IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1328 of 2021

Future General India Insurance Co. Ltd.,
186, 2, 3rd Floor,
Plot No.55, Vijayaraghava Road,
T. Nagar, Chennai – 600 017. ... Appellant / 2nd Respondent

Vs.

1. Jeganathan
2. Jayachithra
3. Minor Jayabalan
4. Minor Jayaseelan ... Respondents 1 to 4 / Petitioners

5. Correspondent,
Rover Engineering College,
Perambalur. ... 5th Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 31.07.2019 passed in M.C.O.P. No.205 of 2015 on the file of the Trial Judge, Motor Accident Claims Tribunal, Virudhachalam (Additional), Subordinate Court, Virudhachalam.

For Appellant	:	Mrs. C. Harini
For RR1 & 4	:	Mr. A. Mayakrishnan
For R5	:	Mr. R Murugesan

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JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the Judgment passed in M.C.O.P. No.205 of 2015, dated 31.07.2019 on the file of the Trial Judge, Motor Accident Claims Tribunal, Virudhachalam (Additional), Subordinate Court, Virudhachalam.

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

3. The deceased herein namely Jayapriya, who is the daughter of the first and second claimants and was a student of first year Bachelor of Electrical and Electronics Engineering. On 03.04.2015 at about 8:15AM, she was travelling in her college bus bearing Registration No.TN-46-P-1438, which belongs to the first respondent, when the college bus reached near Pattur Bus Stop, due to rash and negligent driving by the driver of the

bus, it had hit on the roadside tree. Due to the occurrence, the deceased Jayapriya has sustained grievous on her head and leg and succumbed to injuries while undergoing treatment at Thittakudi Government Hospital. Due to sudden demise of the deceased Jayapriya, the claimants, who are the parents and minor brothers of the deceased have come forward with a claim petition seeking compensation for a sum of Rs.50,00,000/-

4. The first respondent, who is the owner of the bus bearing Registration No.TN-46-P-1438 has filed a counter and disputed the manner in which the accident has taken place and further disputed the fact that the accident was not taken place due to negligent act on the part of the driver of the bus. The first respondent also stated that the driver of the bus has a valid driving licence and the bus was also insured with the second respondent – insurance company and contended that the compensation claimed under various heads is on the higher side, hence prays to dismiss the claim petition.

5. The second respondent – insurance company has filed a counter and contended that the first respondent bus bearing Registration No.TN-46-

P-1438 has no valid FC and RC and the driver of the first respondent bus has no valid driving licence at the time of occurrence and disputed there is a violation of policy condition. Further disputed the age, occupation and income of the deceased and prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimants, P.W.1 was examined and Exs.P.1 to P.8 were marked. On the side of the respondents, no witnesses were examined and no exhibits were marked.

7. Based on the evidence placed on record, the Tribunal in point nos.1 and 2, has held that the rash and negligence on the part of the driver of the bus bearing Registration No.TN-46-P-1438 is responsible for the accident and the respondents are liable to pay compensation to the claimants. In point no.3, the Tribunal has quantified and granted compensation for a sum of Rs.32,05,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

8. Aggrieved over the award of the Tribunal, the insurance company has approached this Court on the ground that the compensation

awarded is exorbitant and not fall within the permissible norms of just compensation as stated under section 168 of the Motor Vehicles Act, 1988.

9. The learned counsel appearing for the insurance company has submitted that the Tribunal has fixed the notional monthly income of the deceased as Rs.25,000/- without any evidence and also contended that the deceased was only a first year student pursuing Bachelor of Electrical and Electronics Engineering, hence fixing notional monthly income of Rs.25,000/- is not in accordance with the norms followed by this Court. The learned counsel also relied on the judgment of this Court in ***HDFC ERGO General Insurance Company Limited vs. Selvarja and others [C.M.A. No.296 of 2020],*** wherein the notional monthly income of a third year Engineering student is fixed as Rs.12,000/- and contended that compensation awarded under various other heads is also on the higher side, hence prays to modify the same.

10. In this case, in spite of serving notice, the respondents have not come forward to contest the appeal.

11. I have considered the submissions made by the appellant -

insurance company herein and perused the materials placed on record:

12. In this case, the deceased was a first year Engineering student and to prove her brilliancy, the claimants have also marked the merit certificate as Ex.P.8. P.W.1, who is the mother of the deceased states that the deceased used to take care of the family and her two minor brothers. Considering the above evidence, the Tribunal has fixed notional income of Rs.25,000/- per month. This Court in ***HDFC ERGO General Insurance Company Limited vs. Selvarja and others*** referred above, this Court has held that notional monthly income of Rs.12,000/- for a third year Engineering student, who died in the accident taken place in the month of February 2015 is proper.

