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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.NO.2622 OF 2018

AND

CMP.NO.19780 OF 2018

Tata AIG General Insurance Company Ltd.,
Third Floor, Jaya Enclave,
1057, Avinasi Road, Coimbatore. ...Appellant / 2nd Respondent

Vs.

1.Alagujothi
2.Minor Ajay
3.Minor Divakaran
4.Minor Renuka
5.Minor Anesh
6.Valliammal ...Respondents 1 to 6 / Petitioners 1 to 6
(Minor respondents 2 to 5, represented by
their mother and next friend Alagujothi)
7.Thiruselvam ...7th Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 30.11.2017 made in MCOP No.386 of 2014 on the file of the Motor Accident Claims Tribunal / the II Additional District Judge, Tiruppur.

For Appellant	:	Mr.K.Vinod
For R1 to R6	:	Mr.M.Lokesh For Mr.Ma.P.Thangavel
For R7	:	No appearance

JUDGMENT

The 2nd respondent in MCOP No.386 of 2014 on the file of the Motor Accident Claims Tribunal / II Additional District Court, Tiruppur is the appellant herein. They are aggrieved by the quantum of compensation awarded by the Tribunal owing to the death of one Jayaseelan, by award dated 30.11.2017. The claim petition had been preferred by the widow and four children of Jayaseelan and his mother. Necessity to file such a claim



petition arose since, on 02.01.2014 at around 2.00 p.m, when Jayaseelan was walking in Kudalur to Calicut Road near Vaishinavi Madapam, a vehicle bearing Regn. No.TN-31-L-6545 driven by a tourist taxi driver coming from Kudalur to Kozhikode apparently in a rash and negligent manner had dashed against him. He sustained grievous injuries. He was taken to Government Hospital, Kudalur and MIMS Hospital Kozhikode. He died on 04.01.2014. Post-mortem was done on 04.01.2014.

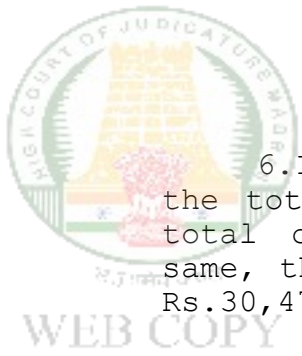
2.It was claimed in the petition that he was the owner of a Mahindra & Mahindra Jeep and to substantiate that particular fact, the Insurance Certificate had also been produced, which was in his name. It was claimed by the claimants that he was also the driver of the vehicle and therefore, owing to the death, there was loss of income for the family. Seeking compensation for the death of Jayaseelan, the claim petition had been filed.

3.Before the Tribunal, during the course of trial, two witnesses were examined on behalf of the claimants and they also marked Exs.P1 to P8. On the side of the respondent, one witness was examined and they marked Exs.R1 to R4.

4.With respect to the first issue regarding negligence and the manner in which the accident had occurred, the Tribunal found as a fact that when Jayaseelan was walking across the road, the offending vehicle had dashed against him and in this connection, the Tribunal also took into consideration the First Information Report which had been marked as Ex.P1. Negligence was determined on the driver of the tourist van bearing Regn.No.TN-31-L-6545. I would confirm that finding.

5.On the basis of the evidence adduced, the Tribunal had granted a total award of Rs.30,37,000/- as follows:

Heads	Amounts
Loss of Income	Rs.24,57,000/-
Loss of Love and Affection (Rs.50,000 x 6)	Rs.3,00,000/-
Loss of consortium	Rs.40,000/-
Pain and suffering	Rs.50,000/-
Attender charges	Rs.50,000/-
Funeral Expense	Rs.25,000/-
Transport charges	Rs.15,000/-
Medical expense	Rs.1,10,000/-
Total	Rs.30,37,000/-



6.It is to be noted that there was an error in calculating the total amount of compensation. The Tribunal stated that the total compensation was Rs.30,37,000/-. Now, by verifying the same, the total award amount granted by the Tribunal is actually Rs.30,47,000/-.

