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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM

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

C.M.A. No.1972 of 2021

The Oriental Insurance Company Ltd.,
3607/21, Sathiyamoorthi Road,
2nd Floor (Near Team Hospital),
Puthukottai 622 001.

...Appellant/2nd Respondent

vs.

1. Gomathi
2. K.S.Balaji
3. Muthammal
4. Ramalingam

...Respondents/Petitioners/Respondents 1,3 & 4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the award and decree dated 11.03.2020 made in MCOP.No.358 of 2012 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Ariyalur.

For Appellant : Mr.D.Bhaskaran

For Respondents
for RR 1,3 & 4 : Notice served - No Appearance

For Respondent 2 : No such person

J U D G M E N T

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

The appeal is heard through video conferencing.

2. This appeal is directed against the judgment and award



passed by the Motor Accidents Claims Tribunal/Principal District Judge, Ariyalur in MCOP.No.358 of 2012, dated 11.03.2020.

3. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

4. The claimant is the wife of the deceased Balakrishnan and his parents were impleaded as respondents 3 and 4 in the claim petition. It is averred that the deceased Balakrishnan was working as a Project Manager in Comfort Air Conditioner and Engineering Private Limited in Singapore with the monthly income of Rs.1,60,000/- and he died at the age of 27. According to the claimant, on 10.02.2012, the deceased was riding a motorcycle bearing Registration No.TN-61-H-4222 from Tholuthur to Viruthachalam and when he was nearing Vahayur Union School, he was hit by a Tanker Lorry and he died on the spot. Though she sought for a compensation of Rs.1 Crore, the Tribunal awarded only Rs.47,06,848/-.

5. The learned counsel appearing for the appellant/Insurance Company Mr.D.Bhaskaran would submit that the documents produced by the claimant before the Tribunal would establish that the deceased was temporarily working at Singapore. Further, admittedly, on the date of accident, he was not in foreign employment. It is further stated that, in the first round of litigation, the Tribunal fixed the monthly income of the deceased at Rs.45,000/- and this Court after fixing 30% negligence on the part of the deceased, remanded the matter back to the Tribunal to quantify the compensation. According to the learned counsel, the monthly income fixed by the Tribunal even for the second time, is also on the higher side.

6. Though the claimant and her in-laws have been served and their names are printed in the cause list, none appears for them.

7. In the instant case, it is an admitted fact that, this Court in CMA.No.1333 of 2016, vide judgment dated 21.07.2017, has fixed the negligence in the ratio of 70:30. Hence, there is no need for further discussion with regard to the negligence aspect.

8. Insofar as the quantum is concerned, the claimant had produced Ex.P14 Statement of account, Exs.P16 & P17 Identity Card and Ex.P18 Consolidated Statement of the deceased to support her case to prove the avocation and income of the deceased. As observed by the Tribunal, on the date of accident, the deceased was not in foreign employment. But the Tribunal had fixed the notional income at Rs.35,000/- and added 40% towards future prospects. Perusal of the records would reveal that the



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deceased had undergone special training for Air Conditioning and Engineering Service and got employment at Singapore. Taking note of the fact that the deceased was a technician and he also worked at Singapore and gained experience, we are of the considered opinion that it is appropriate to fix the monthly income of the deceased at Rs.25,000/- and add 40% towards future prospects and if so calculated, the actual monthly income would be Rs.35,000/- [25,000 + 10,000]. If 1/3 is deducted towards personal expenses of the deceased, the contribution to the family would be Rs.23,340/- [35,000 - 11,660]. Considering the age of the deceased, multiplier 17 is applied and the Loss of the Income is assessed at Rs.47,61,360/- [23,340 x 12 x 17].

9. Further, since the amounts awarded by the Tribunal towards Loss of Love and Affection, Consortium and Funeral Expenses to the tune of Rs.30,000/-, Rs.20,000/- and Rs.10,000/-, respectively could not be awarded as per the decision of the Apex Court, the same are set aside, instead, this Court awards a sum of Rs.40,000/- to the claimant towards consortium; Rs.80,000/- to the parents of the deceased towards Filial Consortium; Rs.15,000/- towards Funeral Expenses; and Rs.15,000/- towards Loss of Estate. Thus, the total amount of compensation comes to Rs.49,11,360/-. Since the contributory negligence of the deceased has already been fixed at 30%, the compensation payable to the legal heirs of the deceased would be Rs.34,37,952/- [49,11,360 - 14,73,408]. Thus, the sum of Rs.34,38,000/- (rounded off) is awarded as total compensation along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Therefore, the total compensation payable to the claimants is re-calculated and tabulated below:

S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Income	66,64,068	47,61,360
2.	Loss of Love and Affection	30,000	-
3.	Consortium	20,000	40,000
4.	Filial Consortium	-	80,000
5.	Funeral Expenses	10,000	15,000
6.	Loss of Estate	-	15,000
	Total	67,24,068	49,11,360



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S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
	30% deducted towards deceased's Contributory negligence	20,17,2220	14,73,408
	Compensation payable to the legal heirs of the deceased	47,06,848	34,37,952 (rounded off to) 34,38,000

10. In view of the above modifications, the Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.47,06,848/- is reduced to Rs.34,38,000/- and this amount will carry interest at 7.5% as ordered by the Tribunal. The wife of the deceased is entitled to Rs.20,00,000/- and the parents of the deceased are entitled to Rs.7,19,000/- each. The appellant/Insurance Company is directed to deposit the above modified award amount with accrued 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. On such deposit, claimants are permitted to withdraw their share with proportionate interest and costs. There is no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

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Sub Assistant Registrar

pvs

To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Ariyalur.
2. The Section Officer,
V.R.Section, High Court, Madras.

C.M.A. No.1972 of 2021

KK(CO)
SU(07/03/2022)