IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2596 of 2021
and C.M.P.No.14836 of 2021

The Divisional Manager,
National Insurance Co. Ltd.,
Office at No.110, 2nd floor,
J.N.Street, Opp. Sarathas,
Pondicherry

... Appellant

Vs.

Nirmala (died)

1.Manojkumar
2.Devakumar
3.Oudayacoumarin ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.09.2018 made in M.C.O.P.No. 107 of 2014 on the file of Motor Accident Claims Tribunal, Additional Sub Judge, Puducherry.

For Appellant : Mr.S.Arun Kumar

For R1 and R2 : Mr.A.G.F.Terry Chellaraja

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 03.09.2018 made in M.C.O.P.No. 107 of 2014 on the file of Motor Accident Claims Tribunal, Additional Sub Judge, Puducherry.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.107 of 2014 on the file of Motor Accident Claims Tribunal, Additional Sub Judge, Puducherry. The respondents 1 & 2 are the sons and the third respondent is the husband of the deceased. They filed the above said claim petition, claiming a sum of Rs.29,00,000/- as compensation for the death of Nirmala, who died in the accident that took place on 01.02.2013.

3.According to the respondents, on the date of accident i.e., on

01.02.2013 at about 05.45 hours, while the deceased was a pillion rider in a motorcycle bearing Reg.No.PY-01-BK-0699 along 100 feet Road, the rider of the motorcycle rode the vehicle in a rash and negligent manner, crossed over a large road pit in above said road and caused the accident. As a result, the deceased sustained injuries all over her body and succumbed to injuries on 12.09.2015. Therefore, the respondents have filed the above claim petition claiming compensation against the appellant / Insurance Company.

4.The 3rd respondent is the owner of the said vehicle and remained ex-parte before the Tribunal.

5.The Appellant/Insurance Company Insurer of the motorcycle filed counter statement denying the averments made in the claim petition. The rider of the motorcycle/3rd respondent did not possess any valid driving license on the date of the accident which is the violation of the policy condition and the Motor Vehicles Act. The appellant denied the income of the deceased. The compensation claimed by the respondents are excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, respondents examined the second respondent, son of the deceased as P.W.1, one Sivaraj, eyewitness to the accident was examined as P.W.2 and marked twenty documents as Ex.P.1 to Ex.P.20. The Appellant/Insurance Company did not examine any witness and marked any documents.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by rider of the motorcycle belonging to the third respondent and directed the appellant/Insurance Company being the insurer of the said vehicle to pay a sum of Rs.21,33,220/- as compensation to the respondents 1 & 2.

8.Against the said award dated 03.09.2018 made in M.C.O.P.No.107 of 2014, the Appellant/Insurance Company has come out with the present appeal.

9.Though, the learned counsel appearing for the Appellant/Insurance Company raised various grounds on negligence, at the time of arguments, he restricted his arguments only with regard to quantum of compensation awarded by the Tribunal. He submitted that the award passed by the Tribunal is excessive. The Tribunal ought not to have granted 30% enhancement towards future prospects, the deceased was aged about 45 years at the time of the accident and not in permanent employment. The respondents 1 and 2 are majors and are not dependent on the deceased. The learned counsel relied upon the Judgment of the Hon'ble Apex Court in ***New India Insurance Company Ltd., Vs. Vinish Jain and others*** reported in ***2018 (1) TN MAC 365*** his support of the submission. Further, the compensation awarded under the heads of love and affection at Rs.2,00,000/- is incorrect. The filial consortium granted at Rs.50,000/- each towards loss of love and affection is excessive and prayed for setting aside the award of the Tribunal and allowing the appeal.

10.The learned counsel appearing for the respondents 1 and 2 submitted that the award of the Tribunal is in accordance with law and there is no reason to interfere with the award and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 and 2 and perused the entire materials on record.

12.From the materials on record, it is seen that it is the case of the respondents 1 and 2 that the deceased Nirmala was aged about 45 years. We find that the Tribunal ought not to have granted 30% enhancement towards future prospects. The Tribunal erroneously granted 30% enhancement towards future prospects. As per the Judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others,** 25% future prospects has to be granted. That apart, the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased. We did not accept the submission of the learned counsel for the appellant that 50% should be deducted towards personal expenses. In the case cited by the appellant, the deceased was aged about 72 years and the respondents were above 40 years and the deceased had grand children. In such circumstances, the Hon'ble Apex Court held that the sons of the deceased were not dependant. In this case, there is no evidence to show that the sons were earning. In such circumstances, the deduction of 1/3rd towards personal expenses of the deceased is just. According to the respondents 1 and 2 at the time of accident, the deceased was earning a sum of Rs.700 to 999/- per day by manufacturing and selling pickles. The respondents 1 and 2 have not filed any documents to prove the same. In the absence of any documentary evidence, the Tribunal fixed a sum of Rs.8000/- as notional monthly income of the deceased. Considering the year of accident and nature of business, the notional monthly income fixed by the Tribunal is not excessive. By granting 25% enhancement towards future prospects, the amount granted by the Tribunal towards loss of dependency is modified to Rs.10,40,000/- (Rs.8,000 + 2000 (Rs.8,000 X 25%] X 12 X 13 X 2/3). The Tribunal excessively granted a sum of Rs.2,00,000/- towards loss of love and affection. Hence, the amounts awarded by the Tribunal towards loss of love and affection is modified and a sum of Rs.40,000/- each is awarded towards loss of parental consortium to respondents 1 and 2. The amounts awarded by the Tribunal under other heads are just and reasonable and hence they are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court (Rs)	Award confirmed or enhanced or

		(Rs)		granted or reduced
1.	Loss of dependency	10,81,080	10,40,000	Reduced
2.	Loss of love and affection to the respondents 1 & 2	2,00,000	80,000	Reduced
3.	Medical Expenses	8,27,140	8,27,140	Confirmed
4.	Funeral Expenses	25,000	15,000	Reduced
5.	Loss of Estate	-	15,000	Granted
	Total	**21,33,220**	**19,77,140/-**	**Reduced by Rs.1,56,080/-**

13.With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.21,33,220/- awarded by the Tribunal is hereby reduced to Rs.19,77,140/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the award amount now determined by this Court along with 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, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.107 of 2014 on the file of Motor Accident Claims Tribunal, Additional Sub Judge, Puducherry, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.M., J)
10.11.2022

Index : Yes / No
vsn

To

1.The Additional Sub Judge,
Motor Accident Claims Tribunal
Puducherry

2.The Section Officer
VR Section
High Court
Madras.

V.M.VELUMANI,J.
and
SUNDER MOHAN,J.
vsn

C.M.A.No.2596 of 2021
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