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C.M.A.No.3050 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3050 of 2019

and

CMP.No.16700 of 2019

The Branch Manager,  
M/s. IFFCO-TOKIO General Insurance Co. Ltd.,  
KSCMF Building, 3<sup>rd</sup> Floor,  
3<sup>rd</sup> Block, No.8, Cunningham Road,  
Bangalore – 560 052.

...Appellant

Vs.

1. Rajeswari
2. Sureshkumar
3. Zeenath.U.A

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 09.07.2018 made in M.C.O.P.No.9 of 2017 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.V.Kumaravelan, for R1 & R2  
: Not ready notice, for R3



C.M.A.No.3050 of 2019

WEB COPY

## **JUDGEMENT**

Aggrieved by the award and decree passed by the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri in M.C.O.P.No.9 of 2017 dated 09.07.2018, the insurer has come up with this Appeal.

2. The case of the appellant is that, the 1<sup>st</sup> and 2<sup>nd</sup> respondents/claimants filed a claim petition claiming compensation of Rs.20,00,000/- on the ground that, on 10.08.2015 at about 05.10 hours, when the deceased Jayabalan was standing on the side of the road in front of the Chennai Silks in Hosur-Banglore NH-7 to cross the road to go to Hosur bus stand, a Maruti Suzuki Alto car bearing Regn.No.KA-03-MS-2251, owned by the 1<sup>st</sup> respondent insured with the 2<sup>nd</sup> respondent driven by its driver in a rash and negligent manner, dashed against the deceased, as a result of which, the deceased sustained fatal injuries all over his body and died on spot. Thereby, the 1<sup>st</sup> and 2<sup>nd</sup> respondents/claimants being the dependants of the deceased filed a claim petition claiming compensation for the death of the deceased, at the hands of the appellant and the 3<sup>rd</sup> respondent. After contest, the tribunal, vide impugned judgment awarded



C.M.A.No.3050 of 2019

a compensation of Rs.10,50,028/-. Aggrieved by the said order, the appellant had preferred this appeal questioning the liability of the insurer.

3. Learned counsel for the Appellant submitted that, the above said accident happened solely due to the rash and negligent act of the deceased, since he hurriedly tried to cross the road without following the traffic signal and not due to the rash and negligent driving of the driver of the 1<sup>st</sup> respondent. While so, the tribunal fixed the entire liability as against the appellant/insurance company which is not sustainable. Further, at the time of accident, the deceased was aged about 65 years and was alleged that he worked as Driver in Tamil Nadu transport corporation and after retirement, he was working as a Driver in Asian Christian High School. It is pertinent to note that, after the death of the pensioner, the family/wife of the deceased/1<sup>st</sup> appellant will receive 50% of the pension received by the deceased as family pension. However, without considering the said fact, the tribunal had taken into account the entire pension amount of Rs.7,532/- received by the deceased and arrived at the income of the deceased as Rs.17,682/- (Rs.10,150/- salary from school plus Rs.7,532/- pension amount), which is not sustainable and the



C.M.A.No.3050 of 2019

WEB COPY

same is contrary to the decision of this Court in the case of ***SBI General Insurance Co. Ltd., Vs. Kannammal*** made in CMA.No.4345 of 2019 reported in ***2020 (2) TNMAC 705***. Further, the compensation awarded under other heads are also on the higher side and the same has to be interfered with. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the 1<sup>st</sup> and 2<sup>nd</sup> respondents/claimants submitted that, the aboveaid accident happened solely due to the rash and negligent driving of the driver of the 1<sup>st</sup> respondent and due to which the deceased, husband of the 1<sup>st</sup> respondent and father of the 2<sup>nd</sup> respondent lost his life and for the above said accident, the FIR came to be registered as against the driver of the 1<sup>st</sup> respondent. Further, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any modification. Accordingly, he prays for dismissal of the appeal.

5. Heard learned counsel for the appellant and the learned counsel appearing for the 1<sup>st</sup> and 2<sup>nd</sup> respondents and perused the materials available on record.



