IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.4800 of 2019
and
C.M.P.Nos.27557 of 2019, 12997, 13001, 13002 and 13004 of 2020

United India Insurance Co. Ltd.,
Divisional Office,
Peramanur Main Road,
Near Mithila Hotel,
Salem - 7.

... Appellant

vs

1. M.Lalitha
W/o.A.Marudhachalam

2. R.Sumathi
W/o.V.Raghupathy Sampath

3. M.Raja Priya
D/o.A.Marudhachalam

4. S.Lagna Priya
W/o.Sidesh Kumar
D/o.A.Marudhachalam

5. Manimegalai

6. P.Maruthan
S/o.Palanisamy

... Respondents

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.12.2018 passed in M.C.O.P.No.52 of 2017 on the file of the Motor Accidents Claims Tribunal, Special District Judge (FAC), Salem.

For Appellant : Mr.S.Arunkumar

For Respondents: Mr.V.Srikanth [R1 to R4]
Ex parte [R5 & R6]

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

This matter is heard through Video-Conferencing.

2. For the sake of convenience, appellant herein is referred to as 'Insurance Company' and respondents 1 to 4 herein are referred to as 'Claimants'.

3. Questioning the quantum of compensation awarded by the Tribunal, in and by its judgment and decree dated 20.12.2018 passed in M.C.O.P.No.52 of 2017 on the file of the Motor Accidents Claims Tribunal, Special District Judge (FAC), Salem, the Insurance Company has filed the present appeal.

4. The brief facts of the case are as follows:
Claimants are wife and daughters of the deceased Marudhachalam. On 23.07.2015 at about 4.00 p.m., the deceased went for a walk along with his friend from West to East on the Northern side of the Sanganur Main Road. When they were nearing the place called Sri.Kanda Plywood shop, a Tipper Lorry bearing Registration No.TN-37-B-6485 came in a rash and negligent manner and dashed against the deceased. In the impact, the deceased sustained grievous injuries. Immediately, the deceased was taken to Kalpana Hospital at Kavundampalayam and after giving first-aid, he was taken to Kongu Nadu Hospital and then to K.M.C.H. Hospital for further treatment. However, the deceased succumbed to the injuries on 04.08.2015. The deceased was aged 72 years at the time of accident. The deceased was a business man and also running Kavitha Theatre, Priya Warehouse, Priya Hostel, Priya Steel Corporation and was earning both as an individual and also from HUF business to the tune of Rs.4,00,000/- p.m. Hence, claimants filed a claim petition seeking compensation in a sum of Rupees Five Crores for the death of the deceased.

5. Resisting the claim made by claimants, the Insurance Company has filed a detailed counter statement inter alia contending that the accident had not occurred in the manner as projected by claimants. It is the specific case of Insurance Company that the deceased and his friend suddenly crossed the road without noticing the lorry and hence, the accident had occurred. Hence, the driver of the lorry cannot be held responsible for the accident. They have also denied the age, occupation and income of the deceased. Thus, they prayed for dismissal of the claim petition.

6. To prove their claim, on the side of claimants, 2

witnesses were examined and 19 documents were marked as Exs.P1 to P19. On the side of Insurance Company, none were examined and no exhibits were marked.

7. On appreciation of materials and the evidence on record, the Tribunal arrived at a finding that the accident had occurred due to the rash and negligent driving of the Tipper Lorry by its driver. On coming to such a finding, the Tribunal directed the Insurance Company, as insurer of the offending vehicle, to pay compensation. The Tribunal awarded a sum of Rs.1,39,45,676/- as compensation. The break-up details are as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency	1,32,62,916/-
2.	Medical expenditure	5,72,760/-
3.	Loss of love and affection [20000 * 4]	80,000/-
4.	Funeral expenses	15,000/-
5.	Loss of estate	15,000/-
	Total	1,39,45,676/-

The said sum of Rs.1,39,45,676/- was directed to be paid together with interest at 7.5% p.a. from the date of claim petition till the date of realisation.

