IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Miscellaneous Appeal No.695 of 2022

M/s. United India Insurance Co. Ltd.,
Third Party Service HUB,
Plot Nos.35, 36, 37, AR Plaza,
45, Feet Road, Balaji Nagar Extn.,
Saram, Puducherry – 605 011. ... Appellant/2nd Respondent

Vs.

1. T.Gunasundari
2. Minor Supriya
3. Minor Aswin
4.R.Kaliyamoorthy
5.Rani ... Respondents/Petitioners
6.K.Kumaravel ... Respondent/1st Respondent

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act,1988, against the award and decree dated 20.04.2021 made in M.C.O.P.No.2065 of 2016 on the file of the Motor Accidents Claims Tribunal/Special Sub Court, Cuddalore.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 to 5 : Ms.Ramya V. Rao

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JUDGMENT

(Judgment of the court was delivered by R.SUBRAMANIAN.,J)

The Insurance Company is on appeal aggrieved by the award of a sum of Rs.1,25,25,000/- (Rupees One Crore Twenty Five Lakhs and Twenty Five Thousand only) for the death of one Tamil Selvan in a road accident that occurred on 08.02.2016.

2. According to the claimants, the said Tamil Selvan, who was working in Singapore as a Forklift Operator, had come to India. While he was riding his motorcycle bearing registration No.PY-01-BX-3274 between Siruthondamadevi and Kollukkarankuttai in Cuddalore District, the rider of the motorcycle bearing Registration No.TN-31-AJ-0060 owned by the sixth respondent and insured with the appellant insurance company, driven by its rider in a rash and negligent manner, came from behind and dashed against the deceased's vehicle. As a result of the impact, the deceased was thrown off the two wheeler and suffered grievous injury in the head and other parts. He was admitted in Mahatma Gandhi Medical

College Hospital at Pondicherry and then he was shifted to SRM Institute for Medical Science Hospital at Chennai. Despite best treatment, he died on 10.02.2016. Terming the negligence on the part of rider of the motorcycle bearing Registration No.TN-31-AJ-0060 as the reason for the accident, the claimants sought for a sum of Rs.1,50,00,000/- (Rupees One Crore and Fifty Lakhs only) as compensation. The claimants asserted that the deceased was earning a sum of Rs.1,00,000/- (Rupees One Lakh) per month.

3. The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants. It was stated that the deceased was also negligent and he contributed to the accident. The quantum of compensation claimed was termed as highly excessive. It was also claimed that the deceased has come back to India even before the expiry of the visa. Before the Tribunal, the first claimant was examined as P.W-1 and one Mr.Chandrasekar and Mrs.Rani were examined as P.W-2 and P.W-3. Ex.P-1 to Ex.P-53 were marked. No evidence was produced on the side of the Insurance Company. The Tribunal accepted Exs.P-33, 34 and 35 to conclude that the deceased was employed in Singapore and was earning a handsome salary. Upon

such finding, the Tribunal fixed the monthly income at Rs.60,000/-, added 40% towards future prospects, deducting 1/4th towards his personal expenses and adopting a multiplier of 16, the Tribunal had arrived at a loss of dependency at Rs.1,20,96,000/-. The Tribunal also awarded the following amounts under the following heads:

Sl. No.	*Heads*	*Compensation Amount (Rs.)*
1.	Love and Affection	2,50,000.00
2.	Funeral Expenses	15,000.00
3.	Transport Charges	5,000.00
4.	Loss of Estate	15,000.00
5.	Loss of Consortium	40,000.00
6.	Medical Expenses	69,000.00
7	Transportation (Ambulance)	35,000.00

Thus, the Tribunal awarded a total sum of Rs.1,25,25,000/-. Aggrieved the Insurance Company is on appeal.

