



C.M.A.No.1699 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 10.02.2023

Pronounced on
.....03.2023

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1699 of 2020
and
C.M.P.No.12520 of 2020

Divisional Manager,
United India Insurance Company Ltd.,
Hub 3rd Party Claims, TKM Complex,
2nd Floor, No.81, Katpadi Road,
Vellore – 632 004.

...Appellant

Vs.

1.Dr.A.D.Selvi
2.Dr.G.Kulandai Vadivel
3.K.S.Nadesh Varshan
4.Dhandapani

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award in Judgment and Decree dated 07.08.2019 made in M.C.O.P.No.837 of 2018 on the file of Motor Accident Claims Tribunal/(Special Sub Court), Thiruvannamalai.

For Appellant : Mr.D.Bhaskaran

For R1 to R3 : Mr.S.Sathiyaseelan
For Mr.S.Panneer Selvam

For R4 : No appearance



C.M.A.No.1699 of 2020

WEB COPY

J U D G M E N T

The Insurance Company is the appellant herein.

2.Challenging the award passed by the Motor Accident Claims Tribunal (Special Sub Court), Tiruvannamalai made in M.C.O.P.No.837 of 2018, dated 07.08.2019 on the ground of quantum of compensation, the present Civil Miscellaneous Appeal has been filed.

3. The factum of the accident, the manner of the accident and rash and negligence driving on the part of the driver of the offending vehicle, are not disputed and hence, the findings rendered by the Tribunal is hereby confirmed.

4. On perusal of the records of the lower Court, it reveals that the brother of the deceased was examined as P.W.1 and another person was examined as P.W.2 and Exs.P1 to P14 were marked. On behalf of the respondents, R.W.1 was examined and no documents was produced.

5. The Tribunal has taken into consideration that he has already completed M.B.B.S Course and the deceased Sailesh Vasan was working as a



C.M.A.No.1699 of 2020

residential Doctor in Meenakshi Medical College and Hospital. As per the decision of the Division judgment of this Court in ***New India Assurance Company Limited v.Indubai and others reported in [2016 (1) TN MAC 713 (DB)]***, the monthly income has been fixed a sum of Rs.37,500/- and accordingly, the Tribunal awarded a sum of Rs.53,22,000/- as compensation. Hence, this appeal has been filed.

6. The learned counsel for the appellant/Insurance company would contend that the claimant is only a medical student and hence, quantum of compensation fixed by the tribunal has to be reduced.

7. Heard Mr.S.Sathiyaseelan, learned counsel represented for Mr.S.Panneer Selvam, learned counsel appearing for respondents 1 to 3.

8. After perusal of the documents viz., Ex.P9 is the I.D card issued by Meenakshi Medical College and Hospital; Ex.P10 is the Certificate issued from Madras University for studying Medicine; Ex.P12 is the Driving license of Silesh Vasan; Ex.P13 is the PAN Card; Ex.P14 is the various medical receipts issued by the Meenakshi Medical College and Hospital, this Court finds that, the deceased has already completed his medical course and he was doing as a Residential Doctor. In fact, R.W.1-Legal Assistant from the



C.M.A.No.1699 of 2020

insurance company had admitted in the cross examination that, the private investigation officer by the insurance company also gave a report that the deceased Sailesh vasan had completed medical course and was doing as residential doctor on monthly basis and he has completed 5 years medical course and accordingly, as per the decision laid down by the Hon'ble Division Bench of this Court cited supra, the Tribunal has fixed a sum of Rs.35,000/- as monthly income. Hence, I do not find that a sum of Rs.35,000/- per mensem fixed by the Tribunal is exonerated inconsonance with the above said decision and multiplier '18' adopted by the trial Court and notional income Rs.35,000/- is just and fair .

9. At the time of the accident, the deceased was working as residential doctor and hence, the notional income has to be fixed, considering the facts that on the date of the accident, the deceased was aged about 48 years and hence, as contended by the learned counsel for the appellant, the proposition laid down by the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others (S.L.P.(Civil) No.25590 of 2014, dated 31.10.2017) (Reported in 2017 (16) SCC 680, the future prospects 40% has to be applied.



