IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1188 of 2021 and
C.M.P. Nos. 5748 and 19599 of 2021

M/s. United India Insurance Co. Ltd.,
Office at No.1171, Muthaiya Complex,
Mettur Road, Erode-11 ... Appellant / 3rd Respondent

Vs.

1. G.Ezhilarasi
2. G. Dinesh Raja
3. G. Rajesh
4. G. Vignesh
5. S. Muniyammal ... Respondents / Petitioners

6. M. Premkumar ... Respondent / 1st Respondent

7. S. Dhanasekaran ... Respondent / 2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 13.11.2019 passed in M.C.O.P. No.563 of 2017 on the file of the Special District Judge, Motor Accident Claims Tribunal, Erode.

For Appellant	:	Mr. S.Arunkumar
For RR 1 to 5	:	Mr. M. Guruprasad
For RR 6 & 7	:	No Appearance

JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the quantum of compensation awarded in M.C.O.P. No.563 of 2017, dated 13.11.2019 on the file of the Special District Judge, Motor Accident Claims Tribunal, Erode.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 13.04.2017, at about 12:30PM, the deceased Ganesan was riding a Mahindra Scooter bearing Registration No.TN-33-BE-9815 on Perundurai to Chennimalai Road, while he reached near Sri Murugan Bakery at Perundurai Old Bus Stand, a lorry bearing Registration No.TN-57-AB-6864 came in the same direction, driven by its driver in a rash and negligent manner, hit behind the scooter, causing grievous injury and the deceased died on the spot. A criminal case was registered against the driver of the lorry in Cr.No.204/2017 U/s. 279, 304(A) of IPC on the file of Perundurai Police Station. For the loss of deceased Ganesan, the claimants, who are the wife, children and mother of the deceased filed this claim

petition seeking compensation for a sum of Rs.30,00,000/- along with interest under section 166 of the Motor Vehicles Act.

4. The first and the second respondent, who are the driver and owner of the offending lorry has not contested the claim before the Tribunal. The third respondent - insurance company filed a counter and contended that the first respondent has driven the lorry with due care and caution and the accident was taken place only due to the rash and negligence on the part of the deceased, who has turned the scooter without any signal and hit on the right side of the lorry. The insurance company also disputed the age, income and occupation of the deceased and further contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.23 were marked. On the side of the respondent, R.W.1 was examined and Ex.R.1 and Ex.W.1 were marked.

6. Based on the evidence placed on record, the Tribunal in point

no.1, has held that the rash and negligence on the part of the driver of the lorry bearing Registration No.TN-57-AB-6864 is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.19,96,958/- along with interest @ 7.5% per annum from the date of filing of claim petition till the date of realization. In point no.3, the Tribunal has fixed the liability on the part of the third respondent - insurance company to indemnify the owner of the lorry and to pay compensation to the claimants.

7. Aggrieved over the award, the insurance company has filed this appeal challenging the quantum of compensation awarded by the Tribunal.

8. The learned counsel appearing for the insurance company submitted that the deceased in this case was a pensioner and he was also working in a Security Agency and earning Rs.12,000/- per month. The major contention raised by the insurance company is that while arriving the quantum of compensation, the Tribunal has not made necessary deduction in the family pension paid to the family members of the deceased, which are liable to be deducted from the monthly income of the deceased and the same

is also settled principle of law and he also relied on this Court judgment in ***SBI General Insurance Co. Ltd., Vs. Kannammal and others [2020 (2) TN MAC 705].***

9. The learned counsel appearing for the claimants submitted that the Tribunal based on the evidences placed on record, has made necessary deduction in the quantum of compensation assessed and there is no error in such deduction, hence prays to confirm the award.

10. Heard the submissions made on both sides and perused the materials available on record:

11. On perusal of this Court judgment in ***SBI General Insurance Co. Ltd., Vs. Kannammal and others [2020 (2) TN MAC 705]***, wherein it is held that deduction of family pension received by the dependents shall be deducted, while arriving the quantum of compensation under the head loss of income. The Hon'ble Apex Court in ***Reliance General Insurance Co. Ltd., vs. Shashi Sharma and others [ ]***, in paragraph 22 reads as follows:

"...The harmonious approach for determining a

> *just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased Government employee in the normal course...."*

12. The Ex.P.9 - Pension Order of the deceased Ganesan shows, he was a retired Sub Inspector of Police and was receiving family pension of Rs.17,750/- and Exs.P.11, P.12 and P.19 to P.23 - evidences shows that the deceased Ganesan was also earning Rs.12,000/- per month separately by working as security in a private concern namely Jupiter Security Services. The Tribunal has rightly appreciated the above evidences and made deduction regarding the family pension received by the dependents, while calculating the income of the deceased and awarded compensation.

