IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MRS. JUSTICE N. MALA

C.M.A.No.2328 of 2017
and
C.M.P.No.12480 of 2017

The New India Assurance Company Ltd.,
Madurai Divisional Office III,
No.161A Kizhakku vel street,
Madurai – 625 001. ... Appellant

Vs.

1.Sangeetha
2.Minor. Athithi
3.Thangavel
4.Baby
5.Mayandi
6.Nagaraj
7.The Commissioner,
Income Tax Department, CPC,
Post Bag No.1,
Electronic City P.O.,
Banglore – 560 100, Karnataka. ... Respondents

[R7 Suo moto impleaded as party respondent vide order of this Court , dated 23.03.2019 made in C.M.A.No.2328 of 2017 & C.M.P.No.1248 of 2017 by MMSJ & PRMJ]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment, dated 13.03.2017, in M.C.O.P.No.562 of 2014 on the file of the learned Additional District Judge III, Motor Accident Claims Tribunal Dharapuram, Tiruppur.

For Appellant	:	Mr.J.Chandran
For R1 to R6	:	M/s.M.Adhishree for Mr.N.Manokaran
For R7	:	Mr.S.Rajesh for Karthick Ranganathan Senior Counsel for Income Tax

JUDGMENT

(Judgment was delivered by **S.S.SUNDAR, J.**)

As against the award of compensation by the Motor Accident Claims Tribunal, III Additional District Court, Dharapuram at Tiruppur ("the Tribunal" for brevity), dated 13.03.2017, in M.C.O.P.No.562 of 2014, the above appeal is preferred by the Insurance Company.

2. The respondents 1 to 4 are the wife and children of the deceased by name Ramesh. It is admitted before this Court that while the

deceased Ramesh was riding his two-wheeler in the main road from Moolanur to Vellakovil towards north from south, the 5th respondent driving the lorry belonging to the 6th respondent dashed against him. As a result of the accident, the said Ramesh died on the spot.

3. The respondents 1 to 4 (hereinafter referred to as "claimants") filed M.C.O.P.No.562 of 2014 before the Motor Accident Claims Tribunal, III Additional District Court, Dharapuram at Tiruppur, claiming a sum of Rs.1,25,00,000/- by way of compensation.

4. The Tribunal specifically rendered a finding that the accident was due to the rash and negligent driving of the driver of the 6th respondent's vehicle. The Tribunal, however, based on income tax returns found that the loss of income per annum is Rs.4,19,170/-. After reducing Income Tax of Rs.26,120/-, the net income per annum was fixed at Rs.3,93,050/-. Adding Rs.60,000/- towards additional income from family partnership business, the Tribunal fixed annual Income of the deceased at Rs.4,53,050/-. Adding 30% towards future prospects amounting to

Rs.1,35,915/- and deducting $1/4^{th}$ of the income towards personal expenses, the net loss of income was fixed at Rs.4,41,724/-. Adopting 16 as multiplier, the total compensation towards loss of income was calculated at Rs.70,67,584/-. The compensation awarded by the Tribunal under other heads are as follows :

Heads	***Amount awarded by the Tribunal***
Loss of income	Rs.70,67,584/-
Loss of consortium	Rs.60,000/-
Love and affection	Rs.40,000/-
Funeral Expenses	Rs.15,000/-
TOTAL	**Rs.71,82,584/-**

Thus, a sum of Rs.71,82,584/- was fixed by the Tribunal by way of compensation in all. The apportionment was also as indicated in Para No.7 of the award of the Tribunal.

5. Challenging the award of the Tribunal, the Insurance Company has preferred the above appeal.

6. The learned counsel appearing for the appellant/Insurance Company, though strenuously argued on several issues, has focussed much on the quantum of compensation towards loss of income. The learned counsel submitted that the income tax returns of the deceased were marked by the claimants cannot be taken as conclusive proof of the income as on the date of accident since income shown in the income tax returns is fluctuating. The learned counsel submitted that it is not safe to merely rely upon the income tax returns to arrive at the income since the income tax returns were for different periods. It is contended that the Tribunal has taken the highest income shown in the income tax returns. The learned counsel also submitted that the Tribunal has added a sum of Rs.60,000/- towards annual income of the deceased as income by assuming that the income of the deceased as a partner of a partnership firm. The learned counsel further submitted that the claimants have not proved by cogent evidence indicating that the partnership firm did not function due to the death of Ramesh.

