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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.A.NO.4001 OF 2019

AND

C.M.P.NO.22616 OF 2019

United India Insurance Co. Ltd.
No.104-A, Ranga Building,
Peramanur Main Road,
Near 4, Road, Salem-636007.

... Appellant / 2nd Respondent

Vs

1. Mani
2. Kamaraj
3. Chinnadurai
4. Selvi

... Respondents 1 to 4 / Petitioners

5. Kalyanasundaram

... 5th Respondent / 1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to against the award and decree dt. 10.4.2019 made in MCOP No.387 of 2017 on the file of the Motor Accidents Claims Tribunal (Special District Court cum/2nd Additional District Judge (Full in-charge) Salem.

For Petitioner : Mr.Bhaskaran D.

For Respondents : Mr.R.Nalliyappan [R.1 to R.4]
No Appearance [R5]

JUDGEMENT

The insurance company has challenged the award passed by the Motor Accident Claims Tribunal, Salem, wherein a sum of Rs.13,80,400/- has been awarded for the death of one Govindhan, the husband of the 1st respondent and father of the respondents 2 to 4.

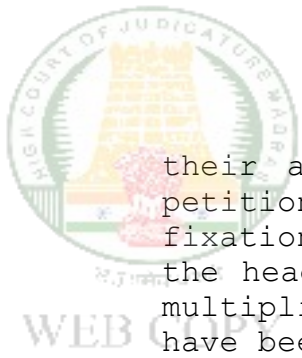


2. The deceased Govindhan was travelling in a TVS Suzuki bike bearing registration No.TN-AX-5499, on the Mechri to Salem Main Road on 07.01.2007. The 1st respondent bus, which was travelling in the same direction driven by its driver namely P.Rajkumar in a rash and negligent manner without following any traffic rules and regulation had dashed against the said Govindhan who was thrown out and had sustained serious injuries on the head. He was admitted to the Medical Government College Hospital Salem but, however, he had succumbed to his injuries.

3. It is the case of the claimant that the accident occurred only on account of the rash and negligent driving by the driver of the 1st respondent bus. The 1st respondent remained ex parte and the 2nd respondent had filed a counter inter alia contending that the deceased was responsible for the accident and not the driver of the 1st respondent bus. The FIR was lodged by the son of the deceased who was only a hearsay witness and therefore, the contents of his complaint should be ignored.

4. That apart, in the counter it is also contended that the 1st respondent's vehicle was not responsible for the accident, on the contrary it was Govindhan who had proceeded to drive his two wheeler from mud road to Tar Road (National Highway) without removing side stand of his vehicle which on coming into contact with the mud road had caused the bike to topple over which has resulted in the accident. The other contents of the petition were also denied. The Tribunal below proceeded to hold the driver of the 1st respondent's vehicle responsible for the accident and the deceased was also held to be liable. The Tribunal has apportioned the liability in the ratio of 85:15 and awarded a sum of Rs.13,80,400/- by adopting a notional income of Rs.8,000/- to which 40 % had been added towards future prospects. The Tribunal below has taken the age of the deceased to be 48 years, this was based on the age given in the claim petition. Challenging the same the insurance company has filed this appeal.

5. The learned counsel for the appellant/insurance company would once again reiterate the fact that the accident had occurred only on account of the negligence of deceased who had not removed the side stand and which when it hit the mud road had caused the accident and not in the manner as pleaded by the claimant. He would further submit that a mere perusal of the Adhar Card of the claim petitioner which were marked as Ex.P.12, E.x.P.14, Ex.P.16 and Ex.P.18 would clearly show that the age of the wife of the deceased Govindhan, the 1st respondent as per the Adhar Card was about 60 years and therefore by no stretch of imagination can it be stated that the deceased was aged 48 years and further the Adhar Card issued to the children also show



their age to be much more than what was stated in the claim petition. He would further submit that on account of this wrong fixation of the age the amounts have been on higher side under the head of future prospects and as well as the adoption of the multiplier. He would submit that the age of the claimant should have been 60 years, therefore, the award has to be set aside.

6. Heard the learned counsels on both sides.

7. As regards the issue of negligence, the finding of the Tribunal cannot be found fault with. The Tribunal has also mulcted liability on the deceased after analysing the evidence. I therefore do not see any reason to interfere with the finding of the Tribunal below with reference to the negligence and the apportionment of the liability. As regards the question of quantum, there is no documentary evidence to show the correct age of the deceased except the Aadhar Card which by reason of perusing Ex.P12, Ex.P.14, Ex.P.16 and Ex.P.18 appears to be erroneous. However taking into account the fact that his wife is aged about 60 years it could be presumed that the deceased was aged about 60 years at the time of the accident.

8. Therefore, only 10 % can be added towards future prospects and the multiplier to be adopted is only '9'. Therefore, the total loss of income would work out to a sum of Rs.9,50,400/- of which 1/3rd has to be deducted towards personal expenses. Therefore, the loss of income available for the family is a sum of Rs.6,33,600/-. It is seen that no amounts have been given under the head of loss of love and affection and loss of consortium. Therefore, a sum of Rs.40,000/- shall be awarded under the head of loss of consortium and as a sum of Rs.1,20,000/- to respondents 2 to 4 for loss of love and affection. The amounts under the head of loss of estate and funeral expenses shall be retained as a sum of Rs.15,000/- each and therefore, the total amount would be a sum of Rs.8,23,600/- from which 15% has been deducted toward contributory negligence i.e., a sum of Rs.1,23,540/-. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of income	13,10,400/-	6,33,600/-	Reduced
2.	loss of estate	15,000/-	15,000/-	Confirmed



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
3.	loss of funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	--	40,000/-	Granted
5.	Loss of love and affection to respondents 2 to 4	--	1,20,000/-	Granted
	TOTAL	13,80,400/-	7,00,060/-	Reduced to Rs.6,80,340/-

9. Therefore, the Civil Miscellaneous Appeal is allowed and the compensation of Rs.13,80,400/- awarded by the Tribunal is hereby reduced to a sum of Rs.7,00,060/- together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other respect the award of the Tribunal is confirmed. The Insurance Company is directed to deposit the said amount (Rs.7,00,060/-) to the credit of M.C.O.P.No.387 of 2017 together with interest @ 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 Judgement. On such deposit being made, the respondents are permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount if any already withdrawn. The Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.387 of 2017 on the file of the Motor Accident Claims Tribunal Special District Court, Salem, if the entire award amount has already been deposited by them. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
(Special District Court cum/2nd Additional District Judge
(Full in-charge), Salem.

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Copy To

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

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.15359

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.15358

C.M.A.No.4001 of 2019

PM(CO)
RLP(27/04/2022)