4. Mr.S.Arun Kumar, learned Counsel appearing for the Insurance Company would vehemently contend that the deceased had departed from Singapore on 28.03.2015 as per the passport. Therefore, he could not have worked during August, 2015 as found in Ex.P-35. It is also contended that once

it is shown that the deceased has come back to India at least a year before the accident, compensation cannot be awarded on the presumption that he was working in Singapore. Though an attempt is made by the learned Counsel for the appellant to traverse the finding of the Tribunal on the question of negligence, we do not think we could allow him to raise an issue regarding negligence in the absence of any evidence let in by the Insurance Company.

5. Ms.Ramya V. Rao, learned Counsel appearing for the claimants would contend that the deceased has been working outside the country for more than twenty years and enough and more evidence is available to show that he has been working in Singapore or Malaysia for several years and therefore, the Tribunal was justified in adopting the income of the deceased at Rs.60,000/- per month.

6. In reply to the contention of the learned Counsel appearing for the Insurance Company that there is no evidence of the deceased having sent moneys to the claimants while he was employed in Singapore, the learned Counsel appearing for the claimants would submit that there are documents to show transfer of funds from Singapore to India under Exs.P-38, P-39 and P-40.

7. We have considered the rival submissions.

8. No doubt there is evidence to show that the deceased was working in Singapore but he had come back to India even in March, 2015, the accident had occurred in February, 2016. Therefore, for almost a year before the accident the deceased was staying in India. This circumstance would be a deterrent to assume that the deceased was working and earning in Singapore at the time of the accident. If we are to conclude that the deceased was working in India at the time of accident, we have to assume a notational income for him in India. As we had already pointed out the deceased has been working in Malaysia and Singapore for more than thirteen or fourteen years. There is evidence to show that the deceased was working abroad at least from 2002. Therefore, he would have earned as a repatriate and after his return to India in March, 2015, he would have worked in India.

9.Considering the over all circumstances and the fact that the deceased has vast experience, we are of the opinion that the monthly income could be fixed at Rs.35,000/- (Rupees Thirty Five Thousand only) instead of Rs.60,000/- (Rupees

Sixty Thousand only) as fixed by the Tribunal. If we add 40% towards future prospects, the monthly income would be about Rs.49,000/-. If we deduct 1/4th towards personal expenses and apply the multiplier of 16, the pecuniary loss would be Rs.70,56,000/-. The Tribunal has awarded a sum of Rs.2,50,000/- towards loss of love and affection which is not in consonance with the judgment of the Hon'ble Supreme Court in ***National Insurance Company Ltd., -vs- Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***. Therefore, the same is reduced to Rs.1,60,000/- at Rs.40,000/- per claimant. Awards under other heads made by the Tribunal are confirmed. Therefore, the total compensation would work out to Rs.73,95,000/-. This we round off to Rs.74,00,000/- (Rupees Seventy Four Lakhs only).

10. The Insurance Company has deposited 50% of the award amount. The Insurance Company is given eight weeks time to deposit the balance. The parents of the deceased, namely, the respondents 4 and 5 will take Rs.5,00,000/- (Rupees Five Lakhs only) each with proportionate interest. The wife of the deceased/first respondent will take Rs.24,00,000/- (Rupees Twenty Four Lakhs only) with proportionate interest and the minor children will take Rs.20,00,000/- (Rupees

Twenty Lakhs only) each with proportionate interest. On deposit of the compensation by the Insurance Company, the Tribunal shall pay out the shares of the major claimants and the shares of the minor claimants shall be kept in deposit in any nationalised bank with auto-renewal clause to be paid over to the minors on their attaining majority. No costs.

11.In fine, the Civil Miscellaneous Appeal is partly allowed with the above modifications. No costs.

[R.S.M., J] [S.S.K., J]
03.02.2023

Index : No
Internet : Yes
Speaking Order
Neutral Citation : Yes
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To
The Motor Accident Claims Tribunal,
Special Sub Court,
Cuddalore.

R.SUB RAMANIAN, J
and
SATHI KUMAR SUKUMARA KURUP, J

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