



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.04.2021

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH
AND
THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

CMA.No.4314 of 2019
and
CMP.No. 24440 of 2019

Tata AIG General Insurance Company
Limited
Jaya Enclave, Avinasi Road,
Coimbatore.

... Appellant/2nd Respondent

Versus

1.V. Senthamarai

2. S. Vellingiri

...Respondent 1 and 2/Petitioner

3. N .Elangovan

...3rd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, to set aside the decree and Judgment dated 18th day of March, 2019 made in M.C.O.P.No.465 of 2015 on the file of the Motor Accidents Claims Tribunal (Sub Court, Sathyamangalam). Erode.

For Appellant : Mr.K. vinod

For R1 and R2 : Mr.R. Nalliyappan

For R3 : Exparte before Tribunal

JUDGMENT

(The Judgment of the Court was delivered by S.KANNAMMAL, J)

This Civil Miscellaneous Appeal has been filed by the appellant/ insurance company questioning the quantum of compensation awarded by Motor Accident Claims Tribunal Sub Court, Sathiyamangalam, Erode passed in M.C.O.P No. 465 of 2015 dated 18.03.2019.

2. The brief facts of the case reads as follows



On 20.02.2015 at about 9PM the deceased V. Venkat Prasad was travelling as a pillion rider in Bajaj Pulsar Motorcycle bearing registration number TN-41-F-5361 driven by his friend Venkatesh Kumar at Pazhani to Pollachi bypass road at Balasamudram four road junction, a Telco Heavy Goods vehicle bearing registration number TCE-4399 came in the direction of east to west in a rash and negligent manner, came at the right side from its direction dashed against the motorcycle and caused the accident. Due to the accident, the deceased V. Venkat Prasad and Venkatesh Kumar sustained serious head injury and died at the spot of accident itself. Hence the respondents 1 and 2 being the parents of the deceased filed a claim petition in M.C.O.P No 465/2015 against the owner of the offending vehicle and the insurance company claiming a sum of Rs. 20 lakhs as compensation for the death of said V. Venkat Prasad.

3. The third respondent owner of the vehicle involved in the accident remained ex-parte before the tribunal.

4. The appellant/insurance company filed a counter statement wherein they denied the averments made by the respondents 1 and 2 in the claim petition.

5. When the matter came up before the tribunal on 18.03.2019, on the side of the claimants two witnesses were examined via PW1 and PW2 and 15 documents were marked as exhibits via Ex.P1 - P15. On the side of appellant/insurance company, neither any witness was examined nor any documents were produced.

6. On appreciation of oral and documentary evidence, produced on the side of claimants, the tribunal arrived at a finding that the accident had occurred due to the rash and negligent driving of the driver of the third respondent's vehicle. By arriving at such a conclusion, the tribunal directed the appellant/ insurance company to pay a sum of Rs.27,58,000 as compensation to the respondents 1 and 2. Aggrieved by the quantum of compensation awarded by the tribunal, the appellant/insurance company has filed the present appeal.

7. The learned counsel for the appellant/insurance company vehemently argued that the compensation awarded by the tribunal is very huge which was not even claimed by the claimants. The learned counsel would contend that the tribunal went wrong in assessing the loss of income of the deceased. It is further contended that though the deceased was a student, the tribunal went wrong in assessing the earnings at Rs.20,000 per month without any basis and also went wrong in fixing 40% of future prospectus. The learned counsel would also contend that the compensation awarded by the tribunal under various heads are



huge and sought for the interference of this court to reduce the compensation.

8. On the other hand the learned counsel for the respondents supported the Judgement and decree passed by the tribunal and prayed for dismissal of the Civil Miscellaneous Appeal.

9. Heard both the sides. Perused the materials available on record.

10. Admittedly the deceased was a 1st year Engineering Student in Sri Krishna College of Engineering and Technology.

11. With regard to the head loss of income the Tribunal has taken Rs.20,000/- as notional monthly income and by adding 40% towards future prospects and applying the multiplier 16 arrived Rs.26,88,000/- as compensation. This Court is of the view that as the deceased was a college going student a reasonable notional monthly income of Rs.18,000/- can be fixed. Hence, the notional monthly income of the deceased is fixed at Rs.18,000/- and the amount under the head loss of income is arrived at Rs.24,19,200/-. ($18,000/- + 40\% = \text{Rs.}25,200/-$ $50\% = 12,600 \times 12 = 1,51,200 \times 16 = \text{Rs.}24,19,200/-$.) With regard to the head loss of love and affection, without an iota of doubt grieving family should be compensated for the loss of love and affection and the Tribunal has awarded Rs.40,000/- to the family members towards the head loss of love and affection, which is very meager and the same is enhanced to Rs.80,000/-. Further, under the head Transport and Funeral Expenses the Tribunal has awarded Rs.15,000/- each which needs no interference. The Tribunal has not awarded any amount for loss of estate which is to be fixed at Rs.15,000/-.

13. Taking all the above aspects into consideration, the compensation awarded by the Tribunal stands modified as follows:

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Loss of Income	Rs.26,88,000/-	Rs.24,19,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Transport Expenses	Rs.15,000/-	Rs.15,000/-
Loss of Love and affection	Rs.40,000/-	Rs.80,000/-
Loss of Estate	-Nil-	Rs.15,000/-
Total	27,58,000	25,44,000



In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.27,58,000 to Rs.25,44,000/-

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above modified award amount, the appellant/Insurance Company is directed to deposit the award amount with proportionate interest and costs, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the claimants are permitted to withdraw the amount awarded as above, by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(v) Connected Miscellaneous petition in CMP.No. 2440 of 2019 is closed .No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To

Motor Accidents Claims Tribunal,
(Sub Court, Sathyamangalam). Erode.

+1cc to Mr.K.Vinod, Advocate Sr.26815

CMA.No.4314 of 2019
and
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srg 21/10/2021