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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.NO.1735 OF 2017

1. Mariammal

2. Rathinam

3. Geetha

... Appellants / Petitioners

Vs

1. S.Sakthivel

2. The United India Insurance Company Limited.,
(Namakkal) TPHUB
Having Office at No. 104-A
Peramanoor Main Road
Salem - 7.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 against the award made in Judgment and Decree dated 14.12.2016 made in M.C.O.P.No. 1965 of 2014 on the file of the Motor Accident Claims Tribunal, Additional Special District Court, Salem.

For Appellants : Mr.SP.Yuvaraj

For 2nd Respondent : M/s.I.Malar

J U D G M E N T

The parents and elder sister of Yuvaraja, who unfortunately died in a motor accident on 21.10.2014 at around 3.45 p.m., were the claimants in M.C.O.P.No. 1965 of 2014 before the Motor Accident Claims Tribunal / Additional and Special District Court, Salem.



2. They have filed the Appeal aggrieved by the quantum of compensation granted for the death of Yuvaraja. On 21.10.2014 at around 3.45 p.m., Yuvaraja was riding as a pillion rider in motorcycle which was driven by his friend Kamalesan in Hosur - Royakottai Main Road. When they reached the Tomato Mandi and the tea shop there, a lorry bearing Registration No. KA-01-B-4916 owned by the first respondent and insured with the second respondent, was said to have been driven in a rash and negligent manner and had entered the Main Road on the wrong side of the road. Due to that particular, entry of the lorry, the driver of the motorcycle Kamalesan applied sudden brakes, but the lorry hit against the motorcycle. Yuvaraja sustained grievous injuries in the head and all over the body and died on the spot. Claiming that the accident occurred only due to the negligent driving of the driver of the lorry, his parents and sister had filed M.C.O.P.No. 1965 of 2014 before the Motor Accident Claims Tribunal, Additional District Court, Salem.

3. By Judgment dated 14.12.2016, the Tribunal, on consideration of the evidence presented before it granted a total compensation of Rs.13,22,500/-. Challenging the said grant of compensation, the present Appeal has been filed.

4. Heard the learned counsels and also perused the materials available on record.

5. During the course of trial, on the side of the claimants, three witnesses had been examined. PW-2, Kamalesan was the driver of the motorcycle and PW-3, was examined. He was an Officer in M/s. LUK India Private Ltd., where Yuvaraja was working. He tendered evidence about the income earned by Yuvaraja and his future prospectus in the company if he had continued to work in the company.

6. With respect to the first issue of negligence, the Tribunal determined that since the lorry had entered on the wrong side and though the motorcycle driver PW-2 Kamalesan had applied sudden brake, the lorry had still dashed against the motorcycle causing the accident and therefore, the Tribunal held that it was owing to the negligence on the part of the driver of the lorry that the accident took place. I would affirm that particular finding.

7. With respect to the grant of compensation, the Tribunal considered the documents produced with respect to the income of the Yuvaraja particularly Exs. P-19 to P-22 but stated that those documents do not give a correct picture of the actual earning of Yuvaraja. The Tribunal found fault that the salary



register or the salary receipt or pay slips had not been produced and observed that if those documents had been produced, the true picture of the actual salary earned by Yuvaraja could be determined.

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8. It must also be stated that Yuvaraja was a student of B.E. Mechanical 1st year in Vinayaga Mission College. The Tribunal however in the absence of any cogent materials to substantiate the salary had determined the monthly income at Rs.7,500/-. The Tribunal then granted 50% towards future prospectus and deducted 50% towards personal expenses. The deceased Yuvaraja was aged about 27 years at the time of his death and therefore, the Tribunal adopted a multiplier of '17' and proceeded to determine the loss of dependency to the claimants in view of this death. The Tribunal also granted compensation under various other heads.

9. This grant of compensation is seriously assailed by the learned counsel for the appellants who pointed out the documents to the extent available had been produced as evidence to indicate that Yuvaraja was actually working in M/s. LUK India Pvt. Ltd., and that he was employed in middle management cadre in the said private company and that to enhance his future prospectus, he had also joined B.E. Mechanical and was in the 1st year in the said course. Learned counsel stated that if the evidence are considered in their proper perspective then the determination of the monthly income at Rs.7,500/- was much on the lower side and was to the disadvantage of the claimants. The learned counsel stated that this Court should revisit the grant of compensation.

