IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.07.2023
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The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2578 of 2019
and
C.M.P.No.12374 of 2019

United India Insurance Company Ltd.,
Divisional Office,
Kumaran Road, Tirupur. ... Appellant

Vs.

1. V. Adhitya (minor)
rep. by its Maternal Grand Mother Santhamani
D.No.64 B, Thippay Gounder, 4th Street,
Ondipudur, Coimbatore – 641016.

2. Sagayaraj

3. Hindustan Corporation,
71, Patel Road Ram Nagar,
Coimbatore.

... Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 28.03.2017, in M.A.C.T.O.P.No.462 2011, passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tirupur District.

Appearance :-

For Appellant : Mr.J.Chandran

For Respondent-1 : Mr.Ma.P.Thangavel,

 Respondents 2 and 3 : Notice not ready

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the quantum of compensation awarded by the Tribunal.

2. Since the present Appeal has been filed, questioning the quantum of compensation, this Court is not traversing into the other aspects of the award.

3. On 27.08.2005, when Velusamy (since deceased) was riding a Motorcycle, bearing Regn. No.TN-41-Z-4715, on the left side of the road, from East of AVR Textiles, Pallapalayam, Sulur, at that point of time, a Tractor Trailer, bearing Regn.No.TN-37-A-0466, belonging to the first respondent turned right side of the road, in a rash and negligent manner, and dashed against the deceased's Vehicle. Due to the said accident, the said Velusamy sustained grievious injuries on right side of the forehead and primary brain stem injury and despite treatment, he died on 03.02.2006.

4. At the time of the accident, the deceased was aged about 33 years. He was an agriculturist and also running a Hatchery Farm and earning a monthly income of Rs.25,000/-. Hence, the minor son of the deceased (represented by his maternal grand mother) being his legal heir, filed a claim petition against the the owner/Hindustan Corporation and insurer/United India Insurance, viz., first and second respondents to pay a sum of Rs.41,26,500/- as compensation for the death of his father, Velusamy.

5. The driver of the offending Vehicle, viz., Sagayaraj, as well its Owner, remained ex parte before the Tribunal.

6. The Insurance Company resisted the Claim Petition by filing a counter statement, *inter alia* contending that, it was the deceased, who contributed to the accident, inasmuch as, he was riding motorcycle, without noticing the oncoming vehicle. Therefore, the Insurance Company cannot be mulcted with any liability to pay compensation to the claimant. It was further contended that the compensation amount claimed by the claimant was excessive and baseless, and therefore, prayed for dismissal of the claim petition.

7. Before the Tribunal, the claimant examined four witnesses as P.W.1 to P.W.4, and marked 15 documents as Exhibits Ex.P1 to Ex.P.15. On the side of the Insurance Company, neither any witness were examined nor any documents were exhibited. The document produced by witness was marked as Ex.W.1.

8. The Tribunal, on the basis of both oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent driving of Tractor Trailor, bearing Regn.No.-TN-37-A-0466, driven by the first respondent's driver, and therefore, held that the Insurance Company is liable to pay the compensation amount and awarded a total sum of Rs.24,34,000/- as compensation to the claimant together with interest at the rate of 7.5% p.a. from the date of claim petition (i.e. 01.04.2011) till the date of deposit, as compensation.

8. The break up details of the compensation amount awarded by the Tribunal are as follows:-

9.

Sl.No.	***Heads***	***Amount***
1	Loss of Dependency	Rs.19,20,000/-
2	Transportation	Rs. 20,000/-
3	Medical Expenses	Rs. 2,29,000/-
4	Damage to Clothes and articles	Rs. 25,000/-
5	Loss of Love and Affection	Rs. 2,00,000/-

Sl.No.	***Heads***	***Amount***
6	Funeral Expenses	Rs. 50,000/-
	Total	**Rs.24,34,000/-**

9. Mr.J.Chandran, learned counsel appearing for appellant/Insurance Company submitted that, initially, claim was made only for a sum of Rs.24,00,000/- by stating the monthly income of the deceased at Rs.25,000/- Subsequently, the claimant filed a Petition seeking amendment of the claim from Rs.24,00,000/-to Rs.70,00,000/-and in the sworn affidavit annexed to the claim, it is stated that the deceased was paid with an annual income of Rs.4,24,296/-, pursuant to the supply of chicks made to M/s.Santhi Poultry Pvt Ltd., (now renamed as M/s.Shanthi Feeds Private Ltd).

9.1 The learned counsel for the appellant submitted the sworn affidavit filed by the first respondent/claimant was strongly objