IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2395 of 2018
&
C.M.P.No.18176 of 2018

HDFC ERGO General Insurance Company Ltd.,
356/1, Empire Arcade, Omalur Main Road,
Opp. to New Bus Stand,
Salem 636 004. ...Appellant

Vs

1.M.Pushpavalli

2.M.Soundarya

3.M.Poovarasan

4.Kannamal

5.Paramakumar ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and Judgement dated 17.01.2018, made in M.C.O.P.No.1996 of 2015, on the file of the Motor Accident Claims Tribunal (I Additional District Court), Salem.

For Appellant	:	Mr.K.Vinod
For Respondents 1 to 4	:	Mr.K.Thirukkumaran
For Respondent 5	:	No Appearance

JUDGEMENT

The 2nd respondent Insurance Company has filed the above appeal challenging the award passed in M.C.O.P.No.1996 of 2015 by the Motor Accident Claims Tribunal, I Additional District, Salem. The appeal is primarily filed challenging the quantum of compensation that has been granted by the Tribunal below, particularly, the notional income that has been fixed by the Tribunal below. The facts in brief are as follows and the parties are referred to in the same array as before the Tribunal.

2. The wife, children and the mother of one Murugan had filed M.C.O.P.No.1996 of 2015 on the file of the Motor Accident Claims Tribunal, Salem claiming compensation for the death of the said Murugan in a road accident on 30.02.2015. The claimants had contended that the said Murugan was a driver, working under the 1st respondent.

3. On 30.08.2015 at about 2.30 p.m, the driver of the lorry bearing registration No.TN 34 R 9990 moved the lorry in a rash and negligent manner and ran over the deceased. The deceased was rushed to the Erode Medical Centre Hospital, Erode, however he had died on the way. Therefore, the claimants had sought for a compensation of Rs.25,00,000/-.

4. The 1st respondent had filed a counter inter alia contending that the petition was not maintainable as the driver of the 1st respondent had driven the lorry in a careful manner and the lorry at the time of the accident was covered by a valid Insurance and that there is no violation of the policy condition. Therefore, the Insurance Company was liable to make the payment on behalf of the 1st respondent.

5. The 2nd respondent Insurance Company had filed a counter stating that the accident had occurred only on account of the fact that the deceased Murugan was sleeping under the lorry and without knowing that he was under the lorry, the driver of the other lorry had reversed the vehicle thereby running over the deceased Murugan. Therefore, the deceased Murugan had primarily contributed for his death. They would therefore submit that the respondent Insurance Company is not liable to compensate the claimants. They had also

raised a plea that the claimants ought to have moved a petition under the Workmen's Compensation Act.

6. The Tribunal on considering the evidence held that the accident had occurred only on account of the negligence of the driver of the other lorry belonging to the 1st respondent, bearing registration TN 34 R 9990. Though the Tribunal had observed that the deceased was sleeping under the lorry, however it had fastened the negligence only on the driver of the lorry, namely, TN 34 R 9990.

7. The Tribunal had adopted a notional income of Rs.12,000/- and added future prospects of 50% **(Rs.12,000/- + Rs.6,000/- = Rs.18,000/-)**. Of this 1/3rd amount was deducted towards personal expenses **(Rs.18,000/- -1/3 = Rs.12,000/-).** The Tribunal had adopted multiplier 14 which comes to **Rs.12,000/- X 12 X 14 = Rs.20,16,000/-**. Ultimately, the Tribunal has awarded a compensation of Rs.21,36,000/-

8. The Insurance Company aggrieved by this award has filed the above appeal.

9. The arguments advanced by the learned counsel appearing for the Insurance Company are as follows:

i)The deceased has primarily contributed to his death by sleeping under the lorry.

ii)The notional income of Rs.12,000/- is on the higher side, as also calculating future prospects at 50% and adopting multiplier 14. The correct percentage of future prospects is 40% since the age of the deceased is 46 as per his driving licence which has been marked as Ex.P.6. Therefore, the correct multiplier to be adopted is 13.

10. The learned counsel for the Insurance Company would further submit that the amount granted under the head of Funeral Expenses, Loss of Love and Affection and Loss of Consortium for the wife was on the higher side. However, the learned counsel fairly conceded that the amounts granted under the head of Loss of Love and Affection for the claimants 2 to 4 is not in keeping with the Judgement of the Hon'ble Supreme Court reported in ***2017 (2) TNMAC 609 – National Insurance Company Vs. Pranay Sethi & others***.

