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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM:

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

C.M.A.NO.2561 OF 2021
AND
C.M.P.NO.14677 OF 2021

The Chief Manager,
The Oriental Insurance Co. Limited,
III Party Claims Hub,
New No.216, O.No.115,
Prakasamsalai, Broadway,
Chennai - 600 108.

... Appellant/
2nd Respondent

Vs.

1.R.Varalakshmi

... 1st Respondent/Claimant

2.A.Saroja

... 2nd Respondent/1st Respondent

PRAYER:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the order of the Motor Accident Claims Tribunal, Special Sub-Court, Cuddalore made in MCOP No.1086 of 2018 dated 22.04.2021.

For Appellant : Mr.E.Chandrasekaran

For Respondents : Mrs.Ramya V. Rao for R1
No appearance for R2



JUDGMENT

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

The Insurance Company has come up with this appeal assailing the award of the Motor Accident Claims Tribunal, Special Sub-Court, Cuddalore made in MCOP No.1086 of 2018, dated 22.04.2021.

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

On 01.08.2017, the deceased Akshay Kumar was riding an Yamaha FZS Version motorcycle bearing Reg.TN-91-Y-7374 on Jothi Ramalingar Salai. When he was nearing NLC CTO Office, at about 17.10 hours, a TVS Victor motorcycle bearing Reg.No.TN-07-R-2820 driven by its rider in a rash and negligent manner, dashed against him. In the impact, he was thrown out and sustained fatal injuries and he died on 03.08.2017 in spite of best treatment. The claimant is the mother of the deceased and the father of the deceased predeceased him. According to the claimant, at the time of accident, the deceased was working at a Private Company and earning Rs.25,000/- per month. The accident had occurred only due to the rash and negligent riding of the rider of the TVS Victor motorcycle. The second 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.25,00,000/-.

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.13 were marked. On the side of the appellant/Insurance Company, no one was examined and no document was filed.

5. The Tribunal, after considering the oral and documentary evidence, held that the rider of the TVS Victor motorcycle bearing Reg.No.TN-07-R-2820 was responsible for the accident and awarded compensation of Rs.33,09,000/- to the claimant. Assailing the award, the appellant/Insurance Company has filed the present appeal.



6.The learned counsel appearing for the appellant/Insurance Company Mr.E.Chandrasekaran would submit that the Tribunal erred in fixing the monthly income of the deceased as Rs.15,000/- without any valid documents. He would further submit that the Tribunal erred in deducting 1/3rd towards personal expenses since the deceased was bachelor. Hence, the learned counsel prays for reduction of the compensation.

7.Per contra, the learned counsel appearing for the first respondent/claimant Mrs.Ramya V.Rao 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.We have considered the rival submission of both the learned counsels and perused the materials available on record.

9.In this appeal, negligence fixed by the Tribunal is not challenged. The appellant questions only quantum awarded by the Tribunal. A perusal of the impugned award would show that to prove the income of the deceased, the claimant has not filed any document. But the Tribunal fixed the monthly notional income of the deceased as Rs.15,000/-, which is on the higher side. Ex.P.8-Transfer Certificate would show that the deceased has completed a Polytechnic Course. Hence, considering his educational qualification, Rs.12,000/- is fixed as his monthly notional 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 claimant is entitled to 40% of the income towards future prospects. The Tribunal rightly applied the multiplier '18', however, deducted 1/3rd towards personal expenses. Since the deceased was a bachelor, 50% of the income has to be deducted towards his personal expenses. Accordingly, by adding 40% towards future prospects and after deducting 50% towards his personal expenses and by applying multiplier '18', loss of income is assessed as Rs.18,14,400/- (12000+4800(40%)=16800x12x18x1/2).

10.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 claimant is entitled to Rs.40,000/- alone towards consortium. Hence, the amount of Rs.2,50,000/- awarded under the head of loss of love and affection is set aside. The amount awarded remaining heads,



viz., funeral expenses, loss of estate, transportation and the rate of interest fixed by the Tribunal as 7.5% per annum are confirmed. Accordingly, the compensation awarded by the Tribunal to the claimant is re-quantified as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of income	30,24,000/-	18,14,400/-	reduced
Loss of Love and Affection	2,50,000/-	Nil	set aside
Loss of Paternal Consortium	Nil	40,000/-	granted
Funeral Expenses	15,000/-	15,000/-	confirmed
Loss of Estate	15,000/-	15,000/-	confirmed
Transport Expenses	5,000/-	5,000/-	confirmed
Total	33,09,000/-	18,90,000/-	reduced

11. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.33,09,000/- is reduced to Rs.18,90,000/-. The appellant/Insurance Company is directed to deposit the modified award amount 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 claimant is permitted to withdraw the modified award amount less the amount already withdrawn, if any, together with interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

skn



To

1. The Motor Accident Claims Tribunal,
Special Subordinate Judge, Cuddalore.

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

+1cc to Mr.E.Chandrasekaran, Advocate, S.R.No.25068

+1cc to Mrs.Ramya, Advocate, S.R.No.24946

C.M.A.No.2561 of 2021
and
C.M.P.No.14677 of 2021

AKII (CO)
PM/20/05/2022