7. The learned counsel appearing for the respondents / claimants on the other hand submitted that the multiplier adopted by the Tribunal is 16

even though the deceased was 36 years old at the time of accident. According to her as per the judgment in ***Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.*** reported in ***2009 (2) TN MAC 1 (SC)***, the proper multiplier should be 15.

8. Considering the rival submission of the learned counsels on either side, the age of the deceased is taken as 36 and hence the multiplier 15 is proper and the Tribunal has erroneously fixed the multiplier as 16.

9. As regards to monthly income, this Court is unable to interfere with the findings of the Tribunal that the monthly income of the deceased as per income tax returns would be Rs.3,93,050/-. However the Tribunal has accepted the additional income of the deceased as a partner of partnership firm as Rs.60,000/-. Since there is no sufficient evidence to indicate that the partnership firm was closed due to the death of the deceased, this Court is unable to add a sum of Rs.60,000/- to the annual income of the deceased. When the income from income tax returns is taken, there is no scope for adding further income. Even though the statement of the claimants was that

the claimants retired from the partnership firm sometime later, subsequent to retirement of claimants from partnership firm may be for valid consideration. However, this Court in the absence of relevant material cannot consider any additional income from the partnership firm as a loss pursuant to the death of deceased. Further, when income of the deceased is expected to be disclosed in income tax returns, there cannot be further addition under the income from agriculture.

10. Therefore, the annual income of the deceased awarded by the Tribunal as Rs.3,93,050/- is taken as the annual income of the deceased. This Court is of the view that 40% of the annual income of the deceased can be taken towards future prospects i.e.40% of Rs.3,93,050/- is Rs.1,57,220/-. Therefore the annual income of the deceased is taken as Rs.5,50,270/-. Deduction towards personal expenses at Rs.1,37,567.50/- should be taken from the annual income. The monthly income of the deceased is arrived at Rs.4,12,702.50/-. Adopting 15 as multiplier, the claimants are entitled to a sum of Rs.61,90,537.50/- towards loss of income and a sum of Rs.15,000/- as taken by the Tribunal towards medical expenses.

11. The learned counsel appearing for the respondents / claimants submitted that a sum of Rs.15,000/- may be awarded towards loss of estate and a sum of Rs.10,000/- may also be added towards transportation charges, this Court is inclined to accept the submission of the learned counsel appearing for the claimants. Therefore the claimants are entitled to a compensation which arrives as follows:-

Heads	***Amounts***
Loss of Income	Rs.61,90,537/-
Loss of Consortium	Rs.60,000/-
Loss of Love and Affection	Rs.40,000/-
Loss of Funeral Expenses	Rs.15,000/-
Loss of Estate	Rs.15,000/-
Loss of Transportation Charges	Rs.10,000/-
TOTAL	**Rs.63,30,537/-**

12. Therefore, this Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is modified to the extent indicated above. In fine, the claimants are entitled to a sum of Rs.63,30,537/- [Rupees Sixty Three Lakhs and Thirty thousand Five Hundred and Thirty Seven only], in total with interest @ 7.5% p.a.,. The apportionment as per the award of the

Tribunal is also confirmed. It is stated that pursuant to the direction of this Court, the appellant has deposited a sum of Rs.40,00,000/- to the credit of the proceedings in M.C.O.P.No.562 of 2014. The appellant is directed to deposit the further amount as per the judgment of this Court in this appeal within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) **(N.M., J.)**

cda **27.10.2022**

Internet : Yes
Index : Yes / No

To

The III Additional District Court,
Dharapuram, Tiruppur
(Motor Accident Claims Tribunal),
Tiruppur.

S.S. SUNDAR, J.
and
N. MALA, J.

cda

C.M.A.No.2328 of 2017

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