

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.3343 of 2019
and C.M.P.No.19461 of 2019

Branch Manager,
HDFC ERGO General Insurance Co. Ltd.,
2nd Floor, Chicago Plaza, Rajaji Road,
Near KSRTC Bus Stand,
Ernakulam. .. Appellant/2nd Respondent

Vs.

1.M. Geetha

2.M. Murali Respondent 1 & 2/Claimants

3.T. Narayanan .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.12.2018, made in M.C.O.P. No.2197 of 2017, on the file of the II Additional District and Sessions Judge, (Motor Accident Claims Tribunal), Tiruppur.

For Appellant : Ms.G.P.Bhargavi

For Respondents: Mr.K.Myilsamy (For R1 & R2)

No appearance (For R3)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 18.12.2018, made in M.C.O.P. No.2197 of 2017, on the file of the II Additional District and Sessions Judge, (Motor Accident Claims Tribunal), Tiruppur.

2.The appellant is the 2nd respondent in M.C.O.P. No.2197 of 2017, on the file of the II Additional District and Sessions

Judge, (Motor Accident Claims Tribunal), Tiruppur. The respondents 1 & 2/claimants filed the said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of one Marimuthu, who died in the accident that took place on 13.10.2017.

3.According to the respondents 1 & 2, on the date of accident, when the deceased was riding his Motorcycle bearing Registration No.TN-39-CA-9351 from East to West in the Thirumuruganpoondi Ring Road, in front of Kethubagavan Koil, Tirupur, the driver of the Container Lorry bearing Registration No.KL-07-4957 belonging to the 3rd respondent drove the same from West to East in a rash and negligent manner and dashed on the Motorcycle ridden by the deceased and caused the accident. In the accident, the deceased succumbed to fatal injuries. The accident occurred only due to rash and negligent driving by the driver of the Container Lorry belonging to the 3rd respondent. Hence, the respondents 1 & 2 filed the claim petition claiming compensation against the 3rd respondent and appellant as owner and insurer of the offending vehicle respectively.

4.The 3rd respondent, owner of the Container Lorry, remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 & 2 in the claim petition. According to the appellant, the accident occurred only due to rash and negligent riding by the deceased and not by the driver of the Container Lorry belonging to the 3rd respondent. At the time of accident, both the rider of the Motorcycle as well as the driver of the Container Lorry did not possess valid driving license to ply the vehicle. The appellant did not receive any information about the accident from the 3rd respondent, owner of the vehicle. Hence, the appellant is not entitled to indemnify the 3rd respondent. In any event, the claim petition is bad for non-joinder of owner and insurer of the Motorcycle. The respondents 1 and 2 have to prove the age, avocation and income of the deceased to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined two eye witnesses as P.W.2 and P.W.3 and marked 4 documents as Exs.P1 to P4. The appellant did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the Container Lorry belonging to the 3rd respondent and directed the appellant as

insurer of the said vehicle to pay a sum of Rs.18,00,000/- as compensation to the respondents 1 & 2.

8.Questioning the quantum of compensation granted by the Tribunal in the award dated 18.12.2018, made in M.C.O.P. No.2197 of 2017, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the respondents 1 and 2 failed to file documents to prove the age, avocation and income of the deceased. In the absence of any materials, the Tribunal fixed the age of the deceased as 48 years, relying on the Post Mortem Certificate. The Post Mortem Certificate is not a conclusive proof of age and it is only approximate. The respondents 1 and 2 ought to have produced Aadhaar Card of the deceased to prove the age. The Tribunal failed to see that age of the deceased is crucial for arriving at compensation for loss of dependency. The Tribunal having fixed the age of the deceased at 48 years, erroneously applied the multiplier '14', instead of '13'. The Tribunal, in the absence of materials, erroneously fixed the monthly income of the deceased at Rs.12,000/- and granted 25% enhancement towards future prospects. The amounts granted by the Tribunal for loss of love and affection and other heads are excessive and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 1 and 2 contended that the deceased was working as a Cutting Master in Shanthi Hosieries, Tirupur and was earning a sum of Rs.20,000/- per month. The 1st respondent, who is wife of the deceased deposed as P.W.1 with regard to the age, avocation and income of the deceased. The Tribunal erroneously rejected the evidence of P.W.1 and fixed meagre sum of Rs.12,000/- per month as notional income of the deceased. The total compensation awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

11.Though notice has been served on the 3rd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

12.Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 and 2 and perused the materials available on record.

