BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2021

CORAM:
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A(MD)No.218 of 2018

M/s.United India Insurance Company Limited,
Gobichettipalayam. ... Appellant/3rd Respondent

Vs.

1.Muthumari
2.Sakthivel ... Respondents 1 & 2/Claimants

3.Mani

4.Sri Bannariamman Transport,
Rangasamudram Post,
Sathyamangalam,
Coimbatore District.

5.IFFCO TOKIO General Insurance Company Limited,
Trivandram Road,
Palayamkottai,
Tirunelveli. ... Respondent 3 to 5/
Respondents 1, 2 & 4
(Respondents Nos.3 to 5 are given up)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 24.10.2017 made in M.C.O.P.No.49 of 2017 on the file of the Motor Accident Claims Tribunal (Additional District Court), Tenkasi.

For Appellant : Mr.C.Jawahar Ravindran

For RR 1 & 2 : Mr.R.J.Karthik

JUDGMENT
(Judgment of the Court was delivered by PUSHPA SATHYANARAYANA,J.)

The United India Insurance Company is the appellant. Challenging the award, dated 24.10.2017 made in M.C.O.P.No.49 of

2017, on the file of the Motor Accident Claims Tribunal (Additional District Court), Tenkasi, the present Civil Miscellaneous Appeal is filed.

2.In the said M.C.O.P, the claimants, who are the respondents 1 & 2, have made the claim as compensation for the death of one Kalyanikumar, who died in the accident that occurred on 18.09.2013. The respondents 1 & 2 are the mother and brother of the deceased.

3.The brief facts relevant for the consideration of the above case are that on 18.09.2013, when the deceased-Kalyanikumar was riding a Hero Honda CBZ motor cycle bearing Registration No.TN-76-K-3511 on the extreme left side of the road from Courtalam to Shencottai main road, a private bus belonging to the fourth respondent/second respondent bearing Registration No.TN-36-T-4566, dashed against the motor cycle. Due to the said impact, the deceased sustained grievous injuries and he was immediately taken to the Government Hospital, Tenkasi for treatment. But, he succumbed to injuries on the way to Hospital. Hence, the respondents 1 & 2/claimants, as legal heirs of the deceased, has filed this claim petition claiming a compensation of Rs.50,00,000/-. The third respondent/first respondent being the driver of the private bus, the fourth respondent/second respondent being the owner of the private bus, the appellant/third respondent being the insurer of the private bus and the fifth respondent/fourth respondent being the insurer of the Hero Honda Motor Cycle.

4.Resisting the claim petition, the appellant-Insurance Company has filed a counter affidavit contending that the accident had occurred only due to the reckless act of the deceased and the quantum of compensation claimed by the claimants is highly excessive and without any basis. The second claimant is not a dependent of the deceased, as he also works in Saudi.

5.Before the Tribunal, the wife of the deceased, the first respondent herein was examined as P.W.1, Ganesan was examined as P.W.2 and Palusamy was examined as P.W.3 and Exs.P1 to Ex.P21 were marked. On the side of the appellant, one Ramamoorthy was examined as R.W.1 and Ex.R1 was marked.

6.The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred only due to the rash and negligent driving of the driver of the third respondent/first respondent and that the deceased sustained injuries and due to the impact, he died. The Tribunal further held that the appellant/Insurance Company is liable to pay compensation to the claimants and had awarded a total compensation of Rs.34,45,200/- under various heads.

7.The learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal had awarded excessive compensation under different heads. He would further submit that the Tribunal had excessively fixed the monthly income of the deceased at Rs.37,950/-, based on the salary certificate-Ex.P.7, which is also on the higher side.

8.The learned counsel appearing for the respondents 1 & 2/claimants would submit that the Tribunal had correctly awarded the compensation under various heads and the same need not be interfered with.

9.Heard the learned counsel appearing on either side and perused the materials available on record.

10.On a perusal of the entire materials available on record, it is seen that the deceased was employed in Saudi Arabia as a Fitter and the same was established by producing his passport visa and he has travelled back to India. The salary certificate, during the relevant period, was also produced as Ex.P.7. The salary certificate shows that he had been employed from May 2011 onwards in the position of instrument Technician with salary of SR2,300/- (in Saudi Rial), apart from free accommodation and transportation. Converting the said Saudi Rial into Indian currency on the date concerned, the salary is calculated at Rs.37,950/-. The deceased was a bachelor aged about 26 years, the respondents 1 and 2/claimants are his mother and brother, only the first respondent/mother can be the legal heir and dependent and the brother is already employed and hence, he cannot be the dependent of the deceased. Since the deceased was employed outside the Country, considering the nature of the job and his prospects of coming back to Country, the Tribunal had adopted a split multiplier '5' + '12' for the income earned in Saudi Arabia and India respectively.

