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C.M.A No.246 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.246 of 2022
and C.M.P.No.1720 of 2022

United India Insurance Co. Ltd.,
No.826, 7th Floor, Tarapore Towers,
Chennai-600 002.

Now at

Motor Third Party Claims Hub,
No.134, silingi Buildings,
4th Floor, Greams Road, Chennai-6

... Appellant

Vs.

1.V.Jayanthi
2.V.Sandhiya
3.V.Swetha
4.V.Sree
5.D.Susila
2 to 4 minor petitioners rep. by their
mother and N.F. V.Jayanthi

6.The Commissioner,
Corporation of Chennai,
Ribbon Building,
Chennai-600 003

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway
Claims Tribunal Act, 1987 seeking to set aside the order dated



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23.03.2020 in M.C.O.P.No.2041 of 2011 passed by the II Judge, Small Causes, MACT-Chennai and allow the above C.M.A.

For Appellant : Mr.P.Sankaranarayanan

For Respondents : Mr.K.Varadha Kamaraj
for R1 to R5

R6 - No Appearance

R2 to R4
Minors - Rep. by R1

JUDGMENT

The insurance company of a lorry bearing Registration No.TN 04 B 3624 belonging to the sixth respondent, City Corporation, is the appellant herein. It challenges the quantum of compensation awarded by the Tribunal for a fatal accident involving a sanitary worker of the corporation who died while traveling in the aforesaid vehicle collecting the garbage. The accident had taken place on 13.12.2010 at around 16:20 hrs. The victim was 36 years old and was said to be earning Rs.9,900/- and after providing for future prospects and applying a multiplier of 15 and deducting 1/4th towards his personal expenditure, the Tribunal had arrived at a total loss of dependency of 5 dependents of the deceased at Rs.20,04,750/- Turning to other heads, the Tribunal had awarded in all



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Rs.6,90,000/- on either loss of consortium or loss of love and affection but under multiple names. In all, the Tribunal had passed an award of Rs.27,09,750/- with interest at 7.5% per annum.

2.Learned counsel for the appellant made two pointed submissions:

(a) The victim chose not to travel in the cabin of the lorry but was traveling along with the garbage where he collects the garbage bins from the road side and the accident had occurred when a branch of a tree knocked one of the garbage bins owing to which he fell and the rest of the garbage bin fell on him and he died on the spot. The learned counsel submitted that the deceased had invited the consequence upon himself as he chose not to travel in the cabin of the lorry. The Tribunal had failed to reckon this element.

(b) Towards loss of consortium, love and affection etc., the Tribunal has awarded in all Rs.6,90,000/- but under four heads for 5 persons. When in law, they will be only entitled to Rs.40,000/- each.

3.Heard the learned counsel for the respondents 1 to 5, whose line of contention is along the line of reasoning of the Tribunal.



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4.Sofar as the first of the contention is concerned, this Court is not particularly impressed. It is an admitted fact or at least an undisputed fact that the vehicle in question was used by the City Corporation for collecting garbages on public roads. A sanitary worker, in such circumstances, will be necessarily traveling to enable him to collect garbage from the roads as quickly as possible as halting the vehicle will cause obstruction to the flow of traffic on the road. The victim was on the job at that time and it cannot be faulted. This Court does not consider that the act of traveling with the garbage bins and not in the cabin of the vehicle is an act of negligence on the part of the victim, but it is an act of necessity given the nature of his avocation. Since the appellant does not challenge the factors which the Tribunal has reckoned to quantify the compensation on the head loss of dependence, this Court does not inclined to interfere with the same on the ground which the appellant now canvasses.

5.Turning to the second ground, this Court finds that the appellant does have a ground. The victim has left behind his surviving young wife, three children and his mother. On this head, the Tribunal has awarded Rs.40,000/- as loss of consortium for his wife, Rs.3,25,000/- as loss of



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love and affection, but without referring to whom it should go and

awarded a sum of Rs.3,00,000/- as loss of parental consortium when there is only one parent and a sum of Rs.25,000/- towards loss of filial consortium and it is not known for whom it is awarded. This Court necessarily has to restrict the total compensation payable for loss of consortium or love and affection, as the case may be to Rs.40,000/- each, which implies that the total compensation payable on this head can only be Rs.2,00,000/- against Rs.6,90,000/- as was awarded by the Tribunal.

6.On scrutiny of the award, this Court finds loss to the estate has not been awarded by the Tribunal and thereby, this Court, awards a sum of Rs.15,000/- towards loss to the estate. In effect, the appellant's liability is brought down by Rs.4,75,000/-. This implies the appellant will be now liable to pay Rs.22,34,750/-. The appellant is stated to have deposited 50% of Rs.27,09,750/- with interest as up to the date of deposit of the said amount. Therefore, the appellant is now required to pay the balance amount, along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, payable in terms of the award now passed by this Court, within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the



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claimants 1 and 5 are permitted to withdraw the award amount falling to their share, along with proportionate interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn. The amount due to the minors shall be deposited in a Nationalized Bank. Till the minors attain majority, the half yearly interest can be withdrawn by the first respondent for the maintenance of the minors. The claimants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the claimants. No Costs.

7.The Civil Miscellaneous Appeal stands partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

12.10.2023

Anu

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To

1.The Commissioner,
Corporation of Chennai,
Ribbon Building,
Chennai-600 003

2.The II Judge, Small Causes,
MACT-Chennai



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N.SESHASAYEE, J.

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