7.It was pointed by the Tribunal that since Jayaseelan was the owner of the jeep and also its driver, his income can be reasonably determined at Rs.15,000/- per month.

8.The present Appeal has been filed questioning the quantum and it is contended by the learned counsel for the appellant that during cross-examination, PW-1 had stated that the vehicle had been subsequently sold and was not available.

9.However, owing to the fact that Jayaseelan was in possession as owner of the jeep, it is only probable that there could have been some reasonable income derived from the vehicle, I would deem it fit and proper to hold that his monthly income can be determined as Rs.15,000/-. Toward future prospects, the Tribunal had granted 30%, which is not proper and 25% alone has to be granted towards future prospects. This would indicate the monthly income of Jayaseelan would be Rs.18,750/- per month (Rs.15,000 + Rs.3,750). Taking into consideration the fact that he would have used 1/4 of the amount towards his personal expenses and would have contributed 3/4 towards the family income, the monthly income will be Rs.14,062.50/- (Rs.18,750 - Rs.4,687.50/-) and for one year it would be Rs.1,68,750/- (Rs.14,062.50/- x 12). By adopting the multiplier of '14', the total loss of Income comes to Rs.23,62,500/-.

10.The Tribunal had granted a sum of Rs.40,000/- to the 1st claimant towards loss of consortium, which I would retain. The Tribunal had however granted a sum of Rs.50,000/- for each one of the claimants towards loss of Love and Affection. That cannot be done, which can only Rs.40,000/- for the 2nd, 3rd, 4th, 5th and 6th claimants and therefore the total amount toward loss of Love and Affection comes to Rs.2,00,000/-.

11.The Tribunal had also granted a sum of Rs.50,000/- towards loss of pain and suffering. That cannot be granted. The Tribunal also granted a sum of Rs.50,000/- towards attender charges. That has to be reduced to Rs.10,000/-. With respect to funeral expenses, Rs.25,000/- has been granted and that has to be reduced to Rs.15,000/-. With respect to transport charges Rs.15,000/- has been granted and that has to be reduced to Rs.10,000/-.

12.I would grant a sum of Rs.15,000/- towards Loss of Estate.



13.The total compensation amount now enhanced is as follows:

Heads	Amounts
Loss of Income	Rs.23,62,500/-
Loss of Love and Affection (Rs.40,000 x 5)	Rs.2,00,000/-
Loss of consortium	Rs.40,000/-
Attender charges	Rs.10,000/-
Funeral Expense	Rs.15,000/-
Transport charges	Rs.10,000/-
Medical expense	Rs.1,10,000/-
Loss of Estate	Rs.15,000/-
Total	Rs.27,62,500/-

14.With respect to the apportionment, the 2nd, 3rd, 4th and 5th claimants are entitled to get Rs.3,00,000/- each and the 1st claimant is entitled to get Rs.10,00,000/- and the balance sum shall go to the 6th claimant who is the mother of the deceased. The accrued interest may also be accordingly apportioned. The 1st claimant / wife of the deceased can withdraw the interest once in every three months in respect of the deposit of the minor's share in Fixed Deposit Scheme in any Nationalized Bank until the claimants who are minor's attain the age of majority and thereafter they are permitted to withdraw their shares.

15.The Civil Miscellaneous Appeal is allowed, reducing the compensation which had been determined as Rs.30,47,000/- to Rs.27,62,500/-. The Insurance Company is directed to deposit the aforesaid claim amount with interest of 7.5% from the date of filing of the petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this judgment. If any amount had been deposited pursuant to directions of this Court, the same may be adjusted. On such deposit being made, the major claimants are permitted to withdraw the award amount by filing necessary application before the Tribunal.

16.There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

smv



To:-

The II Additional District Judge, Tiruppur /
Motor Accidents Claims Tribunal,
Tiruppur.

+1cc to Mr.Ma.P.Thangavel, Advocate Sr.No.21431

CMA.No.2622 of 2018
and
CMP.No.19780 of 2018

AJS (CO)
RVM(12/05/2022)