11.As mentioned above, the monthly salary of the deceased was Rs.37,950/- per month, when converted into Indian currency, from which, 50% has to be deducted for the personal expenses of the deceased, which would come to Rs.18,975/-. Though the Tribunal had deducted further 10% towards Income Tax, as the deceased was earning only in Saudi Arabia, where income is not taxable, 10%

need not be deducted. Considering the fact that the deceased was employed as a Fitter, the future prospects in the Foreign Country is also not considered. Therefore, loss of dependency, immediately following the next five years from the date of death of the deceased, would be Rs.11,38,500/- (Rs.18,975 X 12 X 5).

12.Now, the loss of dependency based on the income in Indian rupees, which was taken at Rs.18,000/- per month by the Tribunal notionally, which we do not want to disturb. In addition to Rs.18,000/-, 40% to be added for future prospects, which would be Rs.25,200/- (Rs.18,000 + Rs.7200). In the claim petition filed by the respondents 1 and 2/claimants, in fact, the monthly income of the deceased was shown only as Rs.25,000/- per month and they have not mentioned any earning in terms of Saudi Rial. Therefore, presuming that the deceased would have earned Rs.18,000/- per month in India and adding 40% future prospects, the amount is Rs.25,200/-, from which, 50% has to be deducted for personal expenses, which would make the income available at Rs.12,600/-. Therefore, the loss of dependency, after return of the deceased to India, would be Rs.18,14,400/- (Rs.12,600 X 12 X 12).

13.In fine, loss of dependency would be as per '5' multiplier, arrived at Rs.11,38,500/- and with '12' multiplier, it is arrived at Rs.18,14,400/-, making the total loss of earning at Rs.29,52,900/-.

14.The Tribunal had awarded a sum of Rs.50,000/- each to the first and second respondents under the head loss of love and affection, which needs interference. So far as the loss of love and affection as per the decision in ***Magma General Insurance Co. Ltd., v. Nanu Ram & Others.,*** reported in ***2018 (1) TN MAC 452 (SC),*** the first respondent, who is the mother of the deceased, alone is entitled to Rs.40,000/-. A sum of Rs.50,000/- awarded under the head of loss of love and affection to the second respondent, who is the brother of the deceased cannot be awarded and the same is deleted.

15.The Tribunal had jointly awarded a sum of Rs.25,000/- towards funeral and transportation expenses, which needs interference and the same is modified and a sum of Rs.25,000/- is awarded towards funeral expenses and a sum of Rs.10,000/- is awarded towards transportation expenses.

16.Though the Tribunal had awarded a sum of Rs.10,000/- towards loss of estate, which is on the lower side, a sum of Rs.15,000/- is awarded towards loss of estate.

17.The Tribunal had awarded the compensation being shared between the first respondent/mother and the second respondent/brother of the deceased. Admittedly, the brother of the deceased is also employed in a Foreign Country and he would not even be the heir of the deceased, we are of the opinion that the entire compensation has to go the first respondent/mother of the deceased. Now, the said amounts are modified and compensation payable to the first respondent has become Rs.30,42,900/- as indicated above.

18.Accordingly, the Award of 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 (during the employment at Saudi)	13,66,200/-	11,38,500/-	reduced
2.	Loss of dependency (after return to India)	19,44,000/-	18,14,400/-	reduced
3.	Loss of estate	10,000/-	15,000/-	enhanced
4.	Loss of love and affection to the respondents 1 & 2	1,00,000/- (Rs.50,000 X 2)	40,000/- (first respondent alone)	reduced
5.	Funeral expenses & Transportation expenses	25,000/-	35,000/- (25,000 + 10,000)	enhanced
	Total	Rs.34,45,200/-	Rs.30,42,900/-	Reduced by Rs.4,02,300/-

19.In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The Award of the Tribunal is reduced to Rs.30,42,900 /- from Rs.34,45,200/-.

(ii) The interest granted by the Tribunal at 9% per annum is confirmed.

(iii) The Insurance Company is directed to deposit the award amount together with accrued interest and costs to the credit of claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order.

(v) The Tribunal is directed to refund the excess award amount, if any, to the appellant-Insurance Company together with interest at the rate of 9% from the date of the claim petition.

(vi) The first respondent is permitted to withdraw the entire award amount with proportionate accrued interest and costs, less the award amount withdrawn already.

No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Additional District Judge,
   Motor Accident Claims Tribunal,
   Tenkasi.

2.The Record Keeper, VR Section-2 copies
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.J.KARTHICK, Advocate (SR-7954[F] dated 01/03/2021)

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KM(20.05.2021) 7P 5C