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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.04.2021

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. No.3169 of 2019

1. Sundaram

2. Nagalakshmi .. Appellants/Petitioners

Versus

1. Ranjithkumar

2. Branch Manager,
Bharat AXA General Insurance Company Ltd.,
No.28, First Floor,
Doddane Kudi,
Bangalore.

.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 08.03.2019 made in MCOP.No.92 of 2015 on the file of the Motor Accident Claims Tribunal / Sub Judge, Udumalaipettai.

For appellant : Mr.C.Thangaraju

For respondents
for R1 : No Appearance

for R2 : Mr.K.Poomalai

J U D G M E N T

(The Judgment of the Court was delivered by R.Subbiah, J)

The appeal is heard through video conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal / Sub Judge, Udumalaipettai, in MCOP No.92 of 2015 dated 08.03.2019, the



present appeal has been filed by the claimants for enhancement of the compensation amount.

3. The appellants / claimants are the parents of the deceased Raju Babu. It is the case of the claimants that on 20.03.2013, the deceased was travelling as a loadman in APE Truck bearing Registration No.TN 78 X 1973, belonging to the first respondent and insured with the second respondent-Insurance Company, which was driven by one Madhankumar on Pollachi-Udumalpet National Highway. While the said Truck was nearing a bridge in Kolarpatti Village, the driver drove the vehicle in a rash and negligent manner and dashed against the bridge. Due to the impact, the said Raju Babu suffered severe head injury and died on the spot. It is the further case of the claimants that at the time of the accident, the deceased was earning monthly a sum of Rs.20,000/- by working as a loadman in the milk van, newspaper hawker and also as a painter. The claimants are aged more than 70 years and the deceased was the only breadwinner of the family. Due to the sudden demise of their son, the appellants are starving for their livelihood. Hence, they made a claim for a sum of Rs.50,00,000/- as compensation.

4. The said case was resisted by the Insurance Company by filing a detailed counter affidavit. It is the specific defence of the Insurance Company that the deceased had travelled in the APE Truck bearing Registration No.TN 78 X 1973 as an unauthorised passenger. In the said Truck, 3 persons travelled as against the seating capacity of 2 and the driver of the said vehicle did not possess driving licence at the time of the accident. In view of the above violation of policy conditions, the Insurance Company is not liable to pay the compensation to the claimants.

5. In order to prove the claim on the side of the appellants / claimants, the father of the deceased examined himself as PW1, besides examining one Mummoorthy as eyewitness as PW2 and 13 documents were marked as Exs.P1 to P13. On the side of the Insurance Company, RW1 and RW2 were examined and 4 documents were marked as Exs.R1 to R4.

6. The Tribunal after analysing the entire evidence came to the conclusion that the accident is the result of rash and negligent driving of the driver of the APE Truck bearing Registration No.TN 78 X 1973 and awarded a compensation of Rs.11,38,400/- to the claimants. However, as the driver of the said vehicle did not possess any licence at the time of the accident, which is a violation of policy condition, the second respondent / Insurance Company is directed to pay the compensation at first instance and thereafter, they are directed to recover the same from the owner of the vehicle. The break-up



details of the amounts awarded by the Tribunal is as follows:

S.No.	Compensation was awarded under the heads	Amount in Rs.
1.	Loss of Dependency	10,58,400
2.	Loss of Love and Affection	50,000
3.	Funeral Expenses	15,000
4.	Loss of Estate	15,000
	Total	11,38,400

7. Now, it is the submission of the learned counsel for the appellants/claimants before the Tribunal that though the father of the deceased, PW1 gave evidence stating that his son was earning a sum of Rs.20,000/- per month by working as loadman, newspaper hawker and painter, the Tribunal has taken only a sum of Rs.7,000/- as monthly income of the deceased, which resulted in awarding an inadequate amount of Rs.10,58,400/- under the head "Loss of Dependency". Hence, by fixing a sum of Rs.20,000/- as monthly income of the deceased, the amount awarded under the head "Loss of Dependency" may be re-calculated. Further, the Tribunal has awarded only a total sum of Rs.50,000/- to the claimants under the head "Loss of Love and Affection" to the claimants instead of awarding Rs.40,000/- to each of the claimant.

8. Per contra, the learned counsel for the Insurance Company made his submissions supporting the awarded passed by the Tribunal.

9. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

10. It is not in dispute that the father of the deceased adduced evidence stating that the deceased was earning a sum of Rs.20,000/- per month, but except oral statement, no documentary evidence was produced to support his oral statement. In the absence of any documentary proof, we are not inclined to fix Rs.20,000/- as monthly income of the deceased. At the same time, considering the cost of living prevailing at the time of the accident, i.e., in the year 2013, the Tribunal ought to have fixed at least a sum of Rs.9,000/- as monthly income of the deceased, instead of Rs.7,000/-.

11. Thus, if a sum of Rs.9,000/- is taken as monthly income of the deceased and 40% of the same is added towards future prospects, the amount works out to Rs.12,600/- [9,000 + 3,600].



Since the deceased was bachelor, 50% of the income has to be deducted towards personal expenses and if so deducted, the amount works out to Rs.6,300/- . Considering the age of the deceased being 24 years at the time of the accident, if multiplier "18" is applied, the "Loss of Dependency" comes to Rs.13,60,800/- [6,300 x 12 x 18].

12. As per the oft-quoted judgment of National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680], a sum of Rs.40,000/- has to be awarded to each of the legal heirs of the deceased towards "Loss of Love and Affection". Hence, the total sum of Rs.50,000/- awarded by the Tribunal towards "Loss of Love and Affection" is set aside, instead a sum of Rs.80,000/- is awarded under such head by awarding each of the claimant a sum of Rs.40,000/-.

13. The sum of Rs.15,000/- awarded by the Tribunal towards funeral expenses appears to be on the lower side and hence, the same is enhanced to Rs.40,000/-.

14. Since no amount was awarded under the head "Transportation Expenses", a sum of Rs.5,000/- is awarded under such head.

15. The sum of Rs.15,000/- awarded under the head "Loss of Estate" appears to be just and proper and hence, the same is confirmed.

16. Thus, the total compensation payable to the appellants / claimants is re-calculated and tabulated below:

S. No.	Heads under which the amount was awarded by the Tribunal	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of Dependency	10,58,400	13,60,800
2.	Loss of Love and Affection	50,000	80,000
3.	Funeral Expenses	15,000	40,000
4.	Loss of Estate	15,000	15,000
5.	Transportation Expenses	-	5,000
	Total	11,38,400	15,00,800
			rounded of to Rs.15,00,000/-
			-

17. i) The total compensation of Rs.11,38,400/- awarded by



the Tribunal is hereby enhanced to Rs.15,00,000/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective shares. The claimants shall pay necessary Court fee, on the enhanced compensation. The apportionment of shares as fixed by the Tribunal to the claimants is hereby confirmed.

ii) The second respondent / Insurance Company is permitted to recover the above compensation amount from the first respondent herein / owner of the APE Truck, after making payments to the claimants.

18. With the above observations and directions, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(R)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Motor Accident Claims Tribunal /
Sub Judge,
Udumalaipettai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+2ccs to M/s.C.Thangaraju, Advocate, S.R.No.22550

C.M.A. No.3169 of 2019

RK(CO)
SU(11/11/2021)