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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.1935 of 2021
and
C.M.P.No. 10421 of 2021

The New India Assurance Co. Ltd.,
No.236, Bombay Mutual Building,
6th Floor, NSC Bose Road,
Chennai.

... Appellant/2nd Respondent

Vs.

1. T.Kumari ...1st Respondent/ Petitioner

2. M.Muthuramanujam ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 18.03.2020 in M.C.O.P.No.6882 of 2016 passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents: Mrs.N.Amuthalakshmi for R1
R2 - Served - No appearance

JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM,
J.]

This Civil Miscellaneous Appeal is filed by the Insurance Company assailing the Judgment and decree passed by the Motor Accident Claims Tribunal, II Small Causes Court, Chennai in M.C.O.P.No.6882 of 2016 dated 18.03.2020.

2.Facts necessary for disposal of this appeal are as follows:-

This is a case of fatal accident. The deceased-Tamilselvan, was a driver of a Eichar Mini lorry bearing Registration No.TN 29 AF 3504 and he was driving the said lorry from Krishnagiri -



Dharmapuri Highways. When he reached near flyover in Santhapuram Village, it is alleged that the TATA Bens Mini lorry bearing Registration No.TN 67 AD 7076, which was proceeding in front of the Eicher lorry, suddenly stopped the vehicle without showing any signal. Therefore, the deceased dashed against the TATA Benz Mini lorry and sustained injuries and died on the spot. The 1st respondent - T.Kumari was the claimant and according to her, her deceased husband was earning Rs.25,000/- per month and hence she is entitled for total compensation of Rs.58,00,000/- from the owner of the TATA Benz Mini lorry as well as the insurer.

3.The appellant filed a counter in the claim petition, wherein, age, occupation, monthly income of the deceased were denied. It is further stated that the accident occurred purely due to the negligent driving of the deceased and not the driver of the TATA Benz Mini lorry. According to the counter, already an accident had taken place on the said road, involving two other vehicles and on seeing those vehicles, involved in the accident, the driver of the TATA Benz Mini lorry slowed down and stopped the lorry. In the meanwhile the Eicher lorry, which was driven by the deceased hit against the said vehicle, hence the appellant cannot be fastened liability to pay any compensation.

4.In order to prove the negligence, on the side of the claimant P.W.2 was examined as eye witness to the incident. On his complaint-Ex.P.5, FIR came to be registered. The oral testimony of P.W.2 and the copy of FIR shows that the driver of the TATA Benz Mini lorry without any signal suddenly stopped the vehicle and hence the vehicle which was following the TATA Benz Mini lorry hit against the same. In our opinion, the Tribunal, based on the evidence of P.W.1 and Ex.P.5 has rightly held that the driver of the TATA Benz Mini lorry was responsible for the accident.

5.In so far as quantum is concerned, in the claim petition, it is stated that the deceased was earning Rs.25,000/- per month. P.W.1, in her evidence also deposed in the same line. Since no documentary evidence is produced, the Tribunal fixed the income of the deceased as Rs.20,000/- per month and after adding 25% towards future prospectus and after deducting 1/3rd for the personal expenses has awarded Rs.26,00,000/- as loss of dependency. It is mainly contended by the learned counsel for the appellant that the income fixed by the Tribunal is on the higher side. We find force in the submission of the learned counsel for the appellant.

6.Considering the fact that the accident had occurred in the year 2016, it would be appropriate to fix the income of the deceased at Rs.15,000/- per month. There is no dispute that 25



% to be added towards the future prospectus and thus, the total monthly income of the deceased is arrived at Rs.18,750/- from which 1/3rd has been deducted for his personal expenses and the contribution to the family would be Rs.12,500/-. Proper multiplier is '13' and hence, the loss of income is assessed as Rs.19,50,000/-. The Tribunal has rightly awarded Rs.40,000/- towards consortium, Rs.15,000/- towards funeral expenses. Since no document has been produced, the amount awarded under the head 'medical expenses' is hereby set aside, instead the said amount is awarded under the head 'loss of estate'. 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	26,00,000/-	19,50,000/-	reduced
2.	Loss of Consortium	40,000/-	40,000/-	confirmed
3.	Medical expenses	15,000/-	---	Set aside
4.	Funeral expenses	15,000/-	15,000/-	confirmed
5.	Loss of estate	----	15,000/-	granted
	Total	26,70,000/-	20,20,000/-	Reduced by Rs.6,50,000/-

7.In fine, the claimant would be entitled to Rs.20,20,000/- along with interest at the rate of 7.5% per annum, from the date of claim petition, till the date of realization. Further, it is represented by the learned counsel for the appellant that the entire award amount has been deposited. The Tribunal shall permit the claimant to withdraw the modified award amount along with interest and the excess amount, if any, shall be returned to the appellant/Insurance company.

8.In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

Jer



To

1. The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

Copy To:

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

+2cc to M/s.N.Amuthulakshmi, Advocate, S.R.No.12656

C.M.A.No.1935 of 2021
and
C.M.P.No. 10421 of 2021

GMR(CO)
SB(18/05/2022)