IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A. No.1779 of 2020
and
C.M.P.No.13117 of 2020

The Divisional Manager,
United India Insurance Company Ltd.,
12003 A, M.M.Reddy Complex,
Old Bangalore Road, Hosur Taluk,
Krishnagiri District - 635 109.

... Appellant/2nd Respondent

Vs.

1.Ramasamy
2.Maheswari
3.Mariyamma ... Respondents 1 to 3/ Petitioners 1 to 3
4.Shiva Kumar ...4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the award dated 13.09.2019 made in M.C.O.P.No.62 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District Court, Hosur.

For Appellant : Mr.D.Bhaskaran

For Respondents: Mr.Mukund R.Pandiyan
for R1 to R3

R4 - Not ready in Notice

J U D G M E N T

The Insurance Company is before this Court, challenging the Award passed by the Motor Accident Claims Tribunal, Additional District Judge, Hosur in M.C.O.P.No.62 of 2015.

2. The facts which has culminated in the filing of the above Appeal are as follows:

The deceased Pachamuthu, who was aged about 24 years and working as an operator trainee in TVS Motor Company Limited was travelling on his vehicle i.e., Honda Unicon bearing Registration No.TN-34-T-5869 on 08.08.2014 at about 21.30 hrs.

The deceased was driving the bike on Thally to Hosur Road and when he neared the Thally Railway road, the driver of the lorry bearing Registration No.TN-70-C-8120 belonging to the fourth respondent and insured with the appellant / Insurance Company came in rash and negligent manner and hit the bike on its rear in which the deceased was travelling. By reason of the impact, the deceased had fallen down and was crushed under the lorry. The claimants are the father and two sisters of the deceased. It is the contention of the claimants that the third respondent, who is dumb since her birth was deserted by her husband and was living under the care of her deceased brother. The claimants had sought for a compensation of Rs.89,22,000/-. The parties are referred to be in the same rank as arrayed in the Tribunal.

3. The Appellant / Insurance Company had filed its counter, invoking the provisions of Section 170 of the Motor Vehicles Act to contest on all grounds for its insured viz., the fourth respondent / owner of the lorry, since the fourth respondent herein had remained ex-parte before the Tribunal.

4. The defence of the appellant / Insurance Company was that the accident had occurred on account of the contributory negligence on the side of the deceased and the owner and the insurer of the motor-cycle was also required to be made a party to the proceedings. The claimants were also put to strict proof that they were the legal heirs of the deceased Pachamuthu. The Appellant had also taken the defence that the deceased did not have a valid and effective driving license. They had also denied the employment of the deceased with the TVS Motor Company.

5. The Additional District Judge, Hosur by its Award dated 13.09.2019 was pleased to pass an Award for a sum of Rs.24,79,080/-. The Tribunal has taken into account Ex.P5 (Pay Slip) and Ex.P16 (Salary Certificate) and arrived at income of Rs.15,900/-. Considering the age of the deceased, 40% was added towards his future prospects and being a bachelor 50% was deducted towards his personal expenses. Ultimately, a sum of Rs.17,17,200/- was arrived under the head of loss of dependency. The Tribunal, after hearing the parties and perusing the evidence, had arrived at the following compensation:

Heads	Amount in Rs.
Loss of dependency	17,17,200
Loss of love and affection	30,000
Transportation	10,000
Funeral Expenses	15,000
Loss of estate	20,000

Heads	Amount in Rs.
Future prospects	6,86,880
Total	24,79,080

Challenging the same, the appellant / Insurance Company is before this Court.

6. Mr.D.Bhaskaran, learned counsel appearing for the appellant / Insurance Company would submit that Ex.P5 and Ex.P16 have not been properly considered by the Tribunal. The pay slip for the period from 01.04.2014 to 30.04.2014 which has been marked as Ex.P16 would show a salary of Rs.15,900/- whereas Ex.P5, which is the pay slip for the period from 01.05.2014 and 31.05.2014, which is the very next month shows a total salary of Rs.11,674.07 and a sum of Rs.1,426.25 was taken towards the PF contributions, ESI Contributions, etc.,. Therefore, he would submit that the Tribunal below has erred in adopting a salary of Rs.15,900/-.

7. Mr.Mukund R.Pandiyan, learned counsel appearing on behalf of the claimants / respondents 1 to 3 would submit that Ex.P16 shows that a sum of Rs.15,900/- is on the higher side, therefore, the Tribunal had adopted the salary, which is the Ex.P16, which is also a pay slip of the Company and considering the beneficial legislation, this Court ought to lien towards the higher salary.

8. Heard the learned counsels appearing on either side and perused the materials available on record.

9. The only ground of challenge is to the quantum. The learned counsel for the Appellant / Insurance Company would submit that the Tribunal has erroneously fixed the income at Rs.15,900/-, totally over-looking the fact that, in Ex.P5, the income is shown as a sum of Rs.11,674.07 which would clearly show that the sum of Rs.15,900/- as shown in Ex.P16 is not correct. Further, the Appellant / Insurance Company has not questioned P.W.3 regarding the above difference in the salary shown in Ex.P16 and as shown in Ex.P5. The counsel for the respondent was not able to explain the above difference and therefore initially this Court was inclined to allow the Appeal and reduce the notional income to Rs.13,000/-. However, on a further analysis of the two salary certificate viz., Ex.P16 and Ex.P5 had come to light that the difference is only on account of the fact that in Ex.P5, the claimant had not worked for two days. Therefore, all the amounts due under various heads including consolidated stipend has been reduced proportionately for the said two days. If this is taken into account, then the

salary shown in Ex.P16 appears to be a salary that was being paid to the claimant. In these circumstances, the adoption of the said amount as the monthly income by the Tribunal cannot be found fault with and accordingly, the Appeal stands dismissed and the Award passed by the Tribunal in M.C.O.P.No.62 of 2015 is hereby confirmed.

10. The Appellant / Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.62 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the award amount, along with proportionate interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. There shall be no order as to costs in the present appeal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   Additional District Court, Hosur.

2. The Section Officer,
   VR Section, Madras High Court,
   Chennai.

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.25717

C.M.A. No.1779 of 2020 and
C.M.P.No.13117 of 2020

RR(CO)
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