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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.3458 of 2017
and C.M.P.No.21973 of 2017

The Branch Manager,
United India Insurance Company Ltd.,
Taj Towers, No.2 Road,
Mayiladuthurai.

...Appellant/2nd Respondent

Vs

1.Vijaya
2.Mahalingam
3.Dineshkumar
4.Vinothkumar ... Respondents 1 to 4/Petitioner
5.M.Mohammed Ismail ...5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 23.06.2017 made in M.C.O.P.No.80 of 2016 on the file of the Motor Accidents claims Tribunal, Additional Sub-Court, Mayiladuthurai.

For Appellant : Mr.D.Bhaskaran

For R1 to R4 : Mr.M.R.Franklin

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 23.06.2017 made in M.C.O.P.No.80 of 2016 on the file of the Motor Accident Claims Tribunal, Additional Sub-Court, Mayiladuthurai.

2.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.80 of 2016 on the file of the Motor Accident Claims Tribunal, Additional Sub-Court, Mayiladuthurai. The respondents 1 to 4 filed the above said claim petition, claiming a sum of



Rs.25,00,000/- as compensation for the death of Premkumar in the accident that took place on 11.09.2015.

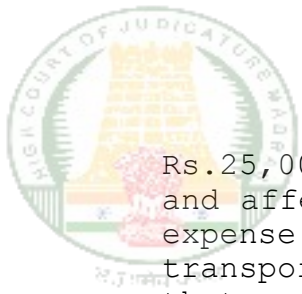
3.The facts of the case is that, the deceased Premkumar was a Mason. On 11.09.2015, while the deceased was walking in the road along with the co-workers on the way to his work, the car bearing Registration No.TN 51 P 9466, driven by its driver in a rash and negligent manner and hit against the deceased and others from the behind. Due to the accident, the deceased sustained injuries and died. The respondents 1 to 4 filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of Premkumar.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.22,91,000/- as compensation to the claimants.

5.Aggrieved over the award passed by the Tribunal, the appellant-Insurance Company filed the present appeal challenging the quantum of compensation.

6.Mr.D.Bhaskaran, learned counsel for the appellant-Insurance Company fairly submitted that there is no dispute with regard to the fixation of liability by the Tribunal. Only the quantum of compensation is in dispute. The accident was occurred in the year 2015. The deceased was a Mason. The Court below fixed the notional income of the deceased as Rs.15,000/- in the absence of any proof. The fixation of Rs.15,000/- in the absence of income proof is on the higher side. Further, he submitted the mason would get Rs.500/- per day. Taking into consideration a sum of Rs.500/- per day and deducting 4 weekly off, the Mason would get a sum of Rs.13,000/- per month as his wage. Awarding more than Rs.13,000/- would be on the higher side. Even, for fixing a sum of Rs.13,000/- for the mason, he requires to get job everyday, it is not possible for a mason to get job everyday. Therefore, he submitted that it would be just and fair to fix the notional income as Rs.12,000/- instead of Rs.15,000/- as determined by the Tribunal.

7.Further, he submitted that the age of the deceased at the time of accident was 24 years and he was a bachelor. He left behind his parents and two brothers. The Tribunal has awarded a sum of Rs.50,000/- each to the respondents 1 and 2 and a sum of



Rs.25,000/- each to the respondents 3 and 4 towards loss of love and affection. A sum of Rs.25,000/- was awarded towards funeral expense and a sum of Rs.10,000/- was awarded towards transportation and loss of amenities. Therefore, he submitted that as per the law laid down by the Hon'ble Supreme Court in the case of National Ins. Co. v. Pranay Sethi & others reported in 2017(2)TNMAC 609 (SC), the amount awarded under different heads may be re-determined.

8.Per contra, the learned counsel for the respondents 1 to 4 would submit that the mason used to get more than Rs.500/- per day as wage even in the year 2015. He would get a sum of Rs.600/- per day. Taking into consideration all these aspect the Tribunal has fixed a sum of Rs.15,000/- as notional income of the deceased. Further, he fairly submitted that the amount may be awarded under other heads as law laid down by the Hon'ble Supreme Court in Pranay Sethi case stated supra.

9.Heard the learned counsel for the appellant as well as the respondents 1 to 4 and perused materials available on record.

10.Taking into consideration the submissions made by the either side counsel and upon perusal, it appears that the accident occurred in the year 2015. The deceased left behind his parents and two brothers. He was working as a mason at the time of accident. The Tribunal fixed a sum of Rs.15,000/- as notional income of the deceased. As contended by the learned counsel for the appellant, it would be fair to award a sum of Rs.500/- per day after deducting four weekly off for a mason in the year 2015. Therefore, this Court re-fix a sum of Rs.13,000/- as notional income of the deceased. Age of the deceased at the time of accident was 24 years. Multiplier applicable for the present case is 18 as per the law laid down by the Hon'ble Supreme Court in Pranay Sethi stated supra and 40% needs to be added towards future prospect. Therefore, after adding future prospect the loss of income is re-determined as follows:

$$\text{Rs.13,000/-} + 5,200 \text{ (40\% of 13,000)} \times 12 \times 18 = 19,65,600/-.$$

11.As far as the amounts awarded under conventional heads are concerned, the Tribunal has awarded a sum of Rs.50,000/- each to the respondents 1 and 2 and a sum of Rs.25,000/- each to the respondents 3 and 4 towards loss of love and affection, which are on the higher side. Therefore, this Court redetermine



the same and award a sum of Rs.40,000/- each to the respondents 1 to 4 towards loss of love and affection. A sum of Rs.25,000/- awarded towards funeral expense is also on the higher side and this Court reduce the same as a sum of Rs.15,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards transportation and loss of amenities and the same is confirmed. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- awarded towards loss of estate. Hence, the amount awarded by the Tribunal is redetermined as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Earnings	21,06,000	19,65,600
2.	Loss of Love and Affection to the respondents 1 and 2	1,00,000	80,000
3.	Loss of Love and Affection to the respondents 3 and 4	50,000	80,000
4.	Funeral Expense	25,000	15,000
5.	Transportation and Loss of Amenities	10,000	10,000
6.	Loss of Estate	-	15,000
	Total	22,91,000	21,65,600

12.Out of the above award amount, the 1st respondent-mother of the deceased is permitted to withdraw a sum of Rs.10,00,000/-. The 2nd respondent-father of the deceased is directed to withdraw a sum of Rs.7,65,600/-. The respondents 3 and 4 is permitted to withdraw a sum of Rs.2,00,000/- each.

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.22,91,000/- is hereby reduced to Rs.21,65,600/- with interest at the rate of 7.5% per annum from the date of petition till the



date of realisation. The appellate/Insurance Company is directed to deposit the modified award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 4 is permitted to withdraw their respective shares, along with interest and costs, less the amount if any, already withdrawn. The Tribunal is directed to transfer the respective shares of the respondents 1 to 4 to them by way of RTGS to their bank account directly, within a period of three weeks from the deposit or application made by the appellant for withdrawal, whichever is later. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Motor Accident Claims Tribunal,
The Additional Subordinate Judge,
Mayiladuthurai.
- 2.The Section Officer,
VR Section,
High Court, Madras-600 104.

C.M.A.No.3458 of 2017
and C.M.P.No.21973 of 2017

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