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C.M.A.No.162 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.162 of 2022

and C.M.P.No.1210 of 2022

The Manager

Cholamandalam MS General

Insurance Company Limite,

Door No.46, Pudhupettai Main Road,

Opposite to IDBI Bank,

Thirupathur, Vellore District.

...Appellant

Vs.

1.Vaijayanthimala

2.Minor Nega

3.Minor Vishnu

(Minors 2 and 3 are rep by
their next friend/mother Vaijayanthimala)

4.Rathinam

5.G.Venkatachalam

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.11.2020 in M.C.O.P.No.639 of 2018 on the file of the Motor Accident Claims Tribunal (Special District Judge) at Dharmapuri.



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C.M.A.No.162 of 2018



For Appellant : Mrs.R.Sree Vidhya
For Respondents : Mr.M.Selvam for R1 & R4
R2 & R3 – Minors
Mr.R.Ezhilarasan for R5

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company aggrieved by the quantum of compensation awarded by the Tribunal to the respondents 1 to 4 herein.

2. The respondents 1 to 4 had filed a claim petition stating that on 05.07.2018, at about 3.30 p.m, when the deceased went in his motorcycle bearing registration No TN 29 AR 2729, the 5th respondent's Tata Ace vehicle bearing registration No.TN 29 AX 6468 came in a rash and negligent manner and dashed against the motorcycle of the deceased; the deceased was thereafter taken to the hospital where he was pronounced dead; that the deceased was working as a Head Constable in Central Reserve Police Force and he had taken a voluntary retirement from his service in the year 2012; that he was drawing a monthly pension of Rs.16,950/-; that he was also doing a agricultural business and was running a poultry farm; and he was earning a monthly income of Rs.35,000/- and hence, were entitled to a claim of Rs.1 crore.



3. The appellant/Insurance Company filed a counter statement, denying the averments made in the claim petition and stated that the driver of TATA Ace did not have valid license and in any event, the accident was not due to the rash and negligent act of the driver of the TATA Ace vehicle and hence, they were not liable to pay the compensation. In any event, the compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

4. Before the Tribunal, the respondents examined two witnesses and marked Exs.P1 to P26 and the appellant examined RW.1 and marked Exs.R1 to R3.

5. The Tribunal considering the pleadings, oral and documentary evidence held that the deceased died only due to rash and negligent act of the driver of the TATA Ace vehicle on the basis of the evidence of P.W.2 and that there was no rebuttal evidence on the side of the respondent and directed the appellant/Insurance Company as insurer of the TATA Ace vehicle to pay a sum of Rs.27,07,255/- as compensation to the respondents 1 to 4.



6. Mrs.R.Sree Vidhya, learned counsel for the appellant submitted that the appellant is not liable to pay the compensation, since the respondents 1 to 4 have not established the negligence on the part of the driver of the TATA Ace vehicle. She further submitted that in any event, the quantum awarded by the Tribunal is excessive for two reasons. The Tribunal had erroneously taken the entire pension drawn by the deceased at the time of his death, while calculating the monthly income. The Tribunal ought to have seen that the first respondent was receiving a family pension equal to half of the said amount and hence, the Tribunal should have considered only half of the pension amount as loss of income, which comes to Rs.8,275/-. She further submitted that admittedly the deceased was aged 48 years and hence, the future prospects ought to have been taken as 25% instead of 30% wrongly taken by the Tribunal and prayed for allowing the appeal.

7. Per contra, the learned counsel for the respondent that the Tribunal had correctly come to the conclusion that the loss of income has to be taken as Rs.16,550/- and the Tribunal has considered the appellant's submission and found that the family pension cannot be deducted, since the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service receivable by the heirs after his death. The Tribunal



had considered the judgment of the **Hon'ble Apex Court in *Vimal Kanwar and others Vs. Kishore Dan and others (CMA.No.5513 of 2012 dated 03.05.2013)*** and held that there cannot be any deduction of the family pension for the purpose of calculating the income of the deceased. He fairly submitted that the future prospects has to be taken as 25% instead of 30% fixed by the Tribunal.

8. This Court had perused the documents and evidence on record. This Court finds that the respondent have established that the accident took place due to the rash and negligent act of the driver of the TATA Ace vehicle, owned by the 5th respondent. P.W.2, an eye-witness to the occurrence had stated about the manner in which the accident took place. From his evidence, it can be seen that the accident occurred due to the rash and negligent act of the driver. The appellant has not let in any contrary evidence to disbelieve the evidence of P.W.2. Hence, the Tribunal had rightly come to the conclusion that the accident took place on account of the negligence on the part of the driver of the TATA Ace vehicle.

9. As regards the quantum, this Court finds that the Tribunal had taken the entire monthly pension of Rs.16,550/- drawn by the deceased at the time of



the accident as loss of income. It is the appellant's case that the Tribunal ought to have taken only half of the income as the first respondent, wife of the deceased is likely to receive half of the family pension. However, there is no evidence or record to show that the first respondent was receiving family pension. Further, even assuming that the first respondent was receiving family pension in the light of the decision of the Hon'ble Apex Court, which is reiterated in *Vimal Kanwar and others Vs. Kishore Dan and others (CMA.No.5513 of 2012 dated 03.05.2013)* and in *Sebastiani Lakra Vs National Insurance Company Limited ([2019] 17 SCC 465)*, the family pension payable to the wife on the account of the death or deceased cannot be deducted for the purpose of calculating the loss of monthly income. Therefore, for the aforesaid reason, this Court is of the view that the Tribunal was right in not deducting the family pension payable to the first respondent for calculating the loss of income. However, it is seen that the deceased was aged 48 years at the time of accident. The Tribunal has granted 30% enhancement towards future prospects and adopted multiplier '13'. As per the judgment of the Hon'ble Apex Court reported in *2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]*, the respondents 1 to 4 are entitled to 25% enhancement towards future prospects. The Tribunal has rightly applied multiplier '13' and after deducting 1/4th towards personal



expenses, the compensation awarded by the Tribunal towards pecuniary loss is modified to Rs.24,20,379/- {Rs.20,687/- [(Rs.16,550/- + Rs.4137/- (25% of Rs.16,550/-)] x 12 x 13 x 3/4}. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary Loss	25,17,255/-	24,20,379/-	Reduced
2.	Loss of consortium	1,60,000/-	1,60,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	27,07,255/-	26,10,379/-	Reduced by Rs.96,876/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.27,07,255/- is hereby reduced to Rs.26,10,379/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st respondent being the wife of the deceased is entitled to a sum of Rs.15,60,379/-, the respondents 2 and 3 being daughter & son of the deceased are entitled to a sum of Rs.4,75,000/- each and the 4th respondent being mother of the deceased is entitled to a sum of



Rs.1,00,000/- as compensation. The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 4 are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The shares of the minors/respondents 2 and 3 are ordered to be deposited in any one of the Nationalised Banks till they attain majority. The mother of the minors/1st respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minors. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.639 of 2018, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

05.07.2023

Index: Yes/No
Internet: Yes/No
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To

1.The III Additional District Judge,
Salem.

2.The Section Officer
VR Section
High Court of Madras
Chennai – 600 104



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SUNDER MOHAN,J.

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