IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2791 of 2013
and M.P.No.1 of 2013

The New India Assurance Company Limited
New No.372, T.T.K Road, Alwarpet,
Chennai-18

... Appellant/2nd Respondent

Vs

1.Sri Devi (Died)
2.V.Suresh

[R1-Died. R2 declared as major vide order dated 09.10.2023 made in C.M.P.No.20100 of 2022 in C.M.A.No.2791 of 2013]

3.V.Dinesh
4.V.Akash

[Respondents 3 & 4 minors represented by the 2nd Respondent, vide Suo motu order of this Court dated 09.10.2023 made in CMP.No.20100 of 2022 in CMA.No,2791 of 2013] ... Respondents 1 to 4 /Petitioners

5.D.E.Senthil Kumar

[The fifth respondent herein was the first respondent before the Tribunal and he remained ex-parte before the Tribunal. Hence, the summons to the fifth respondent herein may be dispensed with]

... Respondent /1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 10th day of October 2012 made in M.C.O.P.No.2422 of 2007 on the file of Motor Accidents Claims Tribunal, (III Judge, I/c.Chief Judge, Court of Small Causes), Chennai.

For Appellant ... M/s.Elveera Ravindran

For Respondents ... Mr.M.Mahendran for R1 to R4
... Notice Dispensed with for R5

JUDGEMENT

Aggrieved by the impugned award dated 10.10.2012 passed by the Motor Accident Claims Tribunal, III Judge, I/c.Chief Judge, Court of Small Causes, Chennai in M.C.O.P.No.2422 of 2007, the Appellant/Insurance Company has filed the present appeal questioning the negligence and quantum of compensation fixed by the Tribunal.

2. The Appellants herein are the wife and sons of the deceased Visvanathan. On 02.03.2007, when the deceased was crossing the Velacherry main road, near the junction of Vandikaran Street from west to east direction, the 1st respondent's Lorry bearing Reg.No.TN-32-Y-1818 which came in a rash

and negligent manner dashed against the deceased, thereby he died on the spot. Aggrieved by the loss incurred due to the said accident, the dependants of the deceased filed a claim petition in M.C.O.P.No.2422 of 2007 claiming compensation of Rs.16,00,000/- towards the death of the deceased.

3. Before the Tribunal, the 1st claimant examined herself as P.W.1 and examined the eye witness as P.W.2 and marked Ex.P.1 to Ex.P.5. No witnesses were examined nor any documents were marked on the side of the respondents. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.14,15,050/- to the claimants under various heads and fastened the liability against the Insurance Company. Aggrieved by the award dated 10.10.2012, the Appellant/Insurance Company has filed the present appeal.

4. Learned counsel appearing for the Appellant-Insurance Company submitted that the Tribunal has erred in assessing the quantum of compensation while computing the loss of income by adding 30% towards

future prospects though the deceased was 32 years old at the time of accident which is contrary to the decision laid down by the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680.*** Further, the compensation awarded under various heads are highly excessive. Accordingly, the compensation awarded by the Tribunal requires to be reconsideration.

5. Per contra, learned counsel appearing for the Respondents 1 to 4/Claimants submitted that the Tribunal, taking into consideration all the relevant documents has rightly fixed the compensation, which does not require any interference. Accordingly, he prayed for dismissal of the appeal.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the Appellant-Insurance Company as well as the Respondents/Claimants and perused the materials available on record.

