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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.04.2022

CORAM:

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

C.M.A.No.1083 of 2022
and
C.M.P.No.7925 of 2022

The Oriental Insurance Co. Ltd.,
No.115/2016, Prakasam Road,
Chennai - 600 108.

... Appellant/1st Respondent

Vs.

1.Shanthi
2.Geetharani
3.Nagarathinam
4.Hariram

...Respondents 1 to 4/Petitioners

5.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.

...5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the Decree and Judgment passed in MCOP No.7164 of 2017 on 29.10.2021 on the file of the Motor Accident Claims Tribunal (In the III Court of Small Causes), Chennai.

For Appellant : Mr.J.Chandran
For Respondents: Mr.K.Varadha Kamaraj for R1 to R4

JUDGMENT

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

Heard Mr.J.Chandran, learned counsel appearing for the appellant/Insurance Company and Mr.K.Varadha Kamaraj, learned counsel appearing for the respondents 1 to 4/claimants.



2.This appeal is directed against the order of the Motor Accident Claims Tribunal (In the III Court of Small Causes), Chennai in MCOP No.7164 of 2017 dated 29.10.2021.

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3.This is the case of fatal accident. The claimants are the legal heirs of the deceased Nithyakalyanan. According to the claimants, the deceased was riding his motorcycle bearing Reg.No.TN-05-AW-7567 on 05.09.2017 at 10.15 hours from west to east in K.H.Road, Ottery, Chennai - 600 012. At that time, a lorry bearing Reg.No.TN-04-AQ-6280 owned by the Chennai Corporation insured with the appellant driven by its driver in a rash and negligent manner in the same direction, hit against him. In the accident, he sustained grievous injuries and died on the spot. The claimants further stated that at the time of accident, the deceased was working as 'Conductor' in the Transport Corporation and he was earning Rs.40,000/- per month. Since the accident occurred due to the negligence of the driver of the lorry, they are entitled to compensation of Rs.50,00,000/-.

4.The claim was resisted by the appellant/Insurance Company and the 5th respondent/Corporation by filing a separate counter disputing the manner of the accident, age, avocation and income of the deceased. However, the Tribunal, after analyzing the evidence adduced by the parties, came to the conclusion that the accident occurred due to the negligence of the driver of the lorry and awarded total compensation of Rs.36,65,200/- along with 7.5% per annum. Questioning the same, the present appeal has been filed.

5.The contention of the learned counsel appearing for the appellant/Insurance Company is that the deceased was drawing the salary of Rs.34,000/- per month only, but the Tribunal has taken the income as Rs.37,200/- to assess the loss of income. According to the learned counsel, the award amount has to be reduced.

6.Per contra, the learned counsel appearing for the respondents/claimants argued in support of the award of the Tribunal.

7.Perusal of the materials would show that at the relevant point of time, the deceased was paid Rs.34,000/- per month. It is not in dispute that the deceased died at the age of 56 years. As per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd., vs. Pranay Sethi



and others reported in 2017 (2) TN MAC 609 (SC), the claimants are entitled to 15% addition towards future prospects and as per the decision of Sarala Verma and others vs. Delhi Transport Corporation and another reported in 2009 TN MAC 1, proper multiplier would be '9'. Since the claimants are four in number, $1/4^{\text{th}}$ of the income has to be deducted towards personal expenses. Hence, after adding 15% towards future prospects and after deducting $1/4^{\text{th}}$ towards personal and living expenses and by applying multiplier '9', the loss of dependency is assessed as Rs.31,67,100/- ($34000+5100=39100 \times 12 \times 9 \times 3/4$). As per the decision of the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), each of the dependents are entitled to Rs.40,000/- towards consortium and Filial consortium, which comes to Rs.1,60,000/-. Hence, the amount of Rs.40,000/- awarded towards consortium is enhanced to Rs.1,60,000/-. The amount of Rs.15,000/- awarded towards funeral expenses; Rs.15,000/- towards loss of estate and Rs.10,000/- towards Transport Expenditure are confirmed. The amount of Rs.1,20,000/- awarded towards loss of love and affection is set aside. The rate of interest fixed by the Tribunal as 7.5% per annum is unaltered.

8. For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of dependency	34,65,180/-	31,67,100/-	reduced
Loss of Consortium	40,000/-	1,60,000/-	enhanced
Funeral Expenses	15,000/-	15,000/-	confirmed
Loss of Estate	15,000/-	15,000/-	confirmed
Transport Expenditure	10,000/-	10,000/-	Confirmed
Loss of love and affection	1,20,000/-	Nil	Set aside
Total	36,65,180/-	33,67,100/-	Reduced
Rounded off	36,65,200/-	33,67,000/-	



9. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.36,65,200/- is reduced to Rs.33,67,000/-. Out of the said amount, the first claimant/wife of the deceased is entitled to Rs.20,00,000/-; the second claimant/daughter of the deceased is entitled to Rs.7,00,000/-, 3rd claimant/mother of the deceased is entitled to Rs.3,67,000/- and the fourth claimant/father of the deceased entitled to Rs.3,00,000/- together with proportionate interest and costs.

10. The appellant/Insurance Company is directed to deposit the modified award amount of Rs.33,67,000/- with accrued interest and costs, 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 claimants are permitted to withdraw their share after filing a memo, along with a copy of this order, less the amount if already withdrawn. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VI)

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Sub Assistant Registrar

skn

To

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

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

+1 cc to M/s.J.Chandran Advocate sr29589

+1 cc to Mr.K.Varadha Kamaraj Advocate sr29767

C.M.A.No.1083 of 2022
and
C.M.P.No.7925 of 2022

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