



C.M.A No.2890 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A. No.2890 of 2023 and
C.M.P. No.27091 of 2023

The Oriental Insurance Co. Ltd.,
Motor III Party Claims Office
No.115, Prakasam Salai
Broadway, Chennai - 600 108

... Appellant

Vs.

1.Nasima

2.Malik Basha

3.N.Manivannan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P. No.1486 of 2018 dated 16.11.2022 on the file of Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai.

For Appellant : Mr.J.Chandran

For Respondents : Mrs.Y.Jayanthi Bhaskar
1 and 2 for Mr.J.Mahalingam



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JUDGMENT

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The appellant herein is the insurance company which challenges the quantum of compensation awarded by the Tribunal on numerable grounds.

2.1 On 27.01.2018 around 11.30 p.m while the victim to be of the accident was taking food in a roadside eatery, a lorry belonging to the third respondent and insured with the appellant, took reverse and run over the victim of the accident. The victim suffered multiple injuries and was taken to hospital where he survived for a day and died on the next day. The victim was 25 years old and was working as a Floor Supervisor with M/s.Sri Venkateswara Super Market, Chennai at the relevant time. Seeking compensation for the loss of their son, his parents moved Motor Accident Claims Tribunal (II Judge, Court of Small Causes), Chennai in M.C.O.P. No.1486 of 2018.

2.2 Before the Tribunal, the claimants produced Exts.P4 to P7, all of which are salary slips of the victim for September 2017 to December 2017. All these salary slips show that the monthly income of the victim was Rs.17,690/- and this was reckoned by the Tribunal as the monthly income of the victim, to which it added another 50% towards future prospects of increase in the income



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of the victim. The Tribunal then proceeded to apply '18' as the multiplier, from which it deducted 50% towards personal expenditure of the victim, since he was a bachelor at the relevant time and arrived at the value of loss of dependency at Rs.28,65,780/-. After providing the other conventional heads of compensation the Tribunal arrived at a total compensation of Rs.29,42,780/-.

The break-up details is as below:

1. Loss of dependency	: Rs.28,65,780/-
2. Loss of consortium	: Rs. 44,000/-
3. Loss of Estate	: Rs. 16,500/-
4. Funeral Expenses	: Rs. 16,500/-
Total	: Rs.29,42,780/-

Rounded off to Rs.29,42,800/-

3. Aggrieved by what the insurance company perceives as excessive compensation, this appeal is laid.

4. Mr.J.Chandran, the learned appearing for the appellant raised three specific points in aid of his contention:

(a) The Tribunal had reckoned the monthly income of the



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victim solely based on Exts.P4 to P7 - Salary Slips and also granted 50% towards future prospects when it is not proved that the job is a permanent employment;

(b) that going by the version of PW2, the victim was standing behind a lorry which implies that he was not in the platform as was contended by the claimants and therefore, a percentage of contributory negligence should have been attributed to the victim; and

(c) the driver of the lorry in question did not possess a valid and effective driving licence and was also in the state of inebriation.

5. Summing up her submissions, the learned counsel submitted in fitness of things that the Tribunal ought not to have relied on Exts.P4 to P7 - salary slips and should have fixed the notional income reasonably and also should have refrained from granting 50% increase for future prospects, and at any rate, should have fastened the liability exclusively on the owner of the vehicle, since the driver did not possess a valid and effective driving licence.



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6. Per contra, Mrs.Jayanthi Bhaskar, the learned counsel for the respondent submitted that the obligation is always on the driver of a vehicle to take care of the events on the road and here, irrespective of whether the victim was in the platform or near the roadside eatery, is not going to make much difference, since the accident had happened solely because of the driver of the lorry who failed to notice the presence of the victim behind the lorry.

7. Turning to the nature of the employment of the victim, the learned counsel submitted that in the absence of any proof to the contrary, the statement of the claimant needs to be appreciated and accepted.

8. The learned counsel then proceeded to add that the Tribunal had erred in not granting adequate compensation for both the parents towards love and affection and confined it to only one of the parents. This apart, the victim had died only a day later from the time of accident and nothing was awarded towards transport and also for pain and suffering.

9. After weighing the rival submissions, this court finds that not one ground, which the appellant has placed before this court to defend the appeal, can be



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sustained on facts. Life is not a designer the way the insurance company appears to believe and now canvasses before the court.

10. Turning to the second leg of this appeal, this court does notice that compensation has not been paid under the head love and affection for both the parents. This apart, the transport expenses and pain and suffering too has not been awarded at all. In fine, this court seeks to interfere with the compensation paid under the other conventional heads of compensation. The final look of the award appears as below:

1. Loss of dependency	: Rs.28,65,780/-
2. Loss of love and affection	: Rs. 80,000/-
3. Loss of consortium	: Rs. 60,000/-
4. Transportation	: Rs. 10,000/-
5. Pain and suffering	: Rs. 20,000/-
5. Loss of Estate	: Rs. 16,500/-
4. Funeral Expenses	: Rs. 16,500/-

Total	: Rs.30,68,780/-



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11. In fine, this appeal is dismissed. Even though cross appeal is not filed, this court chooses to increase the compensation from Rs.29,42,800/- to Rs.30,68,780/-, since the claimants are entitled to the same in law. The appellant is now required to deposit the entire compensation amount less any amount already deposited with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation. The claimants are required to pay additional court fee on the enhanced portion of the compensation. No costs. Consequently, the connected civil miscellaneous petition is closed.

12.12.2023

Asr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accidents Claims Tribunal/
II Court of Small Causes, Chennai.



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N.SESHASAYEE, J.

Asr

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