



WEB COPY



C.M.A.No.3887 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.3887 of 2019

and

CMP.No.22139 of 2019

The Branch Manager,
M/s.Reliance General Insurance Company Limited
No.6, 4th Floor, Reliance House,
Haddows Road, Nungambakkam,
Chennai City – 600 006.

..Appellant/2nd respondent

Vs.

1.Vinmozhi
2.Dhanakodi
3.Dr.Kalavathi Venkatraman

...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order dated 15.03.2018 made in M.C.O.P.No.84 of 2016 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Mayiladuthurai.

For Appellant : Mr.E.Rajadurai

For Respondents : Mr.B.Harish for R1
for K.M.Vijayan & Associates

JUDGMENT

This appeal has been filed by the appellant/Insurance Company



C.M.A.No.3887 of 2019

challenging the impugned award dated 15.03.2018 in M.C.O.P.No.84 of 2016 passed by the Motor Accidents Claims Tribunal, Additional Subordinate Court, Mayiladuthurai.

2.The case in brief, is as follows:

On 15.11.2014, at about 02.30 p.m., while the deceased along with his friend was proceeding from Karaikal to Thirukadaiyur main road in south - north direction, in his two wheeler bearing Regn.No.TN-82-Z-1774, near the Anandamangalam Magimalai River, a LMV Maxi Cab Van bearing Regn.No.TN-20-BV-3192, coming from north to south in a rash and negligent manner, hit against the deceased Balakumar. Due to the said impact, the deceased sustained grievous injuries and died on the spot. The respondents 1 and 2 are the wife and mother of the deceased who filed a claim petition before the Tribunal, claiming a sum of Rs.50,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.20,15,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.



C.M.A.No.3887 of 2019

3. Challenging the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.

4. The learned counsel for the appellant/Insurance Company has submitted that the Tribunal erred in holding that the accident occurred due to the negligence of van driver. The quantum of compensation awarded by the Tribunal is excessive. He further submitted that despite lack of clear proof of actual income, the Tribunal erred in computing loss of dependency. The deduction for personal expenses and multiplier are also erroneous. The pecuniary loss awarded by the Tribunal is contrary to the formula laid down by the Supreme Court in Pranay Sethi's case. They have to produce proof for the age, avocation and income of the deceased. He further submitted that the claimants have to prove that the driver of the two wheeler possess license and insurance at the time of the accident. The accident had occurred due to the rash and negligent driving of the deceased. It is further submitted that in the absence of proof of income, the Tribunal erred in not properly considering the evidences and the documents marked, while fixing the monthly income of the deceased at Rs.8000/- It is also his specific submission that the Tribunal ought to have taken 40% while arriving at the



C.M.A.No.3887 of 2019

compensation towards for future prospects, instead of 50%. Hence, he prays to allow this appeal.

5.The learned counsel for the respondents has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the just, fair and reasonable compensation and the same does not require any interference at the hands of this Court. Hence, he prays for dismissal of the appeal.

6. Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record carefully and meticulously.

7. The details of the compensation awarded by the Tribunal are as follows:

HEADS	AMOUNT (in Rs.)
Loss of Income	17,28,000/-
Loss of Consortium & love and affection for the 1 st respondent	2,00,000/-
Loss of love and Affection for the 2 nd respondent	50,000/-
Funeral Expenses	25,000/-



Transport Expenses	10,000/-
Damages to clothes & things	2,000

TOTAL	20,15,000/-

8. Before the Tribunal, three witnesses have been examined and marked as PW1 to PW3 and filed seven documents which were marked as Ex.P1 to Ex.P7. On the side of the Insurance Company, one witness was examined as RW1. No document was marked on its side.

9. The Tribunal has relied upon Ex.P2-Post Mortem Report of the deceased and has taken the age of the deceased as 23 years. Further, taking note of the earning capacity of the deceased and the economic situation prevailing at that time, the Tribunal fixed the monthly income of the deceased at Rs.12,000/- for calculating the loss of income on account of the death of the deceased. It has awarded a sum of Rs.17,28,000/- towards loss of income by fixing the monthly income of the deceased at Rs.8000/-, adding 50% of future prospectus, deducting 1/3rd of the amount towards personal expenses of the deceased and adopting the multiplier of 18.

10. Based on the evidences of P.W.1 to P.W.3 and perusing the



C.M.A.No.3887 of 2019

exhibits in Ex.P1/FIR, the Tribunal has fastened the liability on the Driver of the van, which has to be compensated by the appellant /Insurance Company.

11. A perusal of the records shows that the deceased was the entire caretaker of the family having two dependants. Taking note of the above submissions of the learned counsel for the appellant, economic situation prevailing at that time and also the facts and circumstances of the case, this Court is of the considered view that the monthly income of the deceased has to be taken as Rs.8000/- and there is no need to change the multiplier also adopted by the Tribunal. Further, the 1/3rd deduction made by the Tribunal also does not require any interference. If Rs.8,000/- is taken as the monthly income of the deceased, after adding 50% towards future prospectus of the deceased and 1/3rd of the amount is deducted and the multiplier of 18 is adopted, the loss of income works out to Rs.16,12,800/- (**Rs.8000x40%=3200 = 8000+3200 = 11200 x12 x 18 x 2/3 = 16,12,800**). Accordingly, the amount awarded by the Tribunal towards loss of income



C.M.A.No.3887 of 2019

stands modified to Rs.16,12,800/-Similarly, it would be appropriate to award a sum of Rs.40,000/- towards loss of consortium and love and affection to the wife of the deceased, a sum of Rs.40,000/- towards loss of love and affection to the mother of the deceased, a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.15,000/- towards Loss of Estate.

12. Insofar as the other heads are concerned, the amount awarded by the Tribunal is just, fair and reasonable and hence it does not require any interference of this court.

13.The details of the modified compensation are as under:

HEADS	AMOUNT(in Rs.)
Loss of Income	16,12,800/-
Loss of consortium & love and affection to the 1 st respondent	40,000/-
Loss of love and affection to the 2 nd respondent	40,000/-
Funeral expenses	15,000/-



C.M.A.No.3887 of 2019

Transportation	10,000/-
Damages	2,000/-
Loss of Estate	15,000/-

TOTAL	17,34,800/-

14. Thus, the respondents 1 and 2 / claimants are entitled to the modified compensation of Rs.17,34,800/-.

A.A.NAKKIRAN.,J.

gv

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

16. The appellant/Insurance Company is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondents / claimants shall withdraw the same, on making proper application before the Tribunal. It is made clear that the claimants have to pay the appropriate Court fee in order to receive the awarded amount.

06.02.2023



C.M.A.No.3887 of 2019

Index : Yes/No

Internet : Yes/No

gv

To

1.The Motor Accidents Claims Tribunal
Additional Subordinate Court, Mayiladuthurai.

2.The Section Officer,
VR Section,
Madras High Court.

**C.M.A.No.3887 of 2019
and CMP.No.22139 of 2019**