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C.M.A.No.3364 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

C.M.A.No.3364 of 2014
and M.P.No.1 of 2014

Universal Sompo General Insurance Co. Ltd.,
Unit 401, 4th floor, Sangam Complex,
127, Andheri Kurla Road, Andheri (East),
Mumbai – 400 059. ... Appellant / 2nd respondent

Vs.

1.Lakshmi
2.Chinnasamy
3.Valarmathi
4.Thulasiammal ... 1 to 4 Respondents / Petitioners
5.L.Manickam ... 5th Respondent / 1st Respondent

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the Motor Accident Claims Tribunal, Krishnagiri in M.C.O.P.No.160 of 2013 dated 15.04.2014.

For Appellant : Mr.R.Vijayakamala

For Respondents 1 to 4 : Mr.Mukund R.Pandiyan

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For Respondent 5 : Exparte in the lower court itself

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J U D G M E N T

This Civil Miscellaneous Appeal No.3364 of 2014 has been filed challenging the award and decree dated 15.04.2014 made in M.C.O.P.No.160 of 2013 on the file of the Motor Accidents Claims Tribunal, Krishnagiri, awarding compensation of a sum of Rs.12,63,000/- to the respondents 1 to 4.

2. The facts of the case in a nutshell:

On 21.06.2017 at about 5.30 P.M., the deceased R.Lakshmanan was standing before the old syndicate bank at Nagarajapuram along with his son in the extreme left side of the road, at the time, one Mahindra Tractor belonging to the fifth respondent and insured with the appellant/Insurance company bearing registration numbers TN 25-A-7391, coming from KRP Dam side towards KRP X road, with rash and negligent manner and hit the deceased and due to the said accident, the deceased sustained grievous injuries to his right hand, right chest. Moreso, he died, while taking him to the Government Hospital, Krishnagiri. The deceased was 57 years old and working as a Assistant Worker in the KRP Dam under the PWD Department.

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He was earning not less than Rs.19,000/- per month. Hence, the legal heirs of the deceased claimant filed a claim petition before the Tribunal by claiming a sum of Rs.15,00,000/- and the Tribunal has awarded a sum of Rs.12,63,000/- . Challenging the said award, the appellant/Insurance Company has come forward with the present appeal.

3. The learned counsel for the appellant/Insurance company submitted that the accident was took place on 21.06.2012 and the order and decretal order was passed by the Tribunal on 15.04.2014. The pay certificate dated 18.06.2013 was marked as Ex.P.7 and according to which, the salary of the deceased was Rs.14,627/-. The Trial court has taken a sum of Rs.11,000/- as monthly salary of the deceased and the annual income to the family as Rs.11,000/- X 12 = Rs.1,32,000/-. In the pay certificate dated 18.06.2013, the date of birth of the deceased was mentioned as 01.07.1954 and the date of death as 21.06.2012 and the date of retirement as 31.07.2014. By considering the Ex.P.7, the Tribunal has fixed the age of the deceased as 58 years and adopted a multiplier as '9' and awarded a sum Rs.11,88,000/- towards future loss of income to the appellants. The Trial Court has failed to consider that the deceased was due to retire on 31.07.2014 as per Ex.P.7 and the date of



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death was 21.06.2012.

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4. The learned counsel for the appellant further submitted that the only income of the deceased would be Rs.1,32,000/- per annum only for two years i.e., from the date of accident 21.06.2012 to 31.07.2014 and for the remaining 7 years, the deceased will get pension which will be 50% of Rs.1,32,000/-. The Trial Court should have applied the principle of split multiplier and should have calculated a sum of Rs.1,32,000/- X 2 = Rs.2,64,000/- and for the remaining 7 years, the calculation would be Rs.66,000/- X 7 = Rs.4,62,000/- and the Trial Court ought to have awarded a sum of Rs.7,26,000/-, however, awarded a sum of Rs.11,88,000/- towards future loss of earning is not sustainable in law.

