THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM:

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

C.M.A.No.1613 of 2023
and
C.M.P.No.16131 of 2023

Tata AIG General Insurance Company Ltd.,
Jaya Enclave, Avinashi Road,
Coimbatore – 641 018. ...Appellant

Vs.

1.T.Parameswari
2.T.Rajesh Kumar (Minor)
3.T.Amsavarshini (Minor)
(Respondents 2 & 3 are Minors rep. By
Mother and Next Friend, 1st respondent)

4.Ramathal
5.S.Sathish Guru ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.229 of 2019 dated 02.01.2023 on the file of the MACT, Sub-ordinate Court, Sathyamangalam.

For Appellant : Mr.M.B.Raghavan for
M/s.M.B.Gopalan Associates

For Respondents : Mr.R.Nalliyappan for R1 to R4

J U D G M E N T

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

With the consent of the learned counsel for the parties, this appeal is taken up for disposal at the admission stage.

2.Heard Mr.M.B.Raghavan, learned counsel for the appellant and Mr.R.Nalliappan, learned counsel for the respondents 1 to 4.

3.The Insurance Company is on appeal, challenging the quantum of compensation awarded for the death of one Thangaraj in a motor accident that occurred on 25.03.2019 at about 3.30 p.m. According to the claimants, while he was riding on TVS XL Moped bearing Registration No.TN-36-AZ-9852 on Puliyampatti to Sathy main road from South to North, a pick up Van bearing Registration No.TN-40-K-9677 driven by its driver in a rash and negligent manner came in the opposite direction dashed against the TVS XL Moped. As a result of the accident, the deceased fell down from the vehicle and suffered head injury. Though he was taken to the hospital on the same day, he died at about 6.15 p.m. Claiming that the deceased was earning about Rs.20,000/- per month and that the accident occurred due to the rash and negligent driving of the pick up Van, the claimants sought for compensation of Rs.40,00,000/-.

4.While the 1st respondent remained exparte, the claim was resisted by the 2nd respondent / Insurance Company contending that the accident did not occur in the manner suggested by the claimants and the deceased also contributed to the accident. The income claimed at Rs.20,000/- per month was disputed and the total compensation claimed was termed as exorbitant.

5.At trial, the 1st petitioner / T.Parameshwari was examined as P.W.1 and one Ragunathan, an eye witness was examined as P.W.2. Exs.P1 to P12 were marked. The Insurance Company did not let in any evidence.

The Tribunal, on a consideration of the First Information Report, final report and rough sketch marked as Exs.P1 to P3 as well as the motor vehicle Inspector's reports marked as Exs.P6 and P7 and concluded that the accident occurred due to the rash and negligent driving of the driver of the pick up Van. It also held that the Insurance Company would be liable to pay compensation.

6.On the quantum, the Tribunal took Rs.15,000/- as monthly income, added 25% towards future prospects and arrived at the total monthly income of the deceased at Rs.18,750/-. It also deducted ¼ towards personal and living expenses of the deceased. Taking the age of the deceased at 45, the Tribunal applied multiplier of 14. Thus, calculated the total loss of dependency at Rs.23,62,500/-. The Tribunal awarded a sum of Rs.15,000/- each towards loss of estate and funeral expenses and Rs.40,000/- each towards loss of consortium for the claimants 1 to 3. In all, the Tribunal awarded a sum of Rs.25,12,500/- as compensation.

7.Mr.M.B.Raghavan, learned counsel for the Insurance Company would vehemently contend that the Tribunal was not right in fixing Rs.15,000/- per month as notional income. He would also submit that as per the Adhar Card of the deceased, his age is 46 years 5 days on the date of the accident and therefore, the Tribunal ought to have applied multiplier of 13 but, he would also fairly submit that the Tribunal ought to have added Rs.40,000/- towards loss of love and affection for the mother of the deceased, who was the 4th claimant.

8.The learned counsel for the respondents would submit that fixation of Rs.15,000/- per month as income for a person for an accident that took place in the year 2019 cannot be said to be on the higher side particularly, when the deceased was said to have been doing real estate business. He would also point out that non-grant of Rs.40,000/- towards loss of love and affection for the mother is improper. We have considered the rival submissons.

9.On the quantum of the notional income, we are inclined to agree with the learned counsel for the respondents. The accident had taken place in the year 2019. At that time, even a last grade servant in the government service was earning more than Rs.20,000/- per month. Therefore, we see no reason to interfere with the said fixation. However, in view of the fact that the deceased was shown to be aged 46 years on the date of the accident, the Tribunal ought to have applied multiplier of 13 as per the judgment of the **National Insurance Company Limited Vs. Pranay Sethi and Others** reported in **(2017) 16 SCC 680**. If we adopt the multiplier of 13 instead of 14, the loss of dependency would be Rs.21,93,750/-. As already discussed, we must grant a sum of Rs.40,000/- towards loss of love and affection for the mother of the deceased. So the compensation for grant of loss of consortium and loss of love and affection would be Rs.1,60,000/- instead of Rs.1,20,000/-. Therefore, the total compensation would be Rs.23,83,750/- and the same is rounded off to Rs.23,84,000/-.

10.The Insurance Company shall deposit the compensation as modified within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the 1st claimant / wife of the deceased will be permitted to withdraw Rs.7,50,000/- and the two minor children will get Rs.7,00,000/- each and the remaining amount of Rs.2,34,000/- will be taken up by the mother of the deceased. It is made clear that the claimants would be entitled to interest at 7.5% on their respective shares of compensation. The Tribunal shall pay out the share of the major claimants and the minor claimants shares shall be kept in a cumulative interest earning fixed deposit till they attain majority.

11.In view of the above, this Civil Miscellaneous Appeal is partly allowed and the award is modified as above. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) **(R.K.M.,J.)**
31.07.2023

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Internet:Yes
Index:No
Speaking
Nuetral Citation : No

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

KKN

To:-

The Motor Accident Claims Tribunal,
Sub-ordinate Court,
Sathyamangalam.

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and
C.M.P.No.16131 of 2023

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