection, which comes to Rs.2,40,000/-. Therefore, the amount awarded under the head of loss of love and affection is set aside. Further, the amount of Rs.40,000/- awarded under the head of consortium separately is also set aside since totally awarded Rs.2,40,000/-.

11.Further, though the learned counsel appearing for the appellant Insurance Company has contended that the award under the others heads are on the higher side and it requires reduction, on perusal of the records, we find that the Tribunal, on proper appreciation of evidence of P.W.1 and Exs.11 to 13



(Bank Passbooks), has fixed the monthly income and adopting correct multiplier awarded a just and reasonable compensation under the head of loss of contribution to the family; loss of estate; and funeral expenses and hence, they are confirmed. The rate of interest fixed by the Tribunal remains unaltered.

12. In the light of the above, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-

Heads	Rs.
Loss of Contribution to the family	24,19,200/-
Loss of Love and Affection & consortium	2,40,000/-
Loss of Estate	15,000/-
Funeral Expenses	15,000/-
Total	26,89,200/-

13. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The appellant Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first claimant is entitled to withdraw a sum of Rs.14,89,000/-; the claimants 2 to 4 are entitled to withdraw a sum of Rs.3,00,000/- each; the claimants 5 and 6 are entitled to withdraw a sum of Rs.1,50,000/- each together with proportionate interest and costs. The major claimants are permitted to withdraw their share after filing a memo, along with a copy of this order, less the amount if already withdrawn. Further, the Tribunal is directed to deposit the share of the minor claimants in any one of the nationalised banks, as fixed deposit under the Cumulative Deposit Scheme, till the minors attain the age of major and permitted to take the interest by their guardian. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

skn



To

1.The Motor Accident Claims Tribunal,
IV-th Small Causes Court, Chennai.

WEB COPY

Copy to:

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

+2cc to M/s.R.J.Radhika, Advocate SR.No.58917

C.M.A.No.4276 of 2019
and
C.M.P.No.24176 of 2019

SPD(CO)
CB(09/12/2021)