IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.802 of 2020
and
CMP.No.5144 of 2020

The United India Insurance Company Ltd.,
7 A, Varadhanar Street,
Vedhachala Nagar,
Chengalpattu … Appellant

vs.

1.Perundevi

2.Venkatesan

3.N.Ramesh … Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 18.06.2019 made in MCOP.No.130 of 2015 on the file of the Motor Accidents Claims Tribunal (Additional District Court), Chengalpattu.

For Appellant : Mr.D.Bhaskaran

For R1 & R2 : Mr.A.C.Kumaragurubaran

For R3 : Dispensed with

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JUDGMENT

The Insurance company has filed the above appeal challenging the award dated 18.06.2019 made in MCOP.No.130 of 2015 on the file of the Motor Accidents Claims Tribunal (Additional District Court), Chengalpattu.

2.The appeal is filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal.

3.The gist of the case leading to the appeal are as follows:

On 30.09.2014 at about 07.00 a.m., when the deceased was proceeding in his motor cycle from Chengalpattu old bus stand to Chengalpattu new bus stand, the first respondent's lorry came in the opposite direction and dashed against the motor cycle, due to which the deceased sustained multiple injuries and succumbed to the same.

4.According to the claimants, the accident occurred only due to the negligence of the first respondent's lorry driver. The deceased was working as a Supervisor cum Instructor in Rani Driving School, earning a sum of Rs.20,000/- per month plus Rs.200/- Daily batta and therefore the claimants filed the claim petition claiming a sum of Rs.40,00,000/- as compensation.

5.The first respondent remained ex-parte. The second respondent, the insurer of the first respondent, filed counter denying all the averments made in the claim petition. The second respondent disputed the negligence, liability and the quantum of compensation claimed by the claimants.

6.Before the Claims Tribunal, the second claimant examined himself as PW1 and examined two other witnesses and filed documents Ex.P1 to Ex.P7. On the side of the respondents no evidence either oral or documentary was filed.

7.The Claims Tribunal on an assessment of the evidence on record found that the negligence of the first respondent's driver resulted in the accident. The claims Tribunal further awarded a sum of Rs.13,12,000/- as compensation to the claimants and mulcted the liability on the second respondent i.e. the insurer of the first respondent. Aggrieved by the compensation awarded by the Tribunal the Insurance Company has filed the above appeal.

8.The learned counsel for the appellant submitted that the income assessed by the Tribunal at Rs.15,000/- per month was very much on the higher side as the claimants failed to prove that the deceased worked as a Supervisor cum Instructor in Rani Driving School. The driving license of the deceased was not produced to support the version of the employer that the deceased was working as a Supervisor cum Instructor with him.

9.According to the learned counsel for the appellant, Ex.P8 is bereft of details, there is no supporting evidence to determine the income of the deceased and therefore the Tribunal erroneously fixed the income at Rs.15,000/- per month. The learned counsel further submitted that the Tribunal erred in adding 15% towards future prospects instead of 10%. On these grounds the learned counsel prayed that the appeal be allowed.

10.The learned counsel for the respondent on the other hand submitted that the claimant filed Ex.P8 and also examined PW3, who issued the Salary Certificate. According to the learned counsel for the respondents even assuming that the claimants failed to produce the driving license of the deceased to show that he was working as a Supervisor cum Instructor in Rani Driving School of the third respondent, the evidence of PW3 supports their contention that the deceased was a Supervisor cum Instructor in the third respondent driving school and therefore the assessment of income at Rs.15,000/- by the Tribunal cannot be faulted. As far as the addition towards the future prospects is concerned, the learned counsel conceded that only 10% could be added as per the Judgment of the Hon'ble Supreme Court in the case of ***National Insurance Ltd., Vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680***.

11.I have heard both the learned counsel and have perused the records.

12.The short point is whether the assessment of income at Rs.15,000/- per month by the Tribunal is justified or not. The claimants examined PW3, who was the Proprietor of Rani Driving School and marked Ex.P8 through him in support of their plea that the deceased was earning Rs.15,000/- per month. The claimants stated in the claim petition that the deceased was working as a Supervisor cum Instructor in Rani Driving School and earned Rs.20,000/- plus Rs.200/- batta as income. As the claimants did not produce the driving license to show that the deceased worked as an instructor also and getting batta of Rs.200/- the tribunal assessed the income at Rs.15,000/- per month.

13.According to the learned counsel for the appellant, the tribunal having rejected the plea of the claimants that the deceased was also doing duty as instructor erred in assessing the income at Rs.15,000/- moreso when Ex.P8, the salary certificate was rejected.

14.I find force in the submission of the learned counsel for the appellant. PW3 admitted that in Ex.P8, it is not stated that the deceased was doing duty as an Instructor. Considering the evidence on record, I am of the view that the income of the deceased can be assessed as Rs.13,000/- per month, 10% has to be added towards future prospects and therefore, the income of the deceased is calculated as follows:

Annual Income Rs.13,000 x 12	= Rs.1,56,000
Add: 10 % future prospects	= Rs. 15,600
	Rs.1,71,600
Less : Personal Expenses 1/3rd	Rs. 57,200
	Rs.1,14,400
Rs.1,14,400/- X 9	= Rs.10,26,600/-

15.The Tribunal awarded Rs.40,000/- towards Loss of consortium to the first claimant. The second claimant is the son of the deceased and he is also entitled for a sum Rs.40,000/- towards loss of consortium. The Tribunal failed to award any sum towards loss of estate. Considering the above, the award of the tribunal is modified as follows:

SI. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Pecuniary loss	Rs.12,42,000/-	Rs.10,29,600/-
2	Loss of consortium to the first petitioner	Rs. 40,000/-	40,000/-
3	Loss of consortium to the second petitioner	-	Rs. 40,000/-
4	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
5	Transport Expenses	Rs. 15,000/-	Rs. 15,000/-
6	Loss of Estate	-	Rs. 15,000/-
TOTAL		Rs.13,12,000/-	Rs.11,54,600/-

16.The claimants shall be entitled for a sum of Rs.11,55,000/- along with interest at the rate of 7.5%, from the date of the claim petition till the date of realisation. It is submitted by the learned counsel appearing for the appellant/insurance company that 50% of the award amount along with accrued interest and cost was already deposited in pursuance to the interim orders of this Court. Hence, the Insurance company is directed to deposit the balance amount within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants shall be entitled to withdraw the said amount as per the apportionment made by the Tribunal by making proper application before the Tribunal.

17.In the result, the Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

23.03.2023

Index : yes/no
Internet : yes/no
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To

1.The Motor Accidents Claims Tribunal
(Additional District Court),
Chengalpattu.

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

N.MALA, J.

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