IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM:

HONOURABLE MR.JUSTICE R.SUBBIAH
AND
HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.4388 of 2019
and
C.M.P.No.24952 of 2019

The Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Office,
Denkanikottai Road,
Near Railway Station,
Hosur-635 109. ..Appellant/R2

Vs.

1. Jayakodi, W/o Sankar
2. N.Sankar, S/o Narayanan
3. Divya, D/o Sankar
4. K.Selvam, S/o Krishnan ..Respondents/Petitioners and R1

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 20.02.2019 made in M.C.O.P.No.128 of 2018 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur.

For appellant : Mr.A.Dhiraviyanathan
For respondents : Notice served,
No appearance for RR-1 to 3
R.4-set ex-parte before the Tribunal

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

Challenging the quantum of compensation awarded by the Tribunal, in and by Award, dated 20.02.2019 passed in M.C.O.P.No.128 of 2018 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur, the present appeal is filed by the Insurance Company.

2. The respondents 1 to 3 are the claimants, who are the father, mother and sister of the deceased Sathyamurthy.

3. It is the case of the claimants that on 16.11.2017 at

about 19.30 hours, while the deceased Sathyamurthy was riding Bajaj Pulsar Motor Cycle bearing Registration No.TN-70-V-4008 with one Ramakrishnan as pillion-rider on the Hosur-Bangalore NH Road, near the Chennai Silks, the said two-wheeler was hit by Ashok Leyland Lorry bearing Registration No.TN-69-W-0063 belonging to the fourth respondent and insured with the appellant-Insurance Company. It is the further case of the claimants that the deceased completed his Diploma in Electronics (Robotics) Course and was working in a private concern, namely Micro Heat Treatment Services, Hosur and was earning a sum of Rs.15,600/- p.m. He was also studying III Year B.E. (Mechanical Engineering) in Adhiyaman College of Engineering, Hosur. Thus, the claimants made a claim of Rs.50 lakhs as compensation.

4. The case of the claimants was resisted by the appellant-Insurance Company by filing counter statement.

5. In order to prove the claim, on the side of the claimants, three witnesses were examined as P.Ws.1 to 3 and Exs.P-1 to P-13 were marked. On the side of the Insurance Company, R.Ws.1 and 2 were examined and no document was marked on their side.

6. The Tribunal, after analysing the evidence on record, fixed a sum of Rs.15,600/- as the monthly income of the deceased based on Ex.P-5 salary certificate marked on the side of the claimants and computed compensation at Rs.16,84,800/- under the head "loss of dependency" (15,600 x 50% x 12 x 18) based on the multiplier 18 as the deceased was aged 22 years at the time of accident, after deducting 50% towards personal expenses. That apart, the Tribunal separately awarded Rs.6,73,920/- under the head "loss of future prospects" (16,84,000 x 40%). The Tribunal also awarded Rs.30,000/- towards loss of love and affection, Rs.10,000/- towards transportation charges, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. In all, the Tribunal awarded Rs.24,28,720/- as the compensation. Questioning the same, the present appeal is filed by the Insurance Company.

7. The learned counsel appearing for the appellant/Insurance Company submitted that before the Tribunal, evidence was adduced to the effect that the deceased was doing part-time job in a private concern, namely Micro Heat Treatment Services and he was also a student studying III year B.E. (Mechanical Engineering). In order to prove the factum of his earning from a private concern at Rs.15,600/- p.m., P.W.3 was examined through whom Ex.P-5 salary certificate was marked. But, except Ex.P-5, no crucial documents like Appointment Order, I.D. Card, salary register/receipt, attendance register, etc., were produced. Hence, the learned counsel appearing for the appellant/Insurance

Company submitted that the Tribunal ought not to have placed reliance upon Ex.P-5 salary certificate while fixing a sum of Rs.15,600/- as the monthly income of the deceased. Thus, the learned counsel appearing for the appellant/Insurance Company submitted that by fixing a nominal sum of Rs.10,000/- as the monthly income of the deceased, the amount awarded by the Tribunal under the head "loss of dependency" may be modified.

8. Though notice was served on the respondent 1 to 3/claimants and their names were also printed in the cause list, there was no representation for them either in person or through a counsel.

9. Upon hearing the learned counsel appearing for the appellant/Insurance Company, it is seen that except marking Ex.P-5 being salary certificate, no other documents like Appointment Order, I.D. Card, attendance register, etc., were produced. Further, the evidence on record shows that the deceased was also pursuing III Year Mechanical Engineering course. In such circumstances, the Tribunal ought not to have fixed Rs.15,600/- as monthly income of the deceased by placing reliance on the said Ex.P-5 alone. However, we are of the opinion that by fixing the notional income of Rs.12,000/- per month, the amount awarded by the Tribunal could be modified. If so fixed, and if 40% is added towards future prospects, the annual loss of income works out to Rs.2,01,600/- (12,000 + (12,000 x 40%) = Rs.16,800 and 16,800 x 12 = 2,01,600). If 50% is deducted towards personal expenses as the deceased died as Bachelor, the amount works out to Rs.1,00,800/-. The correct multiplier that has to be adopted in this case is "18" as the deceased was 22 years at the time of accident. Hence, loss of income works out to Rs.18,14,400/-. Accordingly, the amounts awarded by the Tribunal under both the heads, namely Rs.16,84,800/- under the head "loss of dependency" and Rs.6,73,920/- under the head "loss of future prospects", are set aside and instead, a sum of Rs.18,14,400/- as computed above, is awarded towards "loss of income".

10. Further, the Tribunal had awarded only Rs.30,000/- towards loss of love and affection to respondents 1 to 3 being the parents and sister of the deceased. As per the decision of the Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi, reported in 2017(16) SCC 680, each had to be awarded a sum of Rs.40,000/- under the head "loss of love and affection". Accordingly, the sum of Rs.30,000/- awarded by the Tribunal under the head "loss of love and affection" is set aside and instead, a sum of Rs.1,20,000/- is awarded under the said head (Rs.40,000x3).

11. Except the above modification of the amounts awarded by

the Tribunal, the amounts awarded by the Tribunal under the other heads being just and proper, are confirmed.

12. The amounts awarded by the Tribunal, in comparison with the amounts now awarded by this Court, are tabulated below:

Sl. No.	Heads under which the amounts are awarded	Amounts awarded by the Tribunal (in Rs.)	Amounts awarded by this Court (in Rs.)
1	Loss of dependency	16,84,800	--
2	Loss of love and affection	30,000	1,20,000
3	Transportation	10,000	10,000
4	Funeral expenses	15,000	15,000
5	Loss of Estate	15,000	15,000
6	Loss of future prospects	6,73,920	--
7	Loss of income	--	18,14,400
	Total	24,28,720	19,74,400

13. Accordingly, the appeal is partly allowed and the amount of compensation awarded by the Tribunal at Rs.24,28,720/- is hereby reduced to Rs.19,74,400/- (Rupees nineteen lakhs seventy four thousand and four hundred only), which shall carry interest at 7.5% per annum from the date of claim petition till the date of payment. The appellant-Insurance Company is directed to deposit the said amount as computed now, including accrued/proportionate interest, and costs as awarded by the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any already deposited by them. The proportion of allocation of shares, as adopted by the Tribunal, is hereby confirmed. On such deposit being made, the respondents 1 to 3/claimants are permitted to withdraw the amount after adjusting the amount, if any already withdrawn by them. No costs. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   Additional District Judge,
   Hosur.

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

C.M.A.No.4388 of 2019

RGN(CO)
RGA(13/09/2021)