8. Learned counsel for Insurance Company submits that before the Tribunal, it is the case of claimants that the deceased was earning both from individual business as well as from HUF business. In the proof affidavit dated 04.01.2018 filed on behalf of claimants, it is stated that the deceased was running the following business individually (i) Kavitha Theatre (ii) Priya Warehouse (iii) Priya Hostel and (iv) Priya Steel Corporation and he was also earning income from the HUF business. The deceased had paid income-tax for the income earned through individual business and HUF business. The claimants filed an additional proof affidavit dated 23.01.2018 stating that in the earlier proof affidavit dated 04.01.2018, they have wrongly stated the details of income and income-tax paid by the deceased and hence, they have filed the additional proof affidavit incorporating the correct particulars. The Tribunal, based on Ex.P14 [Income Tax Return for the years 2013-14, 2014-15, 2015-16 & 2016-17] and Ex.P15 [Self tax return for the years 2013-14, 2014-15, 2015-16 & 2016-17], arrived at the conclusion that there is annual loss of Rs.30,00,000/- from HUF business and Rs.14,20,793/- from individual business and accordingly, fixed a sum of Rs.44,20,973/- (30,00,000 +

14,20,793) as the annual loss of income to award an exorbitant sum of Rs.1,32,62,916/- as compensation towards loss of dependency.

9. Learned counsel for the Insurance Company further submits that the details of HUF business, nature of property and source of income had not been divulged. Moreover, the Profit and Loss account or Statement of Accounts filed to the Income-Tax Department had not been annexed. Though it was stated by claimants that, after the demise of the deceased, they are unable to run the theatre and hence, it has to be demolished, no proof has been produced to establish such contention. Further, as per the PAN card and Income-Tax Return, the age of the deceased was 76 years and not 72 years, as stated by the claimants. As the deceased was aged 76 years, definitely he would not have managed the entire business alone. He would have engaged employees and hence, there is no difficulty for the claimants to run the business by engaging the same employees. Therefore, there cannot be any loss of income. Without considering all these aspects, the Tribunal found the annual loss of income at Rs.30,00,000/- from HUF business and Rs.14,20,793/- from individual business, which had resulted in awarding compensation in an exorbitant sum of Rs.1,32,62,916/- as loss of dependency. Therefore, the aforesaid amount fixed by the Tribunal towards annual loss of income needs appropriate reduction and consequently, the total compensation awarded by the Tribunal has to be reduced.

10. Per contra, learned counsel for claimants made his submissions supporting the award passed by the Tribunal.

11. This Court has considered the rival submissions and perused the materials placed on record.

12. At the outset, it is to be stated that the present appeal has been filed by the Insurance Company questioning only the quantum of compensation awarded by the Tribunal. The Insurance Company has not disputed their liability to pay the compensation amount to claimants. Therefore, this Court is not inclined to go into the question as to whether the Insurance Company is liable to pay the compensation amount awarded by the Tribunal or not.

13. As rightly submitted by learned counsel for Insurance Company, the details of the HUF business, nature of property and source of income had not been divulged by the claimants. Only a general statement was made by PW-1/daughter of the deceased that her father was earning income from the HUF business as well as from individual business. Under such circumstances, fixing of Rs.30,00,000/- and Rs.14,20,793/- as annual loss of income