13. The Ex.P.9 - Pension Order categorically shows that family pension was fixed as Rs.17,540/- in which the basic pension is stated as Rs.8,770/- and the commutation amount is Rs.2,923/-, hence after deducting the commutation amount, the amount payable under family pension to the dependents is Rs.5,847/- by adding the Dearness Allowance (DA) of 132%.

But, the Tribunal has erred while adding DA, instead of calculating the 132% on the basis of family pension of Rs.5,847/-, it has calculated on the total family pension of Rs.8,770/-, which is not proper. Accordingly, the family pension of the deceased is modified as follows:

Family Pension after deducting commutation amount	= Rs.5,847/-
DA @ 132% of Rs.5,847/-	= Rs.7,718/-
Total Family Pension (Rs.5,847/- + Rs.7,718/-)	= **Rs.13,565/-**

14. There is no dispute that the deceased was earning Rs.12,000/- per month by working as a security in a private concern, hence the total annual income of the deceased after deduction of Income Tax is as follows:

<u>(a). Total Taxable Income:</u>

Total Family Pension	= Rs.13,565/-
Income earned from private concern	= Rs.12,000/-
Total Income (13,565/- + 12,000/-)	= Rs.25,565/-
Total Annual Income (25,565/- X 12)	= Rs.3,06,780/-
Professional Tax for the year 2017-2018 i.e., (Rs.1,250/- x 2)	= Rs.2,500/-
Total taxable income (3,06,780 - 2,500)	= **Rs.3,04,280/-**

<u>(b). Tax Calculation for Assessment Year (2018-2019):</u>

Total taxable income	= Rs.3,04,280/-
Senior citizen (tax upto Rs.3,00,000/-)	= Nil
Taxable amount	= **Rs.4,280/-**
5% of the taxable amount	= Rs.214/-
Educational cess (2%)	= Rs.4/-
Higher Educational cess (1%)	= Rs.2/-
Total tax amount (214+4+2)	= **Rs.220/-**
Total Annual income of the deceased after deduction of tax (3,04,280 - 220)	= **Rs.3,04,060/-**

15. The Tribunal has by following the dictum as laid down in ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and others*** reported in ***[2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the multiplier is fixed as '7' by considering the age of the deceased at the time of the accident and adopted deduction of (1/4) towards the personal and living expenses of the deceased by considering the number of dependants herein, who are 5 in numbers. This Court finds no infirmity in the above fixing of multiplier and deduction towards personal and living expenses of the deceased adopted by the Tribunal and hence, confirms the same. Hence, the compensation under loss of income / dependency with modified annual income of Rs.3,04,060/-is assessed as follows:

Total annual income after deducting tax	= Rs.3,04,060/-

Yearly contribution to his family(deducting 25%)	= Rs.2,28,045/-
Applicable Multiplier	= 7
Total compensation (Rs.2,28,045/- x 7)	= **Rs.15,96,315/-**

16. The Tribunal has awarded Rs.40,000/- under spouse consartium to the wife of the deceased and Rs.1,00,000/- under the head loss of love and affection. As per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram*** reported in ***2018 ACJ 2018,*** all the claimants are entitled for consortium. Hence, this Court is inclined to grant the claimants, consortium of Rs.40,000/- each to the wife, sons and mother of the deceased Ganesan, as per the Apex Court Judgment stated supra. Whereas the other heads are concerned, the Tribunal has awarded a just compensation and the same are hereby confirmed.

16. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	18,26,958/-	15,96,315/-	Reduced
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium (first claimant)	40,000/-	40,000/-	Confirmed
6.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection/ modified to Loss of consortium (claimants 2 to 5)	1,00,000/-	1,60,000/-	Enhanced
	Total Compensation	19,96,958/-	**18,26,315/-**	**Reduced**

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,96,958/-is hereby reduced to **Rs.18,26,315/- [Rupees Eighteen Lakh Twenty Six Thousand Three Hundred and Fifteen only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The appellant - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.563 of 2017 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Erode. On such deposit, the claimants are

permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. There shall be no order as to costs in the present appeal. Consequently, connected civil miscellaneous petitions stands closed.

22.11.2023

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
   Motor Accident Claims Tribunal,
   Erode.

2. The Section Officer,
   V.R.Section,
   High Court, Chennai.

K. RAJASEKAR, J.

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C.M.A. No. 1118 of 2021

22.11.2023