



C.M.A.No.1587 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.11.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

C.M.A.No.1587 of 2021
and C.M.P.No.8250 of 2021

M/s.United India Insurance Company Ltd.,
Motor Thir Party HUB, 4th Floor,
Silinghi Building, 134,
Greams Road, Thousand Lights,
Chennai 600 006

... Appellant

Vs

1. Fouzia Nickath
2. K.Manzur Husain
3. M.Selvaraj

... Respondents

PRAYER : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award and decree dated 29.07.2019 made in M.C.O.P.No.6914 of 2016 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant	: Mr.S.Arunkumar
For Respondents 1 & 2	: Mr.N.M.Muthurajan
For Respondent-3	: Not ready in notice



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JUDGMENT

The second respondent Insurance Company has filed this appeal challenging the Award passed by the Motor Accident Claims Tribunal II Court of Small Causes, Chennai in M.C.O.P.No.6914 of 2016 on the ground that the Award is excessive.

2. The brief facts are as follows:-

The respondents 1 and herein, who are the petitioners before the Tribunal had filed the above claim petition seeking compensation of a sum of Rs.95,00,000/- for the death of their son, Aakiff Husain in a road accident on 03.10.2016. It is the case of the respondents 1 and 2 that on the said date at about 17.00 hours, the deceased was riding his motor cycle bearing Registration No.TN-09-AY-5686 and proceeding from Thiruneermalai to Veperi in a West-East direction. While he was so proceeding, a lorry bearing Registration No.TN-59-BZ-4455, which was driven in a rash and negligent manner and at a high speed hit the motor-cycle from behind, as a result of which, the motor cyclist (son of



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the respondents 1 and 2 herein) died on the spot. It is their case that the deceased was aged about 27 years and working as a Deputy Director in M/s.Proklean Technologies Pvt.Ltd., Adyar drawing a monthly income of Rs.55,000/-.

3. The third respondent herein, owner of the lorry remained *ex-parte* and it was the appellant-Insurance Company which had contested the above claim petition. The appellant-Insurance Company would deny the manner of the accident and would submit that the accident had occurred only on account of the negligence on the part of the motor-cyclist. However, without prejudice to the above contention, the Insurance Company has also put the petitioners to strict proof of the deceased age, income and occupation. That apart, the appellant had directed the petitioners to forward the copies of the deceased's income tax details.

4. The Tribunal on considering the evidence on record had held the negligence to be on the side of the driver of the third respondent's



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lorry and as regards the quantum had taken a monthly income of Rs.37,400/- based on Ex.P18-Pay Slip and the evidence of P.W3. The Tribunal had added 50% to the said amount towards future prospects and had calculated the annual income of the deceased at Rs.6,73,200/-, to which, 50% was deducted towards personal expenses and taking into account the age of the deceased at the time of the accident, a multiplier of 17 was adopted. Ultimately, a sum of Rs.57,22,200/- was awarded. The appellant-Insurance Company is aggrieved by the fact that the notional income that was adopted has not taken into consideration the conveyance charges as also the deduction towards income tax dues. Further, the Tribunal has awarded a sum of Rs.1,00,000/- each both under the head of loss of love and affection and loss of parental consortium.

5. Heard the learned counsel for the appellant-Insurance Company and the learned counsel for the respondents 1 and 2 perused the materials available on record.



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6. As rightly pointed out by the learned counsel for the appellant-Insurance Company, the monthly income has to be fixed at Rs.35,440/-, which is the monthly income of Rs.37,400/- less a sum of Rs.1,960/- towards conveyance, which works out to Rs.35,440/- to this 40% is added towards future prospects. Therefore, the annual income would be a sum of Rs.5,95,392/- ($\text{Rs.35,440} + 40\% \times 12$), from out of which, a sum of Rs.44,078/- is to be deducted towards the income tax dues, which would work out to a sum of Rs.5,51,314/-, from out of this, 50% is to be deducted towards personal expenses and the multiplier of 17 is to be adopted. Therefore, the amount payable under the head of loss of dependency would be a sum of Rs.46,86,169/- ($\text{Rs.5,51,314} - 50\% \times 17$). A sum of Rs.1,00,000/- was granted under the head of loss of love and affection, the same is deleted. The Tribunal has granted a sum of Rs.1,00,000/- under the head of Parental Consortium, which is reduced to a sum of Rs.80,000/-. Since no amount is given under the head of loss of estate, a sum of Rs.15,000/- is granted under this head. The re-worked compensation would be as follows:



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<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs</i>	<i>Amount awarded by this Court in Rs</i>
Loss of Dependency	57,22,200	46,86,169
Loss of love and affection	1,00,000	-
Filial Consortium	1,00,000	80,000
Funeral expenses and Transport expenses	15,000	15,000
Loss of Estate	-	15,000
Total	59,37,200	47,96,169

7. In the result, the Civil Miscellaneous Appeal is partly allowed and the Award of the Tribunal is modified, reducing the compensation amount from Rs.**59,37,200/-** to Rs.**47,96,169/-** The appellant-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.6914 of 2016 along with interest at the rate of 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 judgment. The claimants are directed to pay the Court fee for the compensation amount now determined by this Court, if required. Excess amount if any deposited shall be withdrawn by the appellant-Insurance



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Company. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

Consequently, connected miscellaneous petition is closed.

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Index:Yes / No

Speaking Order : Yes/No

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To

1. The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.
2. The Section Officer, V.R.Section High Court, Madras



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P.T.ASHA, J.,

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