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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM:

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

C.M.A.No.2039 of 2018
and
C.M.P.No.15848 of 2018

United India Insurance Co. Ltd.
Divisional Office No.II, No.5521, II Floor,
Malankara Buildings Palayam,
Trivandrum - 695 034. ... Appellant/2nd Respondent

Vs.

- 1.Saroja
- 2.Minor Dharaneesh
- 3.Muniyammal
- 4.Sengodan ... Respondents 1 to 4/Claimants 1 to 4
(Minor rep. by his mother/NF
the first respondent)
- 5.Jose Xavier
- 6.The Managing Director,
The Kerala State Transport Corporation Ltd.,
Head Office Transport Bhavan East Fort,
Thiruvananthapuram - 695 014,
Kerala State. ... Respondents 5 & 6/Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 28.07.2017 made in MCOP No.97 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Sankari.

For Appellant :Mr.S.Arunkumar

For Respondents:Mr.C.Bharaneetharan for R1 to R4
Mr.K.J.Sivakumar for R6
No appearance for R5



JUDGMENT

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

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The Insurance Company has come up with this appeal assailing the award of the Motor Accident Claims Tribunal, Sub-Court, Sankari made in MCOP No.97 of 2012, dated 28.07.2017.

2. Facts necessary for disposal of the appeal are narrated herein under:-

On 18.05.2011 at about 07.30 a.m the deceased Rajavel @ Chellamuthu was walking Near Mukkolakkal Junction, Athipera village at Kerala. At that time, the 6th respondent bus bearing Reg.No.KL-15-6251 driven by its driver in a rash and negligent manner, hit the another bus bearing Reg.No.KL-01-BA-6284 (Minibus). In the impact, the driver of the minibus lost his control and hit the deceased. In the accident, the deceased sustained the injuries on his head and all over the body. Immediately, he was taken to the Medical College Hospital, Trivandrum and admitted as inpatient from 18.05.2011 to 28.05.2011 and he died on 29.05.2011. At the time of accident, the deceased was 40 years old and he was working as Driver in a Bore-well Company and thereby, he was earning Rs.10,000/- per month. The first claimant is the wife, the second claimant is the son and the third and fourth claimants are the parents of the deceased. The accident had occurred only due to the rash and negligent driving of the driver of the minibus. The fifth respondent herein is the owner and the appellant is the insurer of the offending vehicle. Hence, the claimant filed the claim petition seeking compensation of Rs.15,00,000/-.

3. The appellant Insurance Company filed their counter disputing the manner of accident, occupation and income of the deceased and its liability to pay the compensation. It was also contended that the claim is excessive and exorbitant.

4. To substantiate the case, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and Ex.P.1 to Ex.P.12 were marked. On the side of the appellant/Insurance Company, only one witness was examined and no document was filed.

5.The Tribunal, after considering the oral and documentary evidence, held that the both the drivers of the bus were responsible for the accident and fixed the negligence on both



the drivers at the ratio of 50:50 and awarded compensation of Rs.41,25,000/- to the claimants. Assailing the award, the appellant/Insurance Company has filed the present appeal.

6.The learned counsel appearing for the appellant/Insurance Company Mr.S.Arunkumar would submit the Tribunal erred in awarding huge compensation of Rs.41,25,000/- on surmises and conjectures. The Tribunal erred in fixing the annual income at Rs.18,000/- even though the claimants themselves have specifically stated in the claim petition that the deceased was earning Rs.10,000/- per month. He would further submit that to get the higher income, the documents Exs.P8, P9 and P12 were prepared. The Tribunal added 50% towards future prospects, which is contrary to the decision of the Hon'ble Supreme Court. Hence, the learned counsel prays that the award amount has to be reduced.

7.Per contra, the learned counsel appearing for the first respondent/claimant Mr.C.Bharaneetharan submitted that the impugned award awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

8.Mr.K.J.Sivakumar, learned Standing Counsel appearing for the 6th respondent/Transport Corporation supported the argument of the learned counsel appearing for the appellant/Insurance Company.

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

10.In this appeal, negligence fixed by the Tribunal on both the drivers is not challenged. Hence, it is not discussed.

11.A perusal of the records would show that in the claim petition, the claimants have stated that the deceased was earning Rs.10,000/- per month, but the Tribunal fixed the notional income as Rs.18,000/-. Considering the fact that the accident occurred in the year 2011, Rs.10,000/- is fixed as notional monthly income. 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' and deducted 1/4th towards personal expenses. Accordingly, by adding 40% towards future prospects, after deducting 1/4th



12.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 claimants are entitled to Rs.40,000/- each towards consortium and filial consortium, which comes to Rs.1,60,000/-. Hence, the amount of Rs.1,00,000/- awarded towards loss of consortium is enhanced to Rs.1,60,000/-. The amount of Rs.25,000/- awarded towards funeral expenses is reduced to Rs.15,000/-. Rs.15,000/- is awarded towards loss of estate. Hence, the amount awarded by the Tribunal under the head of loss of love and affection, medical expenses and pain and suffering are set aside. The rate of interest fixed by the Tribunal as 7.5% per annum is confirmed. The liability to pay the compensation fixed on both the Insurance Company and the Transport Corporation by the Tribunal is confirmed. Accordingly, 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 income	Nil	18,90,000/-	granted
Future prospects	36,45,000/-	Nil	set aside
Loss of Consortium	1,00,000/-	1,60,000/-	enhanced
Loss of love and affection	3,00,000/-	Nil	set aside
Medical Expenses	5,000/-	Nil	set aside
Pain and Sufferings	50,000/-	Nil	set aside
Funeral Expenses	25,000/-	15,000/-	reduced
Loss of Estate	Nil	15,000/-	granted
Total	41,25,000/-	20,80,000/-	reduced



13. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.41,25,000/- is reduced to Rs.20,80,000/-. Out of which, the first claimant/wife of the deceased is entitled to Rs.10,00,000/-; the second claimant/son of the deceased is entitled to Rs.7,00,000/-; third claimant/mother of the deceased is entitled to Rs.3,00,000/- and the fourth claimant/father of the deceased is entitled to Rs.80,000/-. The appellant/Insurance Company and the 6th respondent/Transport Corporation are directed to deposit the modified award amount at the ratio of 50:50 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 claimant in any one of the Nationalised Bank till he 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 claimant/Dharaneesh on attaining majority is permitted to withdraw his share. No costs. Consequently, connected miscellaneous petition is closed.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

skn

To

1.The Motor Accidents Claims Tribunal,
Subordinate Judge, Sankari.

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

+1cc to Mr.S.Arunkumar, Advocate Sr.29057

+1cc to Mr.K.J.Sivakumar, Advocate Sr.28982

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and
C.M.P.No.15848 of 2018

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