10. The learned counsel for the second respondent/Insurance Company however stated that the Tribunal had observed that necessary materials, particularly, pay slips or salary register had not been produced to actually determine the income of Yuvaraja in LUK India Pvt., Ltd. As a matter of fact, the learned counsel stated that Exs. P-19 to P-21 did not even contain the seal of the official who had signed those documents and therefore also raised a suspicion over the genuinity of the said documents. The learned counsel stated that grant of 50% towards future prospectus was not in accordance with the established principles and also stated that there should be a revisitation by this Court about the compensation that had been granted to the claimants / legal heirs of Yuvaraja. It was also pointed out that the third claimant was a elder married sister and therefore, she cannot be classified as dependent of Yuvaraja.

11. I have carefully considered the arguments advanced.



12. PW-2 Kamalesan had spoken that he was the driver of the motorcycle in which the deceased Yuvaraja was the pillion rider at the time of the accident. He produced Ex.X-1 his identity card with LUK India Private Ltd., This establishes the fact that a company called LUK India Private Ltd., is actually in existence and is functioning. To that extent when Es.X-1 is correlated with Exs. P-19 to P-22, a reasonable presumption can be drawn that the said documents, namely, Exs.P-19 to P-22 cannot be brushed aside as not being genuine.

13. The learned counsel for the 2nd respondent pointed out the First Information Report wherein PW-2 did not state that Yuvaraja, was his co-employee but rather stated that Yuvaraja was a known person. I would rather give the benefit to PW-2 Kamalesan since as a driver of the vehicle, having seen his own friend die in front of him, his mental capacity would not have been in a clear state and at that particular point of time, quite apart from being a co-employee, he would have been more concerned that a friend had lost his life and that is what he stated before the police. He could not, at that particular point of time imagine that it was necessary to give a distinct place of work and all such details in his complaint before the police. The word 'friend' comprises everything. I hold that the evidence of PW-2 can be considered to affirm that Yuvaraja was an employee of LUK India Private Ltd. The fact that he had also joined B.E. Mechanical Engineering course shows his enterprise to further his future prospectus.

14. In view of these factors, I would determine the monthly income at Rs.15,000/- per month. To this I would add 40% as future prospectus. This would mean that the monthly income would be Rs.21,000/- (Rs.15,000 + Rs.6,000/-).

15. From this sum 50% has to be deducted towards personal expenses which would mean (Rs.21,000 - Rs.10,500) = Rs.10,500/- which would be the monthly income which Yuvaraja could have contributed to the claimants more particularly to his parents. The per annum contribution towards the family would therefore be (Rs.10,500 x 12) = 1,26,000/-. Since the deceased was aged about 27 years multiplier of '17' can be adopted. This would also mean, the total loss of income would be (Rs.1,26,000 x 17) = Rs.21,42,000/-.

16. The Tribunal had granted a sum of Rs.20,000/- towards transport expenses and I would reduce that to Rs.15,000/-. The Tribunal had granted a sum of Rs.50,000/- towards funeral expenses, I would grant Rs.15,000/- for funeral expenses, The Tribunal had granted a sum of Rs.1,00,000/- towards loss of love



and affection. A sum of Rs.40,000/- each can be granted under this head for the mother, father and the sister can be granted Rs.20,000/-. The Tribunal had granted a sum of Rs.5,000/- towards damages to clothes and I would retain it. I would also grant Rs.15,000/- towards loss of estate. The total compensation is at Rs.22,92,000/- as follows:-

(i) Loss of income	: Rs.21,42,000/-
(ii) Loss of Love and affection (Rs.40000 x 2 +Rs.20000)	: Rs. 1,00,000/-
(iii) towards transportation	: Rs. 15,000/-
(iv) towards funeral expenses	: Rs. 15,000/-
(v) towards damages to clothes	: Rs. 5,000/-
(vi) towards loss of estate	: Rs. 15,000/-

Rs.22,92,000/-	

17. The additional compensation granted is at Rs.9,69,500/-. In fine, the Appeal is allowed. No costs. The award is modified. The compensation award is enhanced to Rs.22,92,000/-.

18. The second respondent is directed to deposit the enhanced amount less the amount already deposited, if any, with interest at the rate of 7.5% per annum from the date of filing of the petition till date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first petitioner/mother will be entitled for a sum of Rs.12/- lakhs, the second petitioner/father will be entitled to Rs.8/- lakhs. The third petitioner will be entitled to the balance amount. They are permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn. No order as to costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

vsg

To

The Additional Special District Court,
Motor Accident Claims Tribunal,
Salem.



Copy To

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

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+1cc to M/s.I.Malar Ravichandran, Advocate, S.R.No.21200

C.M.A.No.1735 of 2017

SRA (CO)
RLP (05/05/2022)