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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11..2023

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3459 of 2019
and CMP.No/20288 of 2019

M/s.TATA AIG General
Insurance Co. Ltd.,
RAHEJA Towers II Floor,
New No.113/134, Anna Salai,
Chennai.

... Appellant

Vs

1. Rahamath Beebi
2. Abdul Kareem
3. Rehana Begum
4. Abdul Munaf
5. Abdulla
6. Riswana Begum
7. Thavamani

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 27.03.2019 passed in MCOP.No.148 of 2016 by the Motor Accidents Claims Tribunal, Sub Court at Sangagiri.

For Appellant : Mr.J.Micheal Visuvasam

For Respondent : Mr.C.Thangaraju RR1 to 6

R7 – No appearance

**J U D G M E N T**

WEB COPY This appeal has been filed by the appellant/insurance company against the judgment dated 27.03.2019 passed in MCOP.No.148 of 2016 by the Motor Accidents Claims Tribunal, Sub Court at Sangagiri.

2. It is the case of the appellant that on 26.10.2011 at about 9.30 a.m, when one Ameer Hamja was travelling as pillion rider in the motor cycle bearing Reg. No.TN 28 AK 2090 driven by one Abdullah, at that time, a vehicle bearing Reg. No.TN 29 AH 0004 driven by its rider in a rash and negligent manner and hit behind the motor cycle. Due to the said accident, the Ameer Hamja sustained grievous injuries and died on 10.12.2011. Thereafter, the claimants have filed a claim petition before the Tribunal claiming a sum of Rs.20,00,000/- .

3. Before the Tribunal, during trial, in order to prove his case, on the side of the claimant, 2 witnesses were examined 22 documents were adduced and on the side of the insurance company, no witness was examined and one document was adduced.

4. After analyzing the oral and documentary evidences, the



Tribunal has awarded a sum of Rs.23,90,000/- as compensation payable by the insurance company.

5. Challenging the quantum of compensation awarded by the Tribunal, the appellant/insurance company has come forward with this appeal before this Court.

6. Learned counsel for the appellant/insurance company submitted that the Tribunal has failed to consider that the fact that no post-mortem certificate was marked by the respondents 1 to 6 to prove that the deceased died only due to the injuries sustained in the alleged road accident. The claimants have not produced any documentary evidence to prove the income of the deceased, who is aged about 62 years at the time of the accident, from tempo van and agriculture. The Tribunal has fixed the notional income of the deceased at Rs.20,000/- which is highly excessive, as the deceased is aged about 62 years at the time of accident and doing self employment, the notional income has to be reduced as per the decision rendered by the Pranay Sethi case. Further, the Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium to the wife and a sum of Rs.1,75,000/- towards loss of love and affection to the wife and



children which has to be rejected. Further the claimants are not entitled to get any compensation towards pain and sufferings as the case is relating to death. Therefore, the learned counsel prays to allow this appeal and set aside the award.

7. The learned counsel appearing for the respondents 1 to 7 submitted that after considering the oral and documentary evidence, the Tribunal has rightly awarded compensation to the claimants which is just and reasonable and the same does not warrant any interference.

8. Heard the learned counsel for the appellant/insurance company and the learned counsel for the claimants also perused the materials available on record.

9. The facts of the case are not in dispute. Admittedly, when the deceased was travelling as pillion rider in the offending motor cycle, the 7th respondent, who is the owner of the motor cycle, was riding his motor cycle, behind the deceased vehicle, in the same direction, hit against them, due to which, the deceased sustained injuries and on 10.12.2011, died in the hospital. Therefore, the Tribunal has rightly fixed the



negligence on the part of the 7th respondent and fixed the entire liability as against the appellant.

10. It is the main grievance of the appellant that the deceased was aged above 62 years at the time of accident and doing self employment, the notional income fixed by the Tribunal is excessive. As per the decisions of the Hon'ble Supreme Court in the case of *Pranay Sethi*, this court fixed the notional income of the deceased at Rs.12,000/- and as per the decision rendered by the Hon'ble Supreme Court in the case of *Sarla Varma*, '7' multiplier has to be applied. As rightly submitted by the learned counsel for the appellant and as per the above said decisions, this Court is modified the award in respect of future prospects and the same is modified as follows:

$$\begin{aligned} \text{Rs. } 12,000/- \times 1/4 &= 9000 \times 12 \times 7 \\ &= \mathbf{7,56,000/-} \end{aligned}$$

11. The Tribunal has awarded compensation for a sum of Rs.40,000/- and Rs.1,75,000/- towards loss of consortium and loss of love and affection respectively and this Court is inclined to set aside the said captions and award a sum of Rs.2,40,000/- (6 X 40,000) for love and affection as there are six legal heirs to the deceased. The claimants are



not entitled to claim the award under pain and sufferings and the same is set aside. In respect of other heads awarded by the Tribunal are just and reasonable and the same are confirmed.

12. In view of the above, this Court is inclined to modify the award as follows:

Heads	Amount awarded by Tribunal (Rs.)	Modified Award Amount (Rs.)
Future prospects	12,60,000	7,56,000
Loss of consortium	40,000	
Loss of love and affection	1,75,000	2,40,000
Pain and sufferings	1,00,000	
Medical exp.	7,74,000	7,74,000
Transportation	10,000	10,000
Loss of Estate	15,000	15,000
Funeral exp.	15,000	15,000
Total	23,89,000	18,10,000/-

13. In the result, this appeal is partly allowed. The appellant insurance company is directed to pay the modified compensation amount of Rs.18,10,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, after deducting the amount if



any already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the same on making proper application before the Tribunal. The apportionment of compensation between the claimants shall be as ordered by the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/no

Internet : Yes/no

Speaking Order/Non speaking order

To

The Deputy Commissioner of Labour-II Chennai.



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M.DHANDAPANI.,J.

Rli

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