7. The factum of the accident is not disputed by the parties and so also

the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded. It is claimed by the appellant that the compensation awarded by the Tribunal under various heads is highly excessive which requires enhancement. It has been the view of the courts that even a vegetable vendor is to be fixed with proper notional income for the purpose of quantifying the monthly income earned by an individual. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** fixing the notional income at Rs.6,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the total income per month is quantified at Rs.8,400/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.6,300/- per month and the deceased being aged about 32 years, as evidenced from the records, adopting the multiplier of 16 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009)***

6 SCC 121, the loss of income to the family is arrived at Rs.6,300 x 12 x 16 = Rs.12,09,600/- which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	6,000
Add: Future Prospects (Rs.6,000 x 40%) (Per month)	+ 2400
	8,400
Less: Personal expenses (1/3rd) (Rs.7,500/- x 1/3) (Per month)	- 2,100
	6,300
Notional income (per annum) (Rs.6,300 x 12)	75,600
Multiplier	x16
Total	**12,09,600**

8. This Court finds that a sum of Rs.20,000/- awarded under the head of "Funeral Expenses' is just and reasonable' which does not require any interference; However, a sum of Rs.2,00,000 granted to the first claimant under the head of "loss of consortium" is excessive and hence the same is reduced to a sum of Rs.40,000/-; A sum of Rs.1,00,000/- each has been awarded to the appellants 2 to 4 under the head of "loss of love and affection", which is excessive and the same is reduced to a sum of Rs.1,20,000/-

(Rs.40,000/= each). Under the head "Loss of Estate" no amount has been awarded and, therefore, the claimants are entitled to a sum of Rs.15,000/-.

9. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

S.No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1.	Loss of earning	Rs,8,95,050/-	**Rs.12,09,600/- (enhanced)**
2.	Loss of Consortium	Rs.2,00,000/-	**Rs.40,000/- (reduced)**
3.	Funeral Expenses	Rs.20,000/-	Rs.20,000/-
4.	Loss of love and affection	Rs.3,00,000/-	**Rs.1,20,000/- (reduced)**
5.	Loss of Estate	-	**Rs.15,000/-**
	Total	**Rs.14,15,050 /-**	**Rs.14,04,600/-**

10. The appeals are partly allowed and the impugned Award of the Tribunal is modified by reducing the compensation amount from **Rs.14,15,050/-** to **Rs.14,04,600/-**. The Appellant-Insurance Company is directed to deposit the reduced amount to the credit of M.C.O.P.No.2422 of

2007 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. The award amount as modified by this Court shall be apportioned equally among the respondents 2 to 4. On such deposit being made, the Tribunal is directed to transfer the share of the 2nd respondent in the bank account of the 2nd respondent, through RTGS, within a period of two weeks thereafter. Further, the Tribunal is directed to deposit the share of the respondents 3 & 4 in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until they attain majority and interest derived from out of the said deposit shall be paid to the brother/Suresh of the claimants 3 & 4 every quarter to be utilised for the welfare of the said minor claimants. After attaining majority, it is open to the claimants 3 & 4 to file necessary application to establish their majority, at which point of time, the Tribunal is directed to transfer the amount in the fixed deposit directly to the bank account of the claimants 3 & 4 through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeals. Consequently, the connected Miscellaneous Petition is closed.

09.10.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS

To

1.The Motor Accident Claims Tribunal,
III Judge, I/c.Chief Judge,Court of Small Causes,
Chennai.

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

M.DHANDAPANI, J

NHS

C.M.A.No.2791 of 2013

09.10.2023

C.M.P.No.20100 of 2022
in
C.M.A.No.2791 of 2013

M.DHANDAPANI, J.

The 2nd Petitioner was minor at the time of filing M.C.O.P.No.2422 of 2007 on the file of the Motor Accidents Claims Tribunal, III Judge, I/c.Chief Judge, Court of Small Causes, Chennai.

2. Pending orders in the appeal, the 1st petitioner also died and therefore, the present petition has been filed.

3. In view of the fact that the 2nd petitioner has attained majority, as is evident from the birth certificate filed along with the petition and also the death certificate of the 1st petitioner, while this petition is allowed declaring the 2nd petitioner as major, further, permits the 2nd petitioner, the brother of the petitioners 3 & 4 to represent the said petitioners by recording the fact that the 1st petitioner is died. Accordingly, this petition is allowed.

4. Registry is directed to carry out the necessary amendments in the cause title.

09.10.2023

NHS