IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.No.3145 of 2021
and C.M.P.No.17783 of 2021

The Divisional Manager
United India Insurance Co. Ltd.
Divisional Office
Rajarshi Shahu Sadan Road
Shahupuri, Kolhapur – 416 001
Maharashtra State. ... Appellant

Vs.

1.Anuradha
2.Minor Sai Dhanush
3.Minor Sai Manasvi
(Minors/respondents 2 and 3 rep. by
their next friend mother Anuradha)

4.Shivaji Ganpat Sarnaik ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.09.2019 made in M.C.O.P.No.866 of 2018 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.J.Chandran

For R1 to R3 : Mr.SP.Yuaraj

For R4 : No appearance

JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 06.09.2019 made in M.C.O.P.No.866 of 2018 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.866 of 2018 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri. The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.2 Crores as compensation for the death of one Prashanth, who died in the accident that took place on 20.08.2017.

3.According to the respondents 1 to 3, on the date of accident i.e., on 20.08.2017 at about 8.00 a.m., while the deceased Prashanth along with his wife and children were proceeding in Maruthi Suzuki Swift Car bearing Registration No.KA-01-ME-0759, which was driven by one Nageshbabu, from Bangalore to Melmalaiyanur Angalamman temple in Villupuram District, for worship and when the Maruthi car was near Anjaneyar temple in Aanandhavalli village on Bangalore to Tiruvannamalai N.H. road, the driver of Tavera Car bearing Registration No.MH-09-DX-5523 belonging to the 4th respondent, who was coming in the opposite direction from Tiruvannamalai to Uthangarai, drove the same in a rash and negligent manner, hit against the said Maruthi Car and caused the accident. In the accident, the said Prashanth died on the spot and other occupants of the car sustained grievous injuries. Therefore, the respondents 1 to 3 have filed the above claim petition claiming compensation against the 4th respondent, owner of the Tavera car and appellant/Insurance Company, insurer of the said Tavera car.

4.The 4th respondent, owner of the Tavera car remained exparte before the Tribunal.

5.The appellant/Insurance Company insurer of the Tavera Car bearing Registration No.MH-09-DX-5523 filed counter statement denying the averments made by the respondents 1 to 3 and stated that the Tribunal has no territorial jurisdiction as the respondents 1 to 3 are having permanent residence at Bangalore. The appellant has not issued any policy certificate for the Tavera car at the time of accident. The driver of the Tavera car belonging to the 4th respondent did not possess driving license to drive the vehicle at the time of accident. The owner and insurer of the Maruthi car were not made as parties to the claim petition. Hence, the claim petition is bad for non-joinder of necessary parties. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 3. The appellant/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents 1 to 3 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent, wife of the deceased Prashanth examined herself as P.W.1 and 29 documents were marked as Exs.P1 to P29. The appellant/Insurance Company did not let in any oral and documentary evidence. Disability certificate issued by the Medical Board for P.W.1 was marked as Ex.C1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of Tavera car belonging to the 4th respondent and directed the 4th respondent as well as appellant/Insurance Company being the insurer of the said Tavera car to jointly and severally pay a sum of Rs.1,38,92,656/- as compensation to the respondents 1 to 3.

8.Against the judgment and decree dated 06.09.2019 made in M.C.O.P.No.866 of 2018, the appellant/Insurance Company has come out with the present appeal.

9.Though the learned counsel appearing for the appellant raised grounds with regard to liability and jurisdiction, at the time of arguments, he restricted his arguments only with regard to quantum of compensation awarded by the Tribunal and contended that the respondents 1 to 3 have marked pay slip of the deceased only for the month of May and June 2017 and they have not examined the author of the said documents to prove the avocation and income of the deceased. The Tribunal erred in taking the entire monthly income of the deceased at Rs.78,385/- without deducting the expenses of Rs.10,712/-. While arriving the compensation, average of income of three years should be taken and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 1 to 3 contended that the deceased was working as Assistant Manager in TATA Consultancy Services, Bangalore and was earning a sum of Rs.8,58,400/- per annum. The respondents 1 to 3 have produced Exs.P9 and P10 salary certificates of the deceased for the months of May and June 2017. The appellant did not object to marking of the same and he is not entitled to challenge the same in the appeal. The Tribunal considering Exs.P9 and P10, fixed monthly income of the deceased and awarded compensation. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Though notice has been served on the 4th 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 as well as the learned counsel appearing for the respondents 1 to 3 and perused the entire materials on record.