11. The claimants / respondents 1 to 4 herein though served have not entered appearance.

12. The accident has taken place on the road within the Mill's complex. It appears that the lorries were waiting at the Mill either for loading or unloading the goods. It is no doubt true that the deceased has contributed to the accident by sleeping under the lorry. However,

taking into consideration the fact that he was a driver of the heavy goods vehicle who is waiting at the premises of the paper Mill for unloading it could be presumed that the deceased had rested without knowing that the vehicle would be moving. Therefore, the accident is an unfortunate one.

13. The fact that he has chosen to sleep under the lorry only highlights the fact that there was no proper resting area within the premises of the Mill for the drivers and cleaners of the vehicles, which enters the premises for loading and unloading activities. Most of the drivers would have driven for considerable distances and in every likelihood they would have been exhausted by the time they reach the premises. This can only be treated as freak accident and not a deliberate act. Therefore, a **contributory negligence of 10%** can be fixed on the deceased.

14. The notional income of Rs.12,000/- fixed by the Tribunal below appears to be reasonable, to this 25% is added towards future prospects as against 50% adopted by the Tribunal. Therefore, monthly notional income would be a sum of Rs.15,000/- **(Rs.12,000/- + Rs.3,000/- = Rs.15,000/-)**, out of the said sum 1/3rd has to be deducted towards personal expenses. Therefore, the income which would be available to the family is Rs.10,000/- **(Rs.15,000/- 1/3 = Rs.10,000/-)**. Considering the age of the deceased, the appropriate multiplier to be adopted is 13. Therefore, the amount under the head of Loss of Income would be **Rs.10,000/- X 12 X 13 = Rs.15,60,000/-**.

15. The Tribunal has granted a sum of Rs.25,000/- towards funeral expenses which is reduced to a sum of **Rs.15,000/-.** Under the head of Loss of Consortium and Loss of Love and Affection for the 1st claimant wife, a sum of Rs.45,000/- has been granted which has to be

reduced to a sum of **Rs.40,000/-.** However, under the head of Loss of Love and Affection for the claimants 2 to 4 a total sum of Rs.50,000/- is granted, which has to be enhanced to a sum of **Rs.1,20,000/-.** No amounts have been granted under the head of Loss of Estate. A sum of **Rs.15,000/-** has to be granted under the head of Loss of Estate.

16. The award of the Tribunal is re-worked as follows:

<table>
<tr><th>Heads</th><th>Award of the Tribunal</th><th>Award of the High Court</th></tr>
<tr><td>Funeral Expenses</td><td>Rs.25,000/-</td><td>Rs.15,000/-</td></tr>
<tr><td>Loss of Love and Affection to the 1st petitioner</td><td>Rs.25,000/-</td><td rowspan="2">Rs.40,000/-</td></tr>
<tr><td>Loss of consortium to the 1st petitioner</td><td>Rs.20,000/-</td></tr>
<tr><td>Loss of Love and Affection to petitioners 2 and 3</td><td>Rs.40,000/-</td><td>Rs.80,000/-</td></tr>
<tr><td>Loss of Love and Affection to 4th petitioner</td><td>Rs.10,000/-</td><td>Rs.40,000/-</td></tr>
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Heads	***Award of the Tribunal***	***Award of the High Court***
Loss of Income	Rs.20,16,000/-	**Rs.15,60,000/-**
Loss of Estate	**------------------**	**Rs.15,000/-**
Total	**Rs.21,36,000/-**	**Rs.17,50,000/-**
10 % Contributory Negligence		**Rs.1,75,000/-**
Grand Total		**Rs.15,75,000/-**

17. Therefore, the revised compensation would be a sum of **Rs.15,75,000/-.**

18. In the result, the Civil Miscellaneous Appeal is partly allowed. The Insurance company is directed to deposit the award amount along with interest and costs, less the amount already deposited within a period of six weeks from the date of receipt of a copy of this Judgement, to the credit of M.C.O.P.No.1996 of 2015. On such deposit, the claimants are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal,

along with proportionate interest and costs, less the amount if any, already withdrawn, by filing necessary application before the Tribunal. Excess amount, if any, paid by the Insurance Company shall be refunded to them. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

29.06.2022

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Index : Yes/No
Speaking order/non-speaking order

To,
The Motor Accident Claims Tribunal
(I Additional District Court),
Salem

P.T.ASHA, J.,

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C.M.A.No.2395 of 2018

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