appears to be extremely on the higher side. At the same time, on a perusal of Ex.P14 [Income Tax Return for the years 2013-14, 2014-15, 2015-16 & 2016-17] and Ex.P15 [Self tax return for the years 2013-14, 2014-15, 2015-16 & 2016-17], this Court finds that the deceased was earning huge income during his life time. This Court also finds that no tangible evidence was produced on the side of claimants to show that, after the demise of the deceased, all the business were closed. The claimants can very well run the business of the deceased by engaging the very same employees, employed by the deceased. Therefore, there was no absolute loss of income which the deceased had earned during his life time. If at all, the family members would have lost the experience and guidance of the deceased, who mastered the nuances in running the business. Thus, it could be reasonably presumed that the business carried on by the deceased is continued by his heirs after his death. The death of deceased would have deprived his legal heirs the nuances of the business and not the entire business carried on by the deceased is lost. Under such circumstances, this Court is of the opinion that there is no complete loss of income to the family and on the other hand, there might be a partial loss of income which the deceased had earned during his life time. In the aforestated circumstances, the sum of Rs.44,20,793/- fixed as annual income of the deceased, by the Tribunal, appears to be on the higher side. Considering the facts and circumstances, this Court is of the opinion that the amount awarded by the Tribunal can be re-calculated by fixing a nominal sum of Rs.20,00,000/- per annum as expenses incurred for engaging a person in the place of the deceased to manage the business, to arrive at a just and reasonable compensation under the head 'loss of dependency'. Accordingly, the compensation payable under the head 'loss of dependency' is re-calculated as follows:

Annual loss of Income on account of engaging a person to run the business	:	Rs.20,00,000/-
Less: Personal expenses 1/3 of Rs.20,00,000/-	:	Rs. 6,66,666/-
		Rs.13,33,334/-
Multiplier	:	x 5
Loss of dependency	:	Rs.66,66,670/-

14. Further, this Court finds that no sum has been awarded towards loss of consortium. As per the dictum laid down by the

Apex Court in the case of National Insurance Company Limited, Vs. Pranay Sethi and others, reported in 2017 (16) SCC 680, wife of the deceased is entitled to get Rs.40,000/- under the head "loss of consortium". Hence, a sum of Rs.40,000/- is granted under such head.

15. Similarly, this Court finds that the Tribunal had awarded a sum of Rs.80,000/- (Rs.20,000/- each) under the head "loss of love and affection". As per the recent judgment of the Supreme Court reported in CDJ 2020 SC 601 = 2020 ACJ 2131 (SC) = 2020 (2) MWN (Civil) 827 (United India Insurance Company Limited and others Vs. Satinder Kaur @ Satwinder Kaur and others), respondents 2 to 4, being the daughters of the deceased, are entitled to Rs.40,000/- each towards parental consortium. Hence, the sum of Rs.80,000/- awarded under the head 'loss of love and affection' is set aside. Instead, a sum of Rs.1,20,000/- (40000 * 3) is awarded as compensation under the head 'loss of parental consortium'. Except this modification, the award of the Tribunal, in all other aspects, is hereby confirmed.

16. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Loss of dependency	1,32,62,916/-	66,66,670/-
2.	Medical expenditure	5,72,760/-	5,72,760/-
3.	Loss of love and affection [20000 * 4]	80,000/-	-
4.	Parental consortium	-	1,20,000/-
5.	Loss of consortium	-	40,000/-
6.	Funeral expenses	15,000/-	15,000/-
7.	Loss of estate	15,000/-	15,000/-
	Total	1,39,45,676/-	74,29,430/-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.1,39,45,676/- awarded by the Tribunal is hereby reduced to Rs.74,29,430/- [Rupees Seventy Four Lakhs Twenty Nine Thousand Four Hundred and Thirty only]. The Insurance Company is directed to deposit the modified compensation of Rs.74,29,430/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. Out of the award, first respondent/wife of the deceased is entitled to a sum of Rs.40,00,000/- and respondents 2 to 4/daughters of the deceased are entitled to a sum of Rs.11,43,143/- each. On such deposit being made by Insurance Company, respondents 1 to 4/claimants are permitted to withdraw their respective shares along with accrued/proportionate interest and costs, less the amount, if any already withdrawn by them, by filing necessary application before the Tribunal. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   Special District Judge (FAC),
   Salem.

Copy to:

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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.13294

C.M.A.No.4800 of 2019

RLD(CO)
SU(01/10/2021)