C.M.A.No.1699 of 2020

WEB COPY

10. As per the evidence of PW1, the deceased was working as a residential doctor at the time of the accident. Hence, the monthly income is fixed as Rs.35,000/- and 40% of future prospect has to be added with the monthly income and from that amount, after deducting 50% amount for his personal expenses, a sum of Rs.24,500/- is taken as the notional income of the deceased. As per the judgment of the Hon'ble Supreme Court in the case of *Sarla Verma & Others .Vs. Delhi Transport Corporation & another*, reported in *2009 (2) TNMAC 1 (SC)*, the correct multiplier is "18" and the same is adopted.

11. In the decision reported in 2016 (1) MAC 713 (DB) [New India Assurance Co.Ltd., Vs.Indubai and others], wherein, the deceased in the said accident also a Doctor, the Division Bench of this Court has held as follows:-

"12. Admittedly, at the time of accident, the deceased was aged 21 years, pursuing III year M.B.B.S Course. Had he been alive, he would have certainly reached a high position in life. Of course, the claimants would have spent lot of money on the education of their deceased son. But, at the time of accident, he was still a student. Also, the contention of the Insurance Company that while arriving at the compensation towards Loss of Pecuniary benefits, Income Tax has been deducted from the income after deducting 50% towards Personal Expenses, has to be taken note of."



C.M.A.No.1699 of 2020

WEB COPY

12. Accordingly, income tax has to be deducted for the proportionate year and the same was followed in the decision of 2023 (1) TN MAC 119 (DB) [B.Amsa and others Vs.Managing Director, Tamil Nadu State Transport Corporation, Cuddalore] and also followed by 2023 (1) TN MAC 306 (DB) [Sri Vidya and others Vs.Leal Enterprise, rep.by its Proprietor, No.56, Gokahale Street, Ram Nagar, Coimbatore and 2. Branch Manager, TATA AIG Insurance Company Limited] wherein, the Division Bench of this Court has considered regarding the non deduction of income tax. When the income tax passed for the relevant material year and hence for the said purpose Rs.30,100/- has to be deducted. Since the deceased is an unmarried, the claimants, who are the parents and brother of the deceased, are entitled to a sum of Rs.40,000/- each towards loss of love and affection i.e. Rs.1,20,000/-. The pecuniary loss sustained by the claim Petitioners are re-assessed as follows:

Loss of Income	:Rs.50,21,100/-
35,000+40%(14,000)=49,000	
49,000*12=5,88,000	
Less Income Tax as per slab:	
5,88,000- 30,100-=Rs.5,57,900/-	
Less:50% towards personal and living expenses	
2,78,950*18=Rs.50,21,100	



C.M.A.No.1699 of 2020

WEB COPY

Loss of estate	:Rs. 15,000/-
Funeral Expenses	:Rs. 15,000/-
Loss of love and affection Rs.40,000x3	:Rs. 1,20,000/-
Total	:Rs. 51,71,100/-

11. The break-up of the compensation is as follows:

<i>S. No.</i>	<i>Head</i>	<i>Awarded by the tribunal</i>	<i>Awarded by this Court</i>
1.	Loss of income	52,92,000/-	50,21,100/-
3.	Loss of Love and affection		1,20,000/- (40,000 x 3 children)
4.	Funeral expenses	15,000/-	15,000/-
5.	Loss of estate	15,000/-	15,000/-
	Total	53,22,000/-	51,71,100/-

In total, the claimants are entitled to a sum of Rs.51,71,100/- (Rupees Fifty one thousand and seventy thousand only). Interest at the rate of 7.5% per annum fixed by the Tribunal is also confirmed.



C.M.A.No.1699 of 2020

13. In fine,

(i) this Civil Miscellaneous Appeal is disposed of, reducing the award amount from **Rs.53,22,000/-** to **Rs.51,71,100/-** with interest at the rate of 7.5% p.a. from the date of petition, till the date of realization. Consequently, connected C.M.P is closed.

(ii) the appellant herein/insurance company is directed to deposit the modified reduced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, all the claimants/1 to 3 respondents herein are permitted to withdraw their entire share in the enhanced award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn by them, by filing necessary application before the Tribunal.

(iv) There shall be no order as to costs.

.....03.2023

nvi

Internet : Yes/No

Neutral Citation:Yes/No

Speaking Order: Yes/no

To

1. The Motor Accident Claims Tribunal



C.M.A.No.1699 of 2020

Principal District Judge, Cuddalore.

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



WEB COPY



C.M.A.No.1699 of 2020

RMT.TEEKAA RAMAN,J,

nvi

Judgment made in
C.M.A.No.1699 of 2020 and
C.M.P.No.12520 of 2020

Dated:.....03.2023