IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

CMA.No.3481 of 2017

1. C.K.Shankar
2. S.Raghavendran .. Appellants

Vs.

1. A.M.Kalaivaniammal

2. United India Insurance Company Limited,
   Silingi Building, 134/4042, Greams Road, Chennai – 6

3. B.Rajendran
4. New India Assurance Company
   Third Party Cell, 45, Moore Street,
   Chennai – 1. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to allow this appeal and to enhance the amount awarded in M.C.O.P.No.1404 of 2010 on the file of Motor Accident Claims Tribunal (Chief Small Causes Court) Chennai.

For the Appellants : Mr.K.Varadha Kamaraj

For Respondent Nos.1 & 2 – Ex-parte

For Respondent No.3 : Mr.J.Chandran

For Respondent No.4 : Mr.S.Arunkumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants for enhancement of the compensation awarded in MCOP.No.1404/2010 dated 01.08.2017 on the file of the MACT, Chief Small Causes Court, Chennai, by which, the Tribunal has awarded a compensation of Rs.38,26,258/- with interest at the rate of 7.5% per annum from the date of the petition till the date of realization.

2. For the sake of clarity, the parties herein are referred to as per their status before the Tribunal.

3. The case of the claimant is as follows: -

On 30.12.2009 at about 8.30 a.m. the deceased K.Kanchanamala was travelling as a pillion rider along with her husband near Kamarajar Salai junction, Pammal Main Road, in a two wheeler. At that time, a van bearing Registration Number TN-51-W-6453 suddenly came in the reverse direction in a rash and negligent manner and hit on the two wheeler. Due to hit, she fell down on the road, at the same time a bus bearing Registration No.TN-20-BA5555 came in a rash and negligent manner and ran over the deceased resulting her death.

4. The husband and son of the deceased have filed a claim petition for compensation of Rs.50,00,000/- in this regard. The first respondent is the owner of the bus, the second respondent is the insurer of the bus, the third respondent is the owner of the van and the fourth respondent is the insurer of the van. According to the fourth respondent, the entire negligence is only on the bus driver and the van driver could not be held responsible for the accident. Likewise, according to the 2nd respondent, the van driver is responsible for the accident and sought for dismissal of the claim petition. Before the Tribunal, on the side of the claimants, PW1 and

PW2 were examined and Ex.P1 to P16 were marked. The respondents have not adduced any evidence. Based on the evidence placed on record, the Tribunal held that the van driver and the bus driver were equally responsible for the accident and hence, the respondents 2 and 4 are directed to pay the compensation equally, awarded a total compensation of Rs.38,26,258/- along with interest.

5. Aggrieved over the quantum awarded, the claimants have filed this appeal and Insurance Companies have not filed any appeal in this regard.

The only contention of the learned counsel for the appellants is that the Tribunal has wrongly deducted 20% towards income tax as against 10%.

Per contra the learned counsel for the second respondent contended that the Tribunal has correctly deducted 20% towards income tax and there is no infirmity in the said deduction made by the Tribunal.

6. In paragraph 16 of its award, the Tribunal has awarded compensation under various heads as under:

Sl.No.	**HEADS**	**CALCULATION**
1.	Salary	Rs.29,000/- per month
2.	30% of (i) above to be added as future prospects	Rs.29,0000/- + Rs.8700/- Rs.37,700/- per month
3.	Annual Income and income of tax above Rs.2,00,000/-	Rs.37700 x 12 = Rs.4,52,400/- Rs.2,00,000/- = 2,52,400/-
4.	Deduct 20% of (3) towards income tax	Rs.2,52,400 – Rs.50,480 = Rs.2,01,920/-
5	Yearly income is	Rs.200000 + 201920 = Rs.4,01,920/-
6	1/3rd of (v) deducted as personal expenses of the deceased	Rs.4,01,920 – 1,33,973 = Rs.2,67,947/-
7	Compensation after multiplier of 14 is applied	Rs.2,67,947 x 14 = Rs.37,51,258/-
8	Loss of consortium to 1st petitioner	Rs.25000/-
9	Loss of Love and affection to petitioners	Rs.20,000/-
10	Transport expenses	Rs.5,000/-
11	Funeral Expenses	25,000/-
	TOTAL COMPENSATION AWARDED	**Rs.38,26,258/-**

7. A perusal of the above shows that the Tribunal has fixed Rs.29,000/- as the monthly income of the deceased and after adding 30% salary towards Future prospects, it has arrived at Rs.37,700/- per month for the whole year and the total annual income of the deceased has been arrived at Rs.4,52,400/-. The Hon'ble Apex Court in National Insurance Company Limited Vs. Indira Srivastava 2008 (1) TNMAC 166(SC), has held that statutory amount of tax payable must be deducted from amount of Income.

