



WEB COPY



C.M.A.No.3293 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3293 of 2017
and C.M.P.No.20802 of 2017

The Divisional Manager,
Reliance General Insurance Co. Ltd.,
Officers Line,
Opposite to Lakshmi Theatre,
Vellore.

... Appellant

Vs.

1.P.Kavitha
2.P.Silambarasan
3.P.Kaviyarasan
4.Unnamalai
5.E.Prabakaran

... Respondents

Prayer : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act against the judgment and decree dated 17.04.2017 made in MACT O.P.No.436 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Vellore.



C.M.A.No.3293 of 2017

For Appellants : Mr.S.Arunkumar

For Respondents

For R1 to R4 : Mr.S.P.Yuaraj

For R5 : Not ready in notice

J U D G M E N T

This Civil Miscellaneous Appeal arises against the award passed by Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Vellore, in M.C.O.P.No.436 of 2015 dated 17.04.2017.

2. Insurance Company is the Appellant herein, challenging the award passed in MCOP.No.436 of 2015, on the file of Motor Accident Claims Tribunal, I Additional and District Judge, Vellore, on the ground of quantum.

3. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.



4. The factum of the accident, manner of the accident, rash and negligent driving of the 1st respondent vehicle insured with the 2nd respondent / Insurance Company are not in dispute in this appeal and hence, the finding rendered by the Tribunal in this regard are hereby confirmed.

5. It is the case of the claim petitioners that on 02.07.2014 at about 2.45 p.m., opposite to Government High School, Perumugai, while the deceased was driving his own Auto bearing Regn.No.TN-23-BB-7081, from South to North at normal speed, by following traffic rules, at that time, the Maxi Cab van bearing Regn.No.TN-20-BL-0911, owned by the 1st respondent was driven by its driver, in a rash and negligent manner, without following traffic rules and regulations and without blowing horn, from West to East direction, in a hurried manner and dashed against the rear side of the Auto. Hence, the accident occurred, due to which, the deceased sustained head injury and multiple injuries on all over the body and immediately he was taken to Government Hospital at Vellore and he died. Hence, the claim petitioners filed a claim petition before the Tribunal for claiming compensation of Rs.45,00,000/-.



6. Before the Tribunal, on behalf of the claimants, P.W.1 was examined and Ex.P1 to Ex.P8 were marked and on the side of the Respondents R.W.1 was examined and Ex.R1 to Ex.R3 were marked.

7. On appreciation of the materials before it, the Tribunal awarded compensation as follows:

(a) Loss of income	:	Rs. 8,77,500/-
(b) Loss of consortium	:	Rs. 1,00,000/-
(c) Loss of love and affection	:	Rs. 1,00,000/-
(d) Loss of estate	:	Rs. 50,000/-
(e) Medical expenses	:	Rs. NIL
(f) Funeral expenses	:	Rs. 25,000/-
(g) Transport expenses	:	Rs. 5,000/-
(h) Damages to cloths and articles	:	Rs. 2,000/-

		Rs. 11,59,500/-

The said sum was directed to be paid by the 2nd respondent along with interest at 7.5% per annum from the date of petition till the date of realization.

8. According to the learned counsel for the appellant / Insurance Company, the Tribunal ought to have appreciated the manner of the



accident and held that the respondents 1 to 4 are entitled only to 'No fault liability' compensation. The Tribunal erred in assuming Rs.15,000/- per month as income and deducted 1/4th towards personal expenses in spite of the fact that the respondents 2 and 3 herein are no dependents. The Tribunal failed to note that the respondents 1 to 4 have not proved the earning of the deceased through acceptable documentary evidence. The Tribunal failed to note that the respondents 1 to 4 have not produced correct age proof of the deceased and themselves. Hence, the compensation awarded by the Tribunal is highly excessive and he prays for modification of the award amount.

9. The learned counsel for the respondents 1 to 4, on the other hand, submitted that the order of the Tribunal is fair and justified and it does not require any interference by this Court.

10. Heard the learned counsel appearing for the parties and perused the records.

11. After going through the oral and documentary evidence, the Tribunal come to the conclusion and fixed the income of the deceased at Rs.20,000/- per month. However, in the absence of production of any proof



for earning of the deceased and considering his age and avocation, this

Court is inclined to fix the monthly income of the deceased at Rs.15,000/- and also fix 25% as future prospects. Accordingly, Rs.17,55,000/- (Rs.12,000/- + 25% future prospects = Rs.15,000/-, Rs.15,000/- x $\frac{1}{4}$ = Rs.3750/-, Rs.11,250 x 12 x 13 = Rs.17,55,000/-) is awarded towards loss of income. The Tribunal awarded Rs.1,00,000/- towards loss of consortium which appears to be higher side and hence, it has to be reduced to Rs.40,000/- to the 1st claim petitioner. The Tribunal awarded Rs.1,00,000/- towards loss of love and affection which appears to be lower side and hence, it has to be enhanced to Rs.1,20,000/-. The Tribunal awarded Rs.50,000/- towards loss of estate which appears to be higher side and hence, it has to be reduced to Rs.15,000/- and the Tribunal awarded Rs.25,000/- towards funeral expenses which also appears to be higher side and hence, it has to be reduced to Rs.15,000/-. Though the Tribunal awarded Rs.5000/- towards transportation and Rs.2000/- towards damages to cloths and articles, this Court is inclined to cancel the compensation awarded in those heads.



12. In the light of the above discussion, the compensation awarded by the Tribunal is reassessed as follows:

<i>Sl.Nos.</i>	<i>Heads</i>	<i>Compensation</i>
1.	Loss of income	Rs.17,55,000/- (11250x12x13)
2.	Loss of consortium	Rs.40,000/-
3.	Loss of love and affection	Rs.1,20,000/-
4.	Loss of estate	Rs.15,000/-
5.	Funeral expenses	Rs.15,000/-
<i>Total</i>		Rs.19,45,000/- (Less 50% (Rs.9,72,500/-) contributory negligence fixed on the part of the deceased)

Accordingly, the amount awarded by the Tribunal is modified from Rs.11,59,500/- to Rs.19,45,000/- and less 50% (Rs.9,72,500/-) contributory negligence fixed on the deceased, together with interest at 7.5% per annum from the date of petition till the date of deposit as compensation.

13. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, modifying the compensation from Rs.11,59,500/- to Rs.9,72,500/- (50% of the reassessed



C.M.A.No.3293 of 2017

award amount), with 7.5 % interest per annum, to the extent indicated above. No Costs. Connected miscellaneous petition is closed.

(ii) the Appellant / Insurance Company is directed to deposit the modified award amount i.e., Rs.9,72,500/- (50%) as apportioned by the Tribunal, with interest and costs before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, the claim Petitioners/respondents 1 to 4 are entitled to get their share in the modified award amount, as per the ratio of apportionment made by the Tribunal, by filing appropriate application.

(iv) the claim Petitioners are directed to pay the court fee, if any, for the modified compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

21.06.2023

Index:yes/no
Internet:yes/no
ata

8/9



WEB COPY



C.M.A.No.3293 of 2017

A.A.NAKKIRAN.J.,

ata

To

The I Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Vellore.

C.M.A.No.3293 of 2017

21.06.2023