IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.07.2023

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THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1426 of 2018
and
C.M.P.No.11384 of 2018

The Divisional Manager,
United India Insurance Company Limited,
Vellore. ... Appellant

Vs.

1. A.Padma
2. A.Sathya
3. A.Saranya
4. R.Kannammal
5. Yesu Naidu ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 against the judgment and decree passed in M.C.O.P.No.249 of 2014 on 28.11.2017 on the file of the learned Special Subordinate Judge, Motor Accident Claims Tribunal, at Tirupattur, Vellore District.

For Appellant : Mr.J.Chandran

For R1 to R4 : No appearance

R5 : Died

JUDGEMENT

This Civil Miscellaneous Petition has been filed against the award dated 28.11.2017 passed in M.C.O.P.No.249 of 2014 on the file of the learned Special Subordinate Judge, Motor Accident Claims Tribunal, Tirupattur, Vellore District.

2. The respondents No.1 to 4 are the claimants. Appellant herein is the Insurance Company which is the second respondent therein. The claimants filed the claim application under Section 163(A) of the Motor Vehicles Act before the Tribunal. The Tribunal, after considering the materials available on record and after conclusion, awarded sum of Rs.11,30,625/- to the claimants. Challenging the award passed by the Tribunal, the Insurance Company has filed the present appeal.

3. The case of the claimants is that, on 02.03.2014 at about 01.00 am, the deceased was driving TATA Sumo vehicle bearing Registration No.TN 21 D 1554 on Tirupattur to Alangayam main road. When he came near Ernapattu Thiru.Vi.Ka. Nagar, the deceased lost his control

and dashed against the road side Tamarind Tree, due to which, the deceased sustained injuries and subsequently, he succumbed to death.

4. Learned counsel for the appellant/Insurance Company submitted that the deceased himself is a tort-feasor since the deceased drove the Tata Sumo vehicle and dashed against the Tamarind tree, due to which, he himself caused the accident. The claimants have filed the claim petition under Section 163(A) of the Motor Vehicles Act, claiming Rs.25,00,000/- as compensation, whereas the Tribunal without considering the scope of Section 163(A) of Motor Vehicles Act, notionally fixed the income of the deceased at Rs.6,500/- per month. Hence the annual income of the deceased comes around Rs.78,000/-, which is against the abovesaid provisions of the Motor Vehicles Act. He further submitted that the amounts awarded under the other heads, are also not permissible under Section 163(A) of the Motor Vehicles Act. Hence, the impugned award passed by the Tribunal does not reflect the "just compensation", which is exorbitant and the claim petition is liable to be dismissed and prayed this Court to award "just compensation".

5. Before the Tribunal, the respondents1-4 herein/claimants have filed eight documents, which were marked as Ex.P1 to Ex.P8 and examined two witnesses as PW1 & PW2. On the side of the appellant/Insurance Company, one witness was examined as R.W.1 and two documents were marked as Ex.R1 and Ex.R2. The fifth respondent herein was set- exparte before the Tribunal. The Tribunal, on considering the oral and documentary evidence, awarded compensation as follows:

Heads	***Award Amount (Rs.)***
Loss of dependency	9,50,625/-
Loss of consortium	40,000/-
Love and affection	1,25,000/-
Funeral expenses	15,000/-
Total	**11,30,625/-**

6. Though notice was served on the respondents 1 to 4, none appeared on behalf of them.

7. Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

8. Admittedly, the claim application was filed by the claimants under Section 163(A) of the Motor Vehicles Act. The contention of the learned Counsel for the appellant/Insurance Company is that the maximum limit of the annual income that could be fixed in accordance with the Motor vehicles Act is Rs.40,000/-. The Tribunal has fixed the monthly income of the deceased as Rs.6,500/- notionally and arrived the annual income of the deceased at Rs.97,500/- after adding future prospects of 25%.

9. This Court finds that fixing annual income of the deceased as Rs.97,500/- is against the provisions of Section 163(A) of the Motor Vehicles Act. Admittedly the age of the deceased mentioned in the claim petition is 46 years and there is no contra evidence produced by either of the parties. The Tribunal has fixed the age of the deceased as 46 years, as per the post-mortem report Ex.P2 of the deceased and hence the Tribunal applied the multiplier at 13. Hence, this Court is now fixing the annual income of the deceased at Rs.40,000/-. If the future prospects of 25% of annual income (Rs.40,000/- + Rs.10,000/-) is added the net

income of the deceased comes around Rs.50,000/-. Deduction for personal expenses is Rs.12,500/- (¼ of Rs.50,000/-). Annual Contribution to his family would be Rs.50,000 – Rs.12,500 =Rs.37,500/- Since the age of the deceased is 46 years, multiplier 13 is rightly adopted by the Tribunal. Hence the loss of dependency is arrived at Rs.4,87,500/- [Rs.37,500/- x 13= Rs.4,87,500/-]

10. Hence, the annual income of the deceased is taken at Rs.40,000/-, awarding 25% towards future prospective increase in income and deducting 1/4th towards the personal expenses and adopting the multiplier of 13, the compensation towards loss of dependency would be Rs.4,87,500/-. The amounts awarded by the Tribunal on other heads are unaltered, as the same reflects the "just compensation".

11. Thus, this Court is inclined to modify the compensation awarded by the Tribunal as detailed hereunder:

Heads	***Amount awarded by the Tribunal***	***Amount awarded by this Court***
Loss of dependency	9,50,625/-	4,87,500/-
Loss of consortium	40,000/-	40,000/-
Love and affection	1,25,000/-	1,25,000/-
Funeral expenses	15,000/-	15,000/-
Total	**11,30,625/-**	**6,67,500/-**

12. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is reduced from Rs.**11,30,625/** to Rs.**6,67,500/-** with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

(ii) The Appellant Insurance Company is directed to deposit the modified award amount i.e,Rs.**6,67,500/** along with interest at the rate of 7.5% per annum and costs as awarded by the Tribunal, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.249 of 2014 within a period of six weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the Tribunal is directed to transfer the respective shares of the award amount as per the ratio apportioned by the Tribunal to the bank accounts of the claimants/R1 to R4 herein along with accrued interest and costs as awarded by the Tribunal through RTGS within a period of two weeks thereafter.

(iv)If any excess amount is already deposited by the Insurance Company, they are permitted to withdraw the said excess amount.

(v) The Tribunal is directed to refund the excess amount paid by the Tribunal if any, without any formal application from the appellant/Insurance Company.

(vi) There shall be no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

24.07.2023

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To
The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Tirupattur,
Vellore District.

P.VELMURUGAN, J.

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