13.It is the contention of the respondents 1 and 2 that the deceased was aged 45 years at the time of accident, working as a Cutting Master and was earning a sum of Rs.20,000/- per month. The respondents 1 and 2 did not produce any materials to prove

the age, avocation and income of the deceased. In the absence of any materials, the Tribunal fixed the age of the deceased as 48 years, as per Post Mortem certificate. In the absence of any materials, the Tribunal considering the age mentioned in the Post Mortem certificate, fixed the age of the deceased as 48 years. The appellant has not produced any document to show that the deceased was not aged 48 years at the time of accident. In the absence of any contra evidence, the Tribunal fixed the age of the deceased as 48 years, based on Post Mortem certificate, which is correct. Hence, the age fixed by the Tribunal is not interfered with. In the absence of evidence produced by the respondents 1 and 2, the Tribunal fixed a sum of Rs.12,000/- per month as notional income. The accident is of the year 2017. The monthly income fixed by the Tribunal is not excessive. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another], the correct multiplier applicable for the age group 46 - 50 is '13'. The Tribunal erroneously applied the multiplier '14'. Hence, by applying the multiplier '13', the amount awarded by the Tribunal towards disability is modified to Rs.15,60,000/- {[Rs.12,000/- + Rs.3,000/- (25% of Rs.12,000/-)] x 12 x 13 x 2/3}. The respondents 1 and 2 are wife and son of the deceased. The Tribunal has granted compensation for both the respondents 1 and 2 under two different heads viz., loss of love and affection and loss of consortium, which they are not entitled to. Hence, the amounts granted by the Tribunal under the heads loss of love and affection and loss of consortium to both the respondents 1 and 2 are set aside. This Court grants a sum of Rs.40,000/- towards loss of consortium to the 1st respondent, who is wife of the deceased and Rs.40,000/- towards loss of love and affection to the 2nd respondent, who is son of the deceased. The Tribunal failed to award any amount towards loss of estate. The respondents 1 and 2 are entitled to a sum of Rs.15,000/- towards loss of estate. The amount awarded by the Tribunal towards funeral expenses is just and reasonable and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	16,80,000/-	15,60,000/-	Reduced
2.	Loss of estate	-	15,000/-	Granted

3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of love and affection to respondents 1 and 2	50,000/-	-	Set aside
5.	Loss of consortium to the respondents 1 and 2	80,000/-	-	Set aside
6.	Loss of consortium to 1 st respondent	-	40,000/-	Granted
7.	Loss of love and affection to 2 nd respondent	-	40,000/-	Granted
8.	Transportation	10,000/-	10,000/-	Confirmed
	Total	18,35,000/- rounded off to 18,00,000/-	16,80,000/-	Reduced by Rs.1,20,000/-

14. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.18,00,000/- is modified to Rs.16,80,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.2197 of 2017. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The II Additional District and Sessions Judge,
(Motor Accident Claims Tribunal),
Tiruppur.

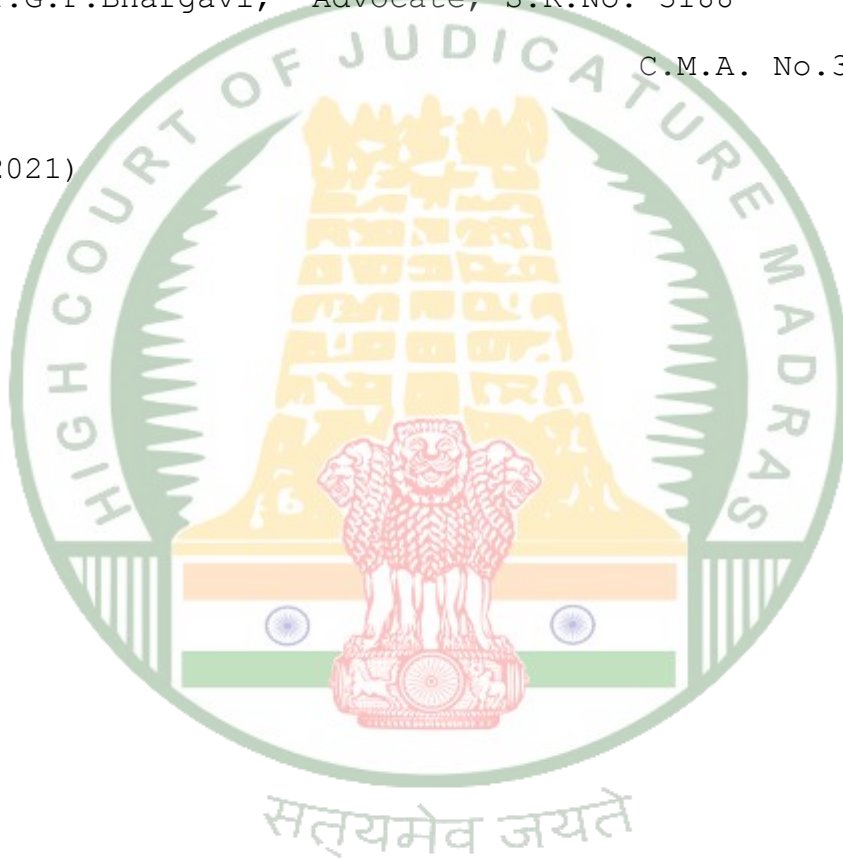
2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.K.Myilsamy, Advocate, S.R.No. 3162

+1cc to Mr.G.P.Bhargavi, Advocate, S.R.No. 3188

C.M.A. No.3343 of 2019

RP (CO)
GN (24/02/2021)



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