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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 21.03.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.4282 of 2019

and

CM.P.No.24205 of 2019

The Branch Manager,
United India Insurance Company Limited,
Mettur Road, Erode.

... Appellant/3rd Respondent

Vs.

1.Usha Rani

2.V.Srimathi

3.J.Vasantha

... Respondents 1 to 3/Claimants 1 to 3

4.Kulandaisamy

5.The Director,
M/s.SKM Animal Feeds and Food,
Nanjai Uthukuli,
Modakurichi , Erode.

... Respondents 4, 5/Respondents 1, 2

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 28.09.2018 made in M.C.O.P.No.142 of 2017 on the file of the Motor Accident Claims Tribunal (Special District Judge (FAC), Erode.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.R.Bharanidharan for R1 to R3
No Appearance for R4 and R5 served

JUDGMENT

The 3rd respondent Insurance Company has filed the above appeal challenging the Award passed by the learned Special District Judge (FAC), Erode.

2. The brief facts leading to filing of the claim of this appeal are as follows:



The claimants are the legal representatives of the deceased J.Vijaybaskar, who had died in a road accident on 19.08.2016. On the ill-fated day, the deceased, who was a driver by profession was driving a car bearing registration No.TN-33BA-1751 from Erode and was proceeding towards Chennai. When the car reached Thiyyagadurgam, Villupuram District at around 06.00 p.m., the lorry driven by the first respondent belonging to the second respondent and insured with the 3rd respondent, came in a rash and negligent manner on the wrong side of the road and dashed against the car, as a result of which, the deceased had died on the spot. The deceased was aged about 53 years at the time of the accident.

3.The claimants would contend that he was earning a monthly income of Rs.50,000/-, and apart from being a driver by profession, he also owned a car which he lets out for hire.

4.The respondents 1 and 2 remained ex-parte and it is only the 3rd respondent, which is contesting the claim. It is their case that the accident had occurred only on account of the negligence on the part of the deceased, since he had been driving the car throughout the night and therefore his eyes must have closed out of fatigue which resulted in the accident. They also denied that the deceased was a driver by profession and that he owned a concern under the name and Style of "Srimathi Travels". The income pleaded by the claimants was also denied. The Tribunal after considering the evidence on record, fixed the monthly income of the deceased at Rs.30,000/- and adopting a multiplier of 11, deducting 1/3rd towards personal expenses and adding 10% towards future prospects arrived at a compensation of Rs.29,04,000/- under the head of loss of income. The amounts awarded by the Tribunal under various heads are tabulated as follows:

Compensation fixed as loss of income to the petitioners	Rs.29,04,000/-
Compensation towards loss of consortium	Rs. 1,00,000/-
Compensation towards loss of love and affection for petitioners 2 and 3 at Rs.25,000/- each	Rs.50,000/-
Compensation towards funeral expenses	Rs.25,000/-
Compensation towards transportation	Rs.10,000/-



Compensation fixed as loss of income to the petitioners	Rs.29,04,000/-
Total compensation	Rs.30,89,000/-

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5.Challenging the same, the Insurance Company has filed the appeal.

6. Mr.Baskaran, learned counsel appearing on behalf of the Insurance Company would submit that no documents were produced by the claimants to prove that the deceased was earning a monthly income of Rs.30,000/- and he would contend that documents produced by them were created for the purpose of the case and as such, the same cannot be relied upon. He submits that even assuming that the deceased was a driver by profession, he would earn a maximum amount of only Rs.10,000/- per month, but the Tribunal has erroneously considered the monthly income of the deceased as Rs.30,000/- He would also argue that a sum of Rs.1,00,000/- has been awarded under the head loss of consortium and Rs.25,000/- towards funeral expenses. However, he will fairly concede that the un-married daughter and mother of the deceased each would be entitled for Rs.40,000/- towards loss of love and affection.

7.Per contra, Mr.Bharanidharan, learned counsel appearing on behalf of the respondent would contend that the claimants have produced the counterfoil of the Trip Sheets and the bank statement which would show the income earned by the deceased and the same would prove the fact that the deceased was a driver by profession who is engaged in carrying passengers on a regular basis and that constantly cash deposits were made in the bank account which go a long way to prove that the deceased was earning a minimum amount of atleast Rs.30,000/- per month. Moreover on some occasions the bank statement shows a deposit of lakhs of rupees.

8.Heard the counsel appearing on both sides.

9.Perusal of the Ex.P17 series which are Trip Sheet books issued by the Thanthai Periyar Tourist Rental Car owners and drivers Welfare Association, would reveal that the deceased has driven various cars and has been crisscrossing across the country. Therefore, the contention of the claimants that the deceased was a driver by profession and carries passenger stands proved. A perusal of Exs.P11 and P13, which are the bank statements of the deceased from three different banks, indicates cash deposit on a regular basis running to five figures and



occasionally 6 figures. Therefore, the finding of the Tribunal that the deceased would have easily earned a monthly income around a sum of Rs.30,000/- or at least a sum of Rs.25,000/- stands proved by documents.

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10. Therefore, it is clear that the deceased was earning the sum of Rs.25,000/- on a regular basis. Therefore, the monthly income is reduced to a sum of Rs.25,000/- to which 10% has to be added towards future prospects.

11. Considering the fact that the deceased was aged 53 years and $1/3^{\text{rd}}$ has to be deducted towards his personal expenses, the loss of income would be $\text{Rs.}27,500 \times 12 \times 11 \times 1/3 = \text{Rs.}24,20,000/-$. The Tribunal has awarded a sum of Rs.1,00,000/- under the head of loss of consortium which has to be reduced to a sum of Rs.40,000/- as pointed out by the counsel for the respondent, the compensation under the head loss of love and affection has to be enhanced from Rs.50,000/- to a sum of Rs.80,000/-, out of which, the daughter and mother of the deceased are entitled to a sum of Rs.40,000/- each. No amount has been given under the head of loss of earning, therefore, a sum of Rs.50,000/- is awarded under the said head. The Tribunal has awarded Rs.25,000/- under the head of funeral expenses which is excessive and therefore, the same is reduced to a sum of Rs.15,000/-. Therefore, the calculation of modified amount awarded by this Court under various heads are tabulated below:

Loss of income	Rs.24,20,000/-
Loss of Consortium	Rs.40,000/-
Loss of Love and Affection to claimants 2 and 3	Rs.80,000/-
Funeral expenses	Rs.15,000/-
Transportation	Rs.10,000/-
Loss of estate	Rs.15,000/-
Loss of earning	Rs.50,000/-
Total	Rs.26,30,000/-

12. In fine, the Civil Miscellaneous Appeal is allowed and the compensation of Rs.30,89,000/- awarded by the Tribunal is reduced to Rs.26,30,000/- along with interest at 7.5% per annum. The reduced amount of compensation awarded by this Court shall be apportioned amongst the claimants in the same ratio as ordered by the Tribunal. The Insurance Company is directed to deposit the reduced compensation amount awarded by this Court along with interest at 7.5% per annum, less the



amount, if any already deposited, to the credit of MCOP.No.142 of 2017 on the file of Motor Accidents Claims Tribunal (Special District Judge (FAC)), Erode, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants/respondents 1 to 3 are permitted to withdraw their respective shares. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
(Special District Judge (FAC), Erode.

+lcc to Mr.R.Karthikeyan, Advocate SR.No.18744

+lcc to Mr.D.Bhaskaran, Advocate SR.No.18748

C.M.A.No.4282 of 2019
and

CM.P.No.24205 of 2019

RSV(CO)
GN(08/06/2022)