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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.636 of 2017

1.Chellammal

2.Jayakodi

3.Rakkammal

...Appellants/Petitioners

Vs

1.T.R.Soundarrajan

2.United India Insurance Company Ltd.,
No.134, Greams Road,
Chennai 600 006.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.06.2014 made in M.C.O.P.No.5966 of 2012 on the file of the Motor Accidents Claims Tribunal, (III Court of Small Causes) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : R1-Exparte
Mr.S.Arunkumar for R2

J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the respondent.

2. The appeal is filed by the claimant being not satisfied with the quantum of compensation awarded by the Tribunal.

3. The facts of the case is that on 12.04.2004, at about 11 p.m., in CTH Road, Ambattur Estate, opposite to V.M.Bajaj showroom, while the deceased Megaraj was trying to cross the road from North to South, the motor cycle bearing Registration No. TN02 X9213 insured under the United India Insurance



Corporation Limited dashed against him resulting in multiple injuries including head injury.

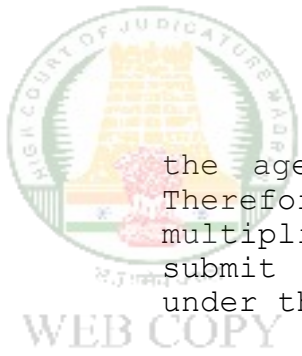
4. The accident victim was taken to the Government General Hospital, Chennai but he died on 13.04.2012. The mother, married sister and unmarried sister aged 28 years joined together and filed claim petition seeking a sum of Rs.12,00,000/- as compensation, placing before the Tribunal the fact that the deceased at the time of the accident was 26 years old working as a Bakery Master earning a sum of Rs.12,000/- per month and the claimants were totally depending on the deceased.

5. The Insurance Company filed counter stating that the claim of the petitioners is excessive and the manner in which the accident occurred was not due to the negligence of the motor cyclist. The Insurance Company also disputed the fact that the motor cyclist had no valid driving license.

6. Before the Tribunal, the respondent has not placed any evidence in support of their counter whereas the claimants have examined three witnesses and marked 9 exhibits. Based on the evidence, the Tribunal has awarded a sum of Rs.6,43,000/- as compensation with 7.5% interest.

7. In this appeal, the claimants have stated that the notional fixation of income of the deceased at Rs.6000/- is very less taking into consideration his avocation and evidence. Further, the Tribunal ought not to have deducted 50% of the income for personal expenditure, since he had three dependents and as per Sarala Verma judgment, only 1/3 has to be deducted for his personal expenditure. Learned counsel would also submit that the multiplier applied for computing the loss of income based on the age of the mother is incorrect and it should have been based on the age of the deceased. Further, the learned counsel would also state that since the Constitution Bench of the Hon'ble Supreme Court has held that future prospect should be a mandatory component for awarding compensation in case of fatal accident, the claimants are entitled for future prospects.

8. Learned counsel for the Insurance Company would submit that though the claimants have stated that the deceased was working as a Bakery Master and earning Rs.12,000/- there is iota of document to show his avocation and income. While so, fixation of income notionally at Rs.6,000/- is appropriate. However, the learned counsel would fairly concede that since the Tribunal has omitted to award future prospects, the future prospects of 40% shall be added to the notional income of the deceased in tune with the Supreme Court judgment. He had also pointed out that the multiplier as per the Sarala Verma judgment and other judgments reiterated by the Supreme Court, should be



the age of the deceased and not the age of the claimants. Therefore, instead of multiplier "11" applied by the Tribunal, multiplier "17" shall be applied. Learned counsel would further submit that in the light of the Pranay Sethy's case, the award under the other heads has to be reconsidered.

9. Taking note of the rival submissions and reasons, this Court finds that in the absence of any evidence to show the income or avocation of the deceased, it is the notional income which could be taken into account taking note of the age, date of accident and other factors. Accordingly, the deceased income is fixed at Rs.6,500/- per month notionally and 40% added to it towards future prospects. Thus, the loss of income is computed as Rs.9,28,200/- $(6500+2,600) \times 17 \times 12 \times 1/2$). The award on other heads left unaltered. Accordingly, the award of compensation to the claimants/appellants is modified and enhanced as below:

Compensation under Various Heads	Award passed by this Court
Loss of income $(6500+2,600) \times 17 \times 12 \times 1/2$	Rs. 9,28,200/-
Loss of love and affection	Rs. 1,00,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs. 10,43,200 /-

10. Accordingly, the award of Rs.6,43,000/- is enhanced to Rs.10,43,200/- with 7.5% p.a. from the date of petition 21.12.2000 till the date of deposit (except the default period). The said amount shall be apportioned among the claimants as below:

Claimants	Apportionment of compensation
1 st Claimant/Mother	Rs. 7,00,000/-
Claimants 2 and 3	Rs. 1,71,600/- each

The award amount shall be deposited by the Insurance Company within a period of 8 weeks from the date of receipt of copy of the order. On such deposit, the claimants/appellants are permitted to withdraw their respective shares on appropriate application.



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11. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
(III Court of Small Causes), Chennai.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.K. Varadha Kamaraj, Advocate sr 1286.

+1 CC to Mr.S. Arun Kumar, Advocate sr 1709.

CMA No.636 of 2017

PA(CO)

SP(01/09/2021)