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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2022

PRONOUNCED ON: 07.03.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.2082 of 2018

and

C.M.P.No.16192 of 2018

M/s.National Insurance Company Ltd.,
No.751, 3rd Floor,
T.P.Cell
Anna Salai,
Chennai - 600 002.

... Appellant / 2nd Respondent

Vs.

1.V.Sarumathi
2.V.Karthiyayini
3.V.Arunprasad
4.V.Priyadarshini
5.J.Devaraj

... Respondents 1 to 4/ Petitioners 1 to 4
... 5th Respondent / 1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 15.12.2017 made in M.C.O.P.No.1389 of 2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, IV Judge (FAC), Chennai.

For Appellant :Ms.R.Sree Vidhya

For R1 to R4 :Mr.B.Jawahar

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company, questioning the validity and correctness of the award dated 15.12.2017 passed in M.C.O.P.No.1389 of 2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, IV Judge (FAC), Chennai.



2. Before the Tribunal, the respondents 1 to 4 herein have filed M.C.O.P.No.1389 of 2013 by stating that on 13.09.2012 at about 4.30 p.m., when the deceased A.Varadarajan was walking along Chithalapakkam Koot Road, opposite to Pillayar Kovil Street, the Tata Indica Car bearing Registration No.TN 69 AY 7497 was driven by its driver (1st respondent in the claim petition) in a rash and negligent manner and hit the deceased from behind. In the impact, the deceased sustained grievous injuries and he was taken to Global Hospital on the same day. In spite of treatment, the deceased succumbed to the injuries on the next day viz., 14.09.2012. Therefore, for the death of the deceased A.Varadarajan, the claimants who are the wife and children, have filed the claim petition seeking a sum of Rs.10,00,000/- as compensation.

3. According to the claimants, the deceased was 70 years old at the time of his death and he was a pensioner receiving pension of Rs.11,000/- per month. It is also stated that the deceased was an employee of Central Public Works Department, Sashtri Bhavan, Chennai-6 and after his retirement he was in receipt of the pensioner benefits from his employer. Therefore, for the loss of the contribution of the deceased, the claimants have filed the claim petition.

4. The appellant/Insurance Company resisted the claim petition by filing a counter statement. In the counter statement among other things, it was inter alia stated that the driver of the car was not impleaded as a party to the claim petition and therefore the claim petition is not maintainable. The appellant/Insurance Company also denied the age, avocation and income of the deceased. It was also stated that the claim amount made by the claimants is exorbitant. The bills for hospitalisation at Rs.97,344/- claimed requires a thorough scrutiny. The appellant/Insurance Company therefore prayed the Tribunal to dismiss the claim petition as devoid of merits.

5. Before the Tribunal, the 1st claimant/wife herself was examined as P.W.1 and one Amarnithi was examined as P.W.2 and Exs.P1 to P9 were marked. On behalf of the respondents one Jayakumar was examined as R.W.1 and 3 documents were marked as Exs.R1 to R3.

6. The Tribunal, upon considering the oral and documentary evidence held that the accident was a result of the rash and negligent driving of the driver of the car and therefore, as insurer of the car, the appellant is statutorily liable to pay the compensation to the claimants.



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7. As regards quantum, the Tribunal taken note of the sum of Rs.11,000/- per month received by the deceased as pension and arrived at a sum of Rs.1,32,000/- as the yearly income of the deceased out of which, a sum of Rs.33,000/- was given towards deduction to arrive at a sum of Rs.99,000/- as the annual income of the deceased. By applying multiplier '5' a sum of Rs.4,95,000/- was arrived at towards loss of Income/Dependancy.

8. For "loss of consortium" to the 1st claimant a sum of Rs.40,000/- was awarded. For "loss of love and affection" a total sum of Rs.1,50,000/- was awarded by the Tribunal. For "Funeral expenses" a sum of Rs.15,000/- was awarded. That apart a sum of Rs.97,344/- was awarded by the Tribunal towards "Medical Expenses" incurred by the claimants, which are based on Ex.P3, medical bills filed before the Tribunal. In all a total sum of Rs.7,97,344/- was awarded by the Tribunal as compensation.

9. Assailing the award passed by the Tribunal, the learned counsel for the appellant/Insurance Company would contend that the deceased was 71 years old at the time of his death. The deceased was a pensioner. For the death of the deceased, the loss of pecuniary benefits calculated by the Tribunal is excessive. The deceased was only a pensioner and he has not having any other independent source of income. While so, awarding a sum of Rs.4,95,000/- towards "loss of income" is excessive. The amount of Rs.1,50,000/- awarded by the Tribunal towards "loss of love and affection" is on the higher side. The learned counsel for the appellant therefore prayed this Court for reduction of the compensation amount awarded by the Tribunal.

