THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

C.M.A.No.1898 of 2023
and
C.M.P.No.18474 of 2023

New India Assurance Co. Ltd.,
Issuing Office at Sharon Building,
161, A, East Veli Street,
Madurai – 625 001. ...Appellant

Vs.

1.Fathima
2.Sheik Ahamed
3.P.Anguraj
4.S.Susila ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.01.2023 made in MCOP.No.46 of 2016 on the file of the Motor Accident Claims Tribunal (III-Additional District Judge, Tiruppur) at Dharapuram.

For Appellant : C. Ramesh Babu

For R1 & R2 : Ms.Adhishree Manokaran -Caveator

JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Insurance Company is on appeal. Challenge is to the award of the Motor Accident Claims Tribunal, Dharapuram made in MCOP.No.46 of 2016 dated 04.01.2023.

2.The claimants are the parents of the deceased. They sought for compensation of Rs.17,00,000/- for the death of their son Sheik Mohammed, aged about 23 years in a road accident that occurred on 09.07.2015 at about 4.30 p.m. According to the claimants, when the deceased was driving the TATA Ace goods vehicle bearing Registration No.TN-33-AL-7571 on the extreme left side of the Kangayam-Erode main road, the lorry bearing Registration No.TN-61-A-9448 driven in a rash and negligent manner by its driver came in the opposite direction and collided against the goods vehicle causing the death of the driver. Contending that their son was earning a sum of Rs.10,000/- per month, the parents sought for a compensation of Rs.17,00,000/-. A First Information Report was registered against the driver of the lorry.

3.The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants. It was claimed that the deceased was responsible for the accident and as it was his negligence that caused the accident. At trial, the mother of the deceased was examined as P.W.1. One Palanisamygounder and Sankar were examined as P.W.2 and P.W.3. Exs.P1 to P32 were marked. On the side of the Insurance Company one Rajan Babu was examined as R.W.1 and Tmt.Jamuna was examined as R.W.2. Exs.R1 to R4 were marked. R4 is the copy of the charge sheet.

4.On examination of the evidence that was placed before the Tribunal, it came to the conclusion that the deceased had also contributed to the accident to a certain extent. Though the Section 161 statement was made against the deceased, the Tribunal, on appreciation of the evidence of the eye-witnesses, fixed the quantum of negligence on the deceased at 20%. A salary certificate was produced to show that the deceased was earning Rs.17,000/- per month. The Tribunal took the monthly income at Rs.12,000/-, since Rs.5,000/- was shown as loading and unloading commission/batta. The Tribunal added 50% towards future prospects. The deceased being a bachelor, it deducted 50% towards personal expenses and arrived at the monthly loss of income at Rs.12,000/-. It adopted multiplier of 18, since the deceased was aged about 23 years and arrived at the total loss of income at Rs.25,92,000/-. The Tribunal added Rs.16,500/- each towards funeral expenses and loss of estate and Rs.88,000/- towards loss of filial consortium. Thus, the total compensation was arrived at Rs.27,13,000/- and after deducting 20% towards contributory negligence, the Tribunal granted a sum of Rs.21,70,400/- as compensation. Aggrieved, the Insurance Company is on appeal.

5.We have heard Mr.C.Ramesh Babu, learned counsel for the appellant.

6.The learned counsel for the appellant / Insurance Company would point out that the Tribunal ought to have adopted future prospects only at 40% and not 50%, since the deceased was employed in a private concern. We find that the salary certificate of the deceased has been produced and supporting documents like payment of GST and Value Added Tax have also been produced. The Tribunal has taken only a portion of the income. The remaining amount of Rs.5,000/- that has been disallowed by the Tribunal. Loading and unloading commission may not be a constant figure, but the deceased would have earned some amount towards Batta every month. We are therefore, unable to approve the action of the Tribunal in omitting that part of the income totally and taking only Rs.12,000/- per month. True, the adoption of 50% towards future prospects may not be correct. The Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** has held that 50% future prospects can be adopted only for persons, who are in permanent job.

7.Even though such adoption of 50% is on the higher side, we find that the Tribunal has taken the monthly income at Rs.12,000/-, which in our opinon, is very low, even considering the salaries that were drawn by the last grade employees working in Government at the relevant point of time. Even though we are unable to approve the action of the Tribunal in adopting 50% increase towards future prospects, we find that the overall compensation is just and reasonable. We therefore, do not see any reason to interfere with the award. This Civil Miscellaneous Appeal therefore, fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) **(R.K.M.,J.)**
21.08.2023

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Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking
Nuetral Citation : Yes/No

To:-

The Motor Accident Claims Tribunal,
III-Additional District Court,
Dharapuram.

R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

KKN

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