5. Learned counsel further submitted that the oral evidence of R.W.1 was not taken into consideration by the Tribunal and also did not consider Ex.R.3-notice, sent to the 5th respondent and his driver to produce the driving license. The Trial Court with this should have concluded that Ex.R.3 was sufficient to establish that the 5th respondent violated the Policy terms and



conditions since, the fifth respondent herein and his driver are living together and have a same residential address. Further, the Trial Court did not consider the fact that the said Ex.R.3 was duly served on both and despite that the driving license was not produced before the Trial Court. The main contention of the appellant is that the split multiplier. In the present case on hand, the salary of the deceased is Rs.1,32,000/-. Accordingly, for two years, the total sum is Rs.2,64,000/- and for the remaining 7 years, it should be 50% i.e., Rs.66,000/- X 7 years = Rs.4,62,000/- and on this ground alone, the appeal filed by the insurance company has to be allowed by this court.

6. Heard the learned counsel for the appellant and perused the materials placed on record.

7. Learned counsel for the appellant/Insurance Company has made his submission only in regard to application of multiplier. In the present case on hand, the deceased salary was taken as Rs.11,000/- by the Tribunal and the annual income was fixed at Rs.1,32,000/- and the age of the deceased was fixed as 58 years and the same is evident from Ex.P.7 dated 18.06.2013. Further, the Tribunal has adopted the multiplier as 9 and calculated a sum of



Rs.11,88,000/- towards future loss of income to the respondents 1 to 4 wants interference by this Court. The date of death of deceased was 21.06.2012 and the date of retirement as per the above Ex.P.7 dated 18.06.2013 is 31.07.2014. According to which, the deceased salary of a sum of Rs.1,32,000/- should be taken only for two years i.e., from the date of his death 21.06.2012 to till the date of his retirement on 31.07.2014, which amounts to a sum of Rs.2,64,000/- and for the remaining 7 years, the pension of the deceased will be 50% of his salary i.e., Rs.66,000/- per annum and it should be calculated as $\text{Rs.66,000/-} \times 7 = 4,62,000/-$. Hence, the compensation awarded towards future loss of income to the respondents 1 to 4 should be a sum of Rs.7,26,000/- and not a sum of Rs.11,88,000/- as awarded by the Tribunal. As stated supra, the compensation under the head, future loss of income alone wants interference by this Court and the same is modified as follows:

<i>Head</i>	<i>Compensation awarded by the Tribunal (Rs.)</i>	<i>Compensation modified by this Court (Rs.)</i>
Future loss of income	11,88,000 /-	7,26,000/ -
Loss of consortium	15,000/-	15,000/-



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Loss of love and affection for 2 and 3 claimant/respondent (Rs.10,000/- X 3)	30,000/-	30,000/-
Transport to hospital	10,000/-	10,000/-
Funeral expenses	20,000/-	20,000/-
Total	12,63,000/-	8,01,000/-

8. In view of the above modification made by this Court by reducing the compensation, the claimant/respondents 1 to 4 are only entitled to a sum of Rs.8,01,000/- along with 7.5% interest. As ordered by the Tribunal dated 15.04.2014, the appellant/Insurance has deposited the entire award amount in the year 2014. On such deposit, the claimants/respondents 1 to 4 had withdrawn half of their shares. Hence, The claimant/respondents 1 to 4 are permitted to withdraw the remaining amount modified by this Court as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, by filing appropriate application before the Tribunal. On such receipt, the Tribunal may pass appropriate orders for withdrawing the balance amount as modified by this Court to the claimants/respondents 1 to 4.

9. In fine, this Civil Miscellaneous Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.



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Index : Yes/No

Speaking Order : Yes/No

J.SATHYA NARAYANA PRASAD,J.

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To:

1. Motor Accident Claims Tribunal -cum-
District Judge,
Krishnagiri.

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

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