13. In this case, on perusal of the records, it shows that the deceased is a brilliant student and also cleared all her subject papers in the first year itself and the age of the deceased at the time of occurrence is only 19 years. Her case could not be compared with the other case cited supra for fixing notional income. However, the Tribunal without any proper reason or evidence has fixed notional income of Rs.25,000/- per month, which is on

the higher side. This Court in ***P. Manjula and others vs. Balineni Sai Venkat Nitheesh and others [C.M.A. No.590 of 2020, dated 19.02.2020]*** and in ***Branch Manager, national Insurance Co. Ltd., vs. Saraswathi and others [C.M.A. No.1170 of 2020, dated 21.01.2021]*** has fixed Rs.15,000/- per month as notional income for the Engineering students, hence this Court is of the view that fixing monthly notional income of Rs.15,000/- would be proper.

14. With regard to the deduction, the Tribunal has considered the number of claimants and fixed one-fourth (1/4) as deduction from the income of the deceased towards her personal and living expenses but in this case, the deceased was only a student and unmarried, hence the deduction of one-fourth (1/4) from the income of the deceased towards her personal and living expenses as fixed by the Tribunal is not proper and this Court is inclined to modify the same to 50% deduction towards her personal and living expenses.

15. The Tribunal has rightly followed the dictum as laid down in ***National Insurance Co. Ltd., vs. Pranay Sethi case*** reported in ***2017(2) TN***

MAC 609 (SC) and fixed 40% as future prospectus. However, though the Tribunal has adopted the guidelines laid in ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298 SC : 2009 (6) SCC 121***, has erred in fixing of multiplier of the deceased as '13'. The applicable multiplier is '18'. After deducting half (1/2) of her monthly income towards the deceased personal and living expenses, the compensation under loss of income / dependency is assessed as follows:

Annual income (Rs.15,000/- x 12)	= Rs.1,80,000/-
Future prospects @ 40%	= Rs.72,000/-
Yearly income of the deceased	= Rs.2,52,000/-
Yearly contribution to his family (after deduction)	= Rs.1,26,000/-
Applicable Multiplier	= 18
Total compensation (Rs.1,26,000/- x 18)	= **Rs.22,68,000/-**

16. The Tribunal has granted Rs.2,00,000/- towards loss of love and affection to the first and second claimants, who are the father and mother of the deceased and granted consortium of Rs.25,000/- each to the brothers of the deceased, as per the Hon'ble Apex Court in three Judge Bench judgment reported as ***United India Insurance Co. Limited v.***

Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780], the compensation under the head on account of loss of love and affection is not permissible and as per ***Magma General Insurance Co. Ltd., vs Nanu Ram*** reported in ***2018 ACJ 2018,*** this Court is of the view that all the claimants herein are entitled to get compensation under the head loss of consortium. Accordingly, this Court inclined to award of Rs.40,000/- each to all the claimants.

17. The claimants are also entitled for compensation under conventional head of funeral expenses and loss of estate. Accordingly, Rs.15,000/- under each head is awarded. The compensation awarded under the head transport charges is hereby cancelled, since compensation awarded under the head funeral expenses includes transportation expenses.

18. 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 income	29,25,000/-	22,68,000/-	Reduced

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
2.	Love and affection	2,00,000/-	---	Rejected
3.	loss of consortium	50,000/-	1,60,000/-	Enhanced
4.	Funeral expenses	20,000/-	15,000/-	Reduced
5.	Transportation	10,000/-	---	Rejected
6.	Loss of estate	---	15,000/-	Granted
	Compensation Awarded	32,05,000/-	**24,58,000/-**	**Reduced**

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.32,05,000/- is hereby reduced to **Rs.24,58,000/- [Rupees Twenty Four Lakh and Fifty Eight Thousand 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 second respondent -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.205 of 2015 on the file of the Trial Judge, Motor Accidents Claims Tribunal, Additional Subordinate Court at Virudhachalam. 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. As far as minor claimants/ respondents 3 & 4 herein are concerned, the award amount to the minor claimants shall be deposited in the name of the minor claimants in any one of the Nationalized Bank in Fixed Deposit under the guardianship of their mother/ 2nd respondent herein, till they attain the age of majority, and the 2nd respondent herein is also permitted to withdraw the accrued interest, every six months for the welfare of minor claimants, if they already attained the age of majority, their share amount may be dispersed. There shall be no order as to costs in the present appeal.

28.11.2023

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

To:

1. The Trial Judge,
   Motor Accidents Claims Tribunal,

Additional Subordinate Court, Virudhachalam.

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

K. RAJASEKAR, J.

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