10. The learned counsel for the appearing for the appellant further submitted that the 1st claimant was aged about 57 years, at the time of the death of the deceased. The claimants 2, 3 and 4 are aged about 34 years, 32 years and 29 years respectively. Having regard to the above, the compensation towards loss of love and affection awarded by the Tribunal at Rs.1,50,000/- is on the higher side. On these grounds the learned counsel for the appellant/Insurance Company prayed for appropriate reduction of the amounts awarded by the Tribunal.

11. On the above contention, this Court heard the learned counsel for the respondents 1 to 4/claimants and perused the entire materials available on record.



12. At the outset, it must be noted that the present appeal has been filed by the Insurance Company, questioning the amount of compensation awarded by the Tribunal. The appellant has not filed this appeal questioning the findings of liability rendered by the Tribunal. Therefore, this Court is not dealing with the issue with respect to liability fastened on the appellant Insurance Company by the Tribunal.

13. The deceased was aged about 70 years at the time of his death. The deceased was a pensioner and receiving a sum of Rs.11,000/- per month as pension from his employer namely Central Public Works Department, Sashtthri Bavan, Chennai-6. This is not disputed by the appellant/Insurance Company. The appellant/Insurance Company questions the amount of Rs.4,95,000/- awarded towards "loss of income". This plea of the appellant/Insurance Company does not merit acceptance for the simple reason that there are evidences to show the receipt of pension by the deceased. It is not a case where the deceased has no independent income. Rather, the deceased retired from a Central Government organisation and was in receipt of pension every month. The Tribunal taking note of the sum of Rs.11,000/- received as pension has arrived at a sum of Rs.1,32,000/- as the yearly income. Out of which, $\frac{1}{4}$ th of the income was given deduction towards personal expenses taking note of the number of dependants left by the deceased namely the claimants 1 to 4. By applying the correct multiplier '5' the Tribunal awarded a sum of Rs.4,95,000/- towards "loss of dependency" or "loss of income" and this Court does not find any reason to interfere with such amount awarded by the Tribunal.

14. The Tribunal awarded a sum of Rs.1,50,000/- towards "loss of love and affection" to the claimants. As rightly pointed out by the learned counsel for the appellant/Insurance Company, the 1st claimant was aged about 57 years at the time of accident. The other claimants namely the children have grown up and they are at least more than 29 years old at the time of accident, as mentioned supra. While so, this Court is of the view at awarding a sum of Rs.25,000/- towards loss of love and affection to each of the claimants would meet the ends of justice. Accordingly, the sum of Rs.1,50,000/- awarded by the Tribunal is modified, instead a sum of Rs.1,00,000/- is hereby awarded towards "loss of love and affection".



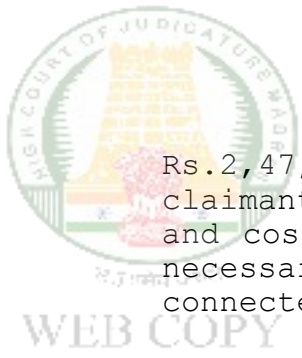
15. The other amounts awarded by the Tribunal, in the opinion of this Court are reasonable and they do not warrant any interference.

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16. Accordingly, the award passed by the Tribunal is modified except modifying the amount awarded towards loss of love and affection from Rs.1,50,000/- to Rs.1,00,000/-. In all other aspects the award passed by the Tribunal stands confirmed. Thus the compensation awarded by the Tribunal is modified as under:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	Rs.4,95,000/-	Rs.4,95,000/-	Confirmed
2.	Loss of Consortium	Rs.40,000/-	R.40,000/-	Confirmed
3.	Lossof Love and affection	Rs.1,50,000/-	Rs.1,00,000/-	Reduced
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Medical Bills	Rs.97,344/-	Rs.97,344/-	Confirmed
	Total	Rs.7,97,344/-	Rs.7,47,344/-	Reduced by Rs.50,000/-

17. In the result, the Judgment and decree dated 15.12.2017 made in M.C.O.P.No.1389 of 2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, IV Judge (FAC), Chennai is modified as indicated above. This Civil Miscellaneous Appeal is partly allowed. No costs. The compensation awarded by the Tribunal at Rs.7,97,344/- is hereby reduced to Rs.7,47,344/- [Rupees Seven Lakhs Forty Seven Thousand Three Hundred and Forty Four only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified 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 to the credit of M.C.O.P.No.1389 of 2013, on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, IV Judge (FAC), Chennai. On such deposit, the 1st claimant shall permitted to withdraw a sum of Rs.5,00,000/- and the balance amount of



Rs.2,47,344/- shall be permitted to be withdrawn by the claimants 2 to 4 in equal proportion along with accrued interest and costs, less the amount if any, already withdrawn, by making necessary application before the Tribunal. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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To:

1.The IV Judge (FAC),
III Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Mr.R.Ravichandran, Advocate SR.No.15668

C.M.A.No.2082 of 2018

JPL (CO)
GMY (09/05/2022)