Division Bench of this Court in "United India Insurance Company Limited Vs. Saroja " 2021 (2) TNMAC 593 has followed the Income Tax Slab rate fixed during the relevant period for deduction of Tax from Income.

8. For the Financial Year 2009-2010 and Assessment Year 2010-2011 the applicable income tax rates are as follows: the basic tax exemption provided upto Rs.1,60,000/-. From 1,60,001/- to Rs.3,00,000/- the percentage of income tax was at 10%. From Rs.3,00,001/- to Rs.5,00,000/- the percentage of income tax was at 20%. Therefore, applying the said income tax slab rate to the case on hand, the total tax to be deducted would be,

10% (Rs.1,60,001 to Rs.3,00,000/-) = Rs.14,000/-

20% (Rs.3,00,001 to Rs.4,52,400/-) = Rs.30,480/-

Total = Rs.44,480/-

1. After deducting Rs.44,480/- being the total tax payable from the annual income of the deceased determined as Rs.4,52,400/- the actual annual income of the deceased arrived as Rs.4,07,920/-. After deducting one-third towards " personal expenses" of the deceased and applying multiplier 14 as per the age of the deceased, who was 43

years old at the time of accident, " Loss of Dependency" is calculated as hereunder:

2.

Annual Income	::	Rs.4,07,920/-
Less:		
1/3rd towards Personal Expenses	::	Rs.4,07,920/- (-) 1/3 (Rs.4,07,920/-)
	::	Rs.4,07,920/- (-) Rs.1,35,973/-
Total Annual Income	::	Rs.2,71,947/-
Loss of Dependency	::	Rs.2,71,947 x 14
	::	Rs.38,07,258/-

9. By following the judgment of the Hon'ble Apex Court in "National Insurance Company Limited Vs. V.Pranay Sethi and others reported in (2017) 16 SCC 680, the amount of Rs.25,000/- awarded towards " Loss of Consortium" to husband is enhanced to Rs.40,000/- and Rs.20,000/- awarded towards "Loss of Love and Affection" towards son is enhanced to Rs.40,000/-. The amount of Rs.25,000/- awarded towards "Funeral Expenses" is on the higher side and the same is reduced to Rs.15,000/- and

a sum of Rs.15,000/- is awarded towards “Loss of Estate”. The amount awarded towards “Transport Expenses” is hereby confirmed. Hence, the total compensation payable to the appellants is recalculated and tabulated as follows:

Loss of Dependency	::	Rs.38,07,258/-
Loss of Consortium	::	Rs. 40,000/-
Loss of Estate	::	Rs. 15,000/-
Loss of Love and Affection	::	Rs. 40,000/-
Funeral Expenses	::	Rs. 15,000/-
Transport Expenses	::	Rs. 5,000/-
Total	::	**Rs. 39,22,258/-**

1. In fine, the Civil Miscellaneous Appeal stands partly allowed and the compensation awarded by the Tribunal to the tune of Rs.38,26,258/- is enhanced to Rs.39,22,258/-. No costs. The rate of interest awarded by the Tribunal @ 7.5% per annum is sustained. Additional court-fee, if any, to be paid on the enhanced amount, shall be paid by the appellants.

2.

11. The 2nd and 4th respondent Insurance Company are directed to deposit the entire award amount, as per the modified award passed by this Court at 50:50, with interest and costs, less the amount already deposited, if any, before the Tribunal within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the appellants / claimants are permitted to withdraw their respective shares as per the apportionment of the Tribunal.

20.07.2023

Index : Yes/No
Speaking order:Yes/No
Neutral citation:Yes/No
adl

To

1. The United India Insurance Company Limited,
   Silingi Building, 134/4042, Greams Road, Chennai – 6.

2. The New India Assurance Company,
   Third Party Cell, 45, Moore Street,
   Chennai – 1.

3. The Chief Small Causes Court, Chennai.

K.RAJASEKAR, J.

adl

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