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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM:

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

C.M.A.NO.2137 OF 2021

AND

C.M.P.NO.11797 OF 2021

M/s Cholamandalam MS General Insurance Company Limited,
Rashmi Towers, 2nd Floor,
No.1, Village Road,
Nungambakkam,
Chennai - 600 034.

...Appellant / 2nd Respondent

Vs.

1.S.Sujatha

2.Minor Sreya

3.Minor Srinika

...Respondents / Petitioners

(respondents 2 and 3 are rep.

by their mother & NF, the 1st respondent)

4.S.Bala

5.K.Jelarani

...Respondents / Respondents 1 & 3

Kaliyaperumal (died)

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree made in MCOP No.503 of 2015 dated 03.12.2020 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Cuddalore.

For Appellant : Mr.M.B.Raghavan

For Respondents : Mrs.Ramya V.Rao for R1 to R3
No appearance for R4 & R5

JUDGMENT

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

This appeal is directed against the award passed by the Motor Accident Claims Tribunal, Special Sub Judge, Cuddalore made in MCOP No.503 of 2015 dated 03.12.2020.



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2. Heard Mr.M.B.Raghavan, learned counsel appearing for the appellant/Insurance Company and Mrs.Ramya V.Rao, learned counsel appearing for the respondents/claimants and perused the materials available on record.

3.The facts in nutshell:-

This is the case of fatal accident. On 30.08.2014 at about 08.30 hours, when the deceased Senthil was riding his Yamaha Libero Motorcycle bearing Reg.No.31-F-5848 on Imperial Road, opposite to Chakralaya Motors, Cuddalore, a Maxi Cab bearing Reg.No.TN-21-C-1026, which was coming from the opposite direction in a rash and negligent manner, hit against the deceased. Even though he was taken to Government Head Quarters Hospital, Cuddalore, he succumbed to the injuries on the same day. The respondents 1 to 3 filed the claim petition seeking compensation of Rs.2,50,00,000/-. The first claimant is the wife and the claimants 2 and 3 are the children of the deceased Senthil. The fifth respondent is the mother of the deceased. During the pendency of the appeal, the father of the deceased died. According to the claimants, the deceased Senthil died at the age of 35 years and he was working Bosun (Officer in Ship Managng Deck crew) and drawing a sum of Rs.1,00,000/- per month. Hence, the owner as well as insurer of the Maxi Cab are liable to pay compensation.

4.The claim was resisted by the appellant/Insurance Company by filing a detained counter disputing and denying the allegations made in the claim petition.

5.During the Trial, the parties adduced oral and documentary evidence. After analyzing the evidence adduced by the parties, the Tribunal came to the conclusion that the accident occurred due to the negligence of the driver of the maxi cab van and awarded compensation of Rs.1,92,25,000/- along with interest at the rate of 7.5% per annum. Questioning the same, the present appeal has been filed.

6.The learned counsel appearing for the appellant/Insurance Company would urge that though the claimants have pleaded in the claim petition that the deceased was earning Rs.1,00,000/- per month, but no material is available to show that the income was received by the claimants. According to the learned counsel, P.W.1 has admitted in her evidence that her deceased husband has deposited the earning in her account and if the average amount received from the deceased is taken, it would be Rs.33,774/- per month, hence, the notional income fixed by the Tribunal as Rs.1,00,000/- per month is liable to be set aside.



7. Per contra, the learned counsel appearing for the respondents/claimants would submit that the claimants have produced the receipts for payment of salary, but there is no supporting documents to show that those amounts were credited to the account of the deceased, nor the said amount was received by the claimants. It is the submission of the learned counsel that the amount awarded by the Tribunal is reasonable and no interference is required by this Court.

8. We have considered the rival submission of both the learned counsels and perused the materials available on record.

9. In this appeal, the appellant/Insurance Company have not disputed the finding on negligence, but they are questioning the quantum of compensation awarded in favour of the claimants.

10. Perusal of the bank statements of P.W.1, which were marked as Exs.P.69 and 74, would reveal that the deceased had deposited money in the account of P.W.1 from the year 2008 to 2014. The amount varies from year to year. In 2008-2009, Rs.13,527/- was deposited in the account of P.W.1, which was gradually increasing for the subsequent years, however, in the year 2014-15, the amount was Rs.29,168/- and it went up to about Rs.50,000/-. If an average amount is taken, it would be Rs.33,774/- as suggested by the learned counsel appearing for the appellant. However, considering the fact that the deceased was working in ship and according to the claimants, he was receiving Rs.1,00,000/- per month as salary, we are of the opinion that the contribution to the family can be taken as Rs.40,000/- per month. Since we have taken contribution, there need not be any deduction for the personal expenses of the deceased. 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) TNMAC 609 (SC), the claimants are entitled to 40% of the income towards future prospects. The Tribunal rightly applied the multiplier '15'. Accordingly, by adding 40% towards future prospects and by applying multiplier '15', the loss of income is assessed as Rs.1,00,80,000/- $(40,000 + 16000(40\%) = 56000 \times 12 \times 15)$. Hence, Rs.1,00,80,000/- is awarded under the head of loss of income.

11. As per the decision of the Hon'ble Supreme Court of India in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), the dependents are entitled to Rs.40,000/- each towards consortium and filial consortium, which comes to Rs.1,60,000/-. Hence, the amount of Rs.40,000/- awarded towards loss of consortium is enhanced to Rs.1,60,000/-. The amount of Rs.2,50,000/- awarded towards loss of love and affection is set aside. The amount of Rs.15,000/- awarded towards funeral expenses; Rs.15,000/- awarded towards



loss of estate and Rs.5000/- awarded towards Transportation are confirmed. The rate of interest fixed by the Tribunal as 7.5% per annum is confirmed.

12. Accordingly, the compensation awarded by the Tribunal is re-quantified as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of income	1,89,00,000/-	1,00,80,000/-	reduced
Loss of love and affection	2,50,000/-	Nil	set aside
Loss of Consortium	40,000/-	1,60,000/-	enhanced
Funeral Expenses	15,000/-	15,000/-	confirmed
Loss of Estate	15,000/-	15,000/-	confirmed
Transportation	5,000/-	5,000/-	confirmed
Total	1,92,25,000/-	1,02,75,000/-	reduced

13. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.1,92,25,000/- is reduced to Rs.1,02,75,000/-. Out of which, the first claimant/wife of the deceased is entitled to Rs.32,75,000/-; the claimants 2 and 3/children of the deceased are entitled to Rs.30,00,000/- each; and the fifth respondent/K.Jelarani/mother of the deceased is entitled to Rs.10,00,000/-. The appellant/Insurance Company is directed to deposit the modified award amount 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 major claimants are permitted to withdraw their share after filing a memo, along with a copy of this order, less the amount if already withdrawn. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Bank till they attains majority and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the Bank. The minor claimants/Sreya and Srinika on attaining majority are permitted to withdraw there share. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

skn



To

1. The Special Sub Judge,
The Motor Accident Claims Tribunal,
Special Subordinate Court, Cuddalore.

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

+2ccs to M/s. Ramya V. Rao, Advocate Sr.No.28729

C.M.A.No.2137 of 2021
and
C.M.P.No.11797 of 2021

VG-II (CO)
RVM(01/06/2022)