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C.M.A.No.4018 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

**CMA.No.4018 of 2019
and
CMP.No.22703 of 2019**

M/s.Universal Sompo General
Insurance Company Ltd.,
Unit 401, 4th Floor, Sangam Complex,
127, Andheri Kurla Road,
Andheri East, Mumbai – 400 059.

..Appellant

Vs.

1.Senthil Vadivu
2.Minor Mathu Varshini
3.Minor Seenu Varshan
(Minors rep by its Guardian/mother)
4.Saroja
5.S.Dhamodharan

...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.10.2017 made in M.C.O.P.No.145 of 2013 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge) Tiruppur.

For Appellant : Ms.R.Sree Vidhya

For Respondents : Mr.Balaji Thirumoorthy for R1 to R4
Dispensed with for R5



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JUDGMENT

WEB COPY This appeal has been filed by the appellant/Insurance Company seeking to set aside the impugned award dated 26.10.2017 in M.C.O.P.No.145 of 2013 passed by the Motor Accidents Claims Tribunal, (II Additional District Judge) Tiruppur.

2.The case in brief, is as follows:

On 06.11.2012, at about 08.45 p.m., while the deceased was riding his two wheeler bearing Reg.No.TN-39-AH-3118 at Karuppa Goundam Palayam, Tirupur, from South to North, another two wheeler bearing Regn.No.TN-39-BD-7106, came from the opposite direction in a rash and negligent manner and dashed against the deceased Kaniyan Poongundran. Due to the said impact, the deceased sustained grievous injuries and died on the next day at Government Hospital, Tiruppur. The wife, son, daughter and mother of the deceased filed a claim petition before the Tribunal, claiming a sum of Rs.15,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.20,00,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Challenging the same, the



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appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.

3. The learned counsel for the appellant has submitted that the Tribunal has erred in awarding dis-proportionate amount which is repetition and legally unsustainable in law. She further submitted that the Tribunal has failed to note that the deceased was not a permanent employee and ought to have added only 40% of future prospects. The award of the Tribunal is liable to be scaled down since it failed to follow the Judgment of the Apex Court 'Pranay Sethi Case' and the amount awarded under all the heads are on higher side. She further submitted that while awarding compensation, it has not properly considered and decided the monthly income of the deceased as per the depositions and Ex.P6. She further submitted that the Tribunal ought to have taken 40% as future prospects since at the time of accident, the deceased was aged about 30 years. It is also submitted that the Tribunal ought to award less amount under the heads of 'loss of consortium to the first petitioner', 'loss of consortium to the petitioners 2 to 4' and 'Transport'. It failed to award under the head of 'Loss of Estate'. She further submitted that both the drivers were not possessing



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valid, effective driving license and the two wheelers were not road worthy to ply and was not possessing valid fitness certificate, permit, etc., and there are no breach and violation of the terms and conditions of the policy. Stating so, the learned counsel prayed to allow this appeal.

4. The learned counsel for the respondents 1 to 4 has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the just, fair and reasonable compensation and the same does not require any interference at the hands of this Court. Hence, he prays for dismissal of the appeal.

5. The Tribunal, after framing issues and recording evidence, has fastened the liability on the Insurance Company and ultimately quantified the compensation in the following manner:-

<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
1.	Loss of Income	Rs.18,36,000/-
2.	Loss of love & affection & consortium to the 1 st respondent	Rs. 1,00,000/-
3.	Loss of love & affection to the respondents 2 to 4	Rs. 1,50,000/-
4.	Medical Expenses	Rs. 40,000/-



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<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
5.	Transport	Rs. 10,000/-
6.	Funeral Expenses	Rs. 25,000/-
	Total	Rs.21,61,000/-

Rounded off to Rs.20,00,000/-

6. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 4 and perused the materials available on record carefully and meticulously.

7. The Tribunal has awarded a sum of Rs.18,36,000/- towards loss of income by fixing the monthly income of the deceased at Rs.9000/-, deducting 1/3rd of the amount towards personal expenses of the deceased and adopting the multiplier of 17. The Tribunal has relied upon the depositions of PW1 and PW3 and Ex.P6-Salary Certificate of the deceased and has taken the age of the deceased as 30 years. Further, taking note of the earning capacity of the deceased and the economic situation prevailing at that time, after adding 50% for future prospects of the deceased, the Tribunal fixed the monthly income of the deceased at Rs.9000/- for calculating the pecuniary loss on account of the death of the deceased.



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8. It is claimed in the claim petition that the deceased was earning a sum of Rs.9000/- per month as a Foreman and that he was the sole earning member of the family. It is submitted by the learned counsel for the appellant that the Tribunal has not properly considered the evidences and the documents marked, while adopting 50% for the future prospectus. It is also her specific submission that the Tribunal ought to have taken 40% while arriving at the compensation towards for future prospects, instead of 50%.

9. It is seen that the deceased was the bread winner of the family having four dependants. Taking note of the above submissions of the learned counsel for the appellant and economic situation prevailing at that time and also the facts and circumstances of the case, this Court is of the considered view that the future prospectus of the deceased has to be fixed at 40%. There is no need to change the multiplier adopted by the Tribunal. Further, the 1/3rd deduction for personal expenses made by the Tribunal also does not require any interference. If Rs.9,000/- is taken as the monthly income of the deceased, after adding 40% towards future prospectus of the



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deceased and $\frac{1}{3}$ rd of the amount is deducted and the multiplier of 17 is adopted, the Future prospectus works out to Rs.17,13,600/- ($\text{Rs.}9000 \times 40\% = 3600$, $9000 + 3600 = 12600 \times \frac{1}{3} = 4200$, $12600 - 4200 = 8400$, $(8400 \times 12 \times 17 = 17,13,600/-)$). Accordingly, the amount awarded by the Tribunal towards loss of earning stands modified to Rs.17,13,600/-. Similarly, it would be appropriate to award a sum of Rs.40,000/- towards loss of love & affection and consortium to the first respondent/wife of the deceased, a sum of Rs.1,20,000/- ($\text{Rs.}40,000/- \times 3$) towards loss of love and affection to the son, daughter and mother of the deceased, a sum of Rs.15,000/- towards loss of estate and a sum of Rs.15000/- towards funeral expenses. This court is not inclined to grant any award under the head of Transport.

10.The details of the modified compensation are as under:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
1.	Loss of Earning	Rs.17,13,600/-
2.	Loss of love & affection & consortium to the 1 st respondent	Rs. 40,000/-
3.	Loss of love & affection to the respondents 2 to 4	Rs. 1,20,000/-
4.	Medical Expenses	Rs. 40,000/-
5.	Loss of Estate	Rs. 15,000/-



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<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
6.	Funeral Expenses	Rs. 15,000/-
	Total	Rs.19,43,600/-

11. Thus, the respondents/claimants are entitled to the modified compensation of Rs.19,43,600/-. It is made clear that for the modified amount of Rs.19,43,600/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

12. In the result, the Civil Miscellaneous Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

13. The claimants shall withdraw the modified award amount of Rs.19,43,600/-, on making proper application before the Tribunal and on payment of appropriate court fee. The appellant/Insurance Company is entitled to withdraw the balance amount with accrued interest after deducting the modified award amount.

Index : Yes/No
Internet : Yes/No
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To

1.The Motor Accidents Claims Tribunal
(II Additional District Judge) Tiruppur.

2.The Section Officer,
VR Section,
Madras High Court.

A.A.NAKKIRAN.,J.



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