13.From the materials on record it is seen that, the respondents 1 to 3 claimed that at the time of accident, the deceased Prashanth was working as Assistant Manager in TATA Consultancy Services, Bangalore and was earning a sum of Rs.8,58,400/- per annum. To prove the said claim, the respondents 1 to 3 have marked pay slip of the deceased for the months of May and June 2017. Further, the respondents 1 to 3 have marked TDS Form – 16 issued by the employer of the deceased as Ex.P11. The appellant has not disputed the claim of respondents 1 to 3 that deceased was working as Assistant Manager in TCS, Bangalore and Exs.P9 and P10 are not genuine and fabricated. In view of the same, the contention of the learned counsel appearing for the appellant/Insurance Company that the respondents 1 to 3 have marked only pay slip for the month of May and June 2017 and author of the said documents was not examined, is without any merits and not acceptable. The Tribunal accepting Exs.P9 and P10 fixed the monthly income of the deceased at Rs.77,135/-, after deducting a sum of Rs.1,250/- towards sundry medical as per Ex.P10. From Exs.P9 and P10 – Pay slips for the month of May and June 2017, it is seen that the employer of the deceased has deducted a sum of Rs.7,962/- towards Income Tax. However, the Tribunal failed to deduct the same while arriving at the monthly income of the deceased. The respondents 1 to 3 are entitled to compensation only after deducting the Income Tax payable by the deceased. Thus, the monthly income of the deceased is arrived as follows -

Monthly income of the deceased		... Rs.78,385/-
LESS: Sundry Medical	Rs. 1,250/-}	
LESS: Income tax deduction	Rs. 7,962/- }	... Rs. 9,212/-

		Rs.69,173/-
		=========

The deceased was aged 35 years at the time of accident. Following the judgments of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC [Sarla Verma & Others vs. Delhi Transport Corporation & another]** and

2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the Tribunal has rightly adopted multiplier '16' and granted 40% enhancement towards future prospects. There are three dependants of the deceased. The Tribunal has rightly deducted 1/3rd towards personal expenses. Hence, the same is not interfered with. Thus, by fixing the monthly income of the deceased as Rs.69,173/-, the amount towards loss of dependency is arrived as follows -

Monthly income of the deceased	Rs.69,173/-
ADD: 40% towards future prospects	Rs.27,669/-

	Rs.96,842/-
LESS: 1/3rd towards personal exps.	Rs.32,281/-

	Rs.64,561/-

Loss of dependency (Rs.64,561 x 12 x 16)	**Rs.1,23,95,712/-**

The sum of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- awarded by the Tribunal towards loss of consortium, funeral expenses and loss of estate respectively are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by	Amount awarded by	Award confirmed or

		Tribunal (Rs)	this Court (Rs)	enhanced or granted
1.	Loss of dependency	1,38,22,656	1,23,95,712	Reduced
2.	Funeral expenses	15,000	15,000	Confirmed
3.	Loss of consortium	40,000	40,000	Confirmed
4.	Loss of estate	15,000	15,000	Confirmed
	Total	**1,38,92,656**	**1,24,65,712**	**Reduced by Rs.14,26,944/-**

14.With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.1,38,92,656/- awarded by the Tribunal is hereby reduced to Rs.1,24,65,712/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant/Insurance Company and the 4th respondent are jointly and severally directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw her respective share of the award amount, now determined by this

Court, as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minor respondents 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 and 3, is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 and 3. The appellant/Insurance Company and 4th respondent are permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.866 of 2018 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) **(S.S., J)**
20.06.2022

Index : Yes / No
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V.M.VELUMANI,J.
and
S.SOUNTHAR,J.

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To

1.The Additional District Judge
Motor Accident Claims Tribunal
Krishnagiri.

2.The Section Officer
VR Section
High Court
Madras.

C.M.A.No.3145 of 2021
and C.M.P.No.17783 of 2021

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