C.M.A.No.3050 of 2019

WEB COPY

6. The factum and manner of the accident is not disputed by the parties. 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 at the time of accident, the deceased was aged about 65 years and it is alleged that the deceased was working as a Driver in Asian Christian High School and was earning a sum of Rs.10,150/- per month and was receiving a sum of Rs.7,532/-, as pension and even after his death, 50% of the pension amount received by the deceased will be received by the 1<sup>st</sup> respondent/ wife of the deceased as family pension and without considering the same, the tribunal had taken the entire sum received by the deceased as notional income.

7. A perusal of the impugned award reveals that, the contribution of the deceased to the family was around Rs.17,682/- i.e., Rs.10,150/- as salary by working as a driver in the school and Rs.7,532/- as pension, since the deceased was a retired Tamil nadu transport corporation driver. As rightly pointed out by the learned counsel for the appellant/insurance company, after the death of the pensioner, the wife of



C.M.A.No.3050 of 2019

the deceased/1<sup>st</sup> appellant will receive 50% of the pension received by the deceased as a family pension ie., around Rs.3,766/- and without deducting the said amount from the income of the deceased, the tribunal had fixed the notional income of the deceased as Rs.17,682/-, which is erroneous and the same has to be interfered with and only to that extent, the impugned award deserves to be modified.

8. Therefore, this Court fixes the notional loss of income to the family at Rs.13,916/- ( $10,150 + 50\%(7,532) = 13,916$ ) and after deducting  $1/3^{\text{rd}}$  towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.9,277/- per month and the deceased being aged about 65 years, as evidenced from the records, adopting the multiplier of 7 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 dependency is arrived at  $\text{Rs.}9,277/- * 12 * 7 = \text{Rs.}7,79,268/-$

9. Further, no compensation is awarded under the head loss of love and affection for the 2<sup>nd</sup> respondent/son of the deceased and therefore, a sum of Rs.40,000/- shall be awarded under the said head.



C.M.A.No.3050 of 2019

WEB COPY

10. Insofar as the compensation awarded under the other heads are concerned, the said compensation awarded by the tribunal are just and reasonable and no interference is warranted with the award of compensation under the said heads.

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

| <i><b>Heads</b></i>        | <i><b>Awarded by<br/>the<br/>Tribunal<br/>(Amount in<br/>Rs.)</b></i> | <i><b>Awarded by<br/>this Court<br/>(Amount in<br/>Rs.)</b></i> |
|----------------------------|-----------------------------------------------------------------------|-----------------------------------------------------------------|
| Loss of dependency         | 9,80,028/-                                                            | <b>7,79,268/-<br/>(reduced)</b>                                 |
| Loss of love and affection | -                                                                     | <b>40,000/-</b>                                                 |
| Loss of consortium         | 40,000/-                                                              | 40,000/-                                                        |
| Funeral Expenses           | 15,000/-                                                              | 15,000/-                                                        |
| Loss of estate             | 15,000/-                                                              | 15,000/-                                                        |
| <b>Total</b>               | <b>10,50,028/-</b>                                                    | <b>8,89,268/-</b>                                               |

12. The appeal is allowed and the impugned Award of the Tribunal is modified by reducing the compensation amount from **Rs.10,50,028/-** to **Rs.8,89,268/-**. The appellant-Insurance company is directed to deposit the above said amount awarded by this Court to the credit of M.C.O.P.No.9 of 2017 along with interest at the rate of 7.5%



C.M.A.No.3050 of 2019

WEB COPY

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. In the above said amount, the 1<sup>st</sup> and 2<sup>nd</sup> respondents/claimants are entitled to a sum of Rs.4,44,634/- each. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the 1<sup>st</sup> and 2<sup>nd</sup> respondents/claimants through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous petition is closed.

**08.11.2023**

skt

Index : Yes / No  
Speaking order : Yes / No  
NCC : Yes / No

To

- 1.The Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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C.M.A.No.3050 of 2019

**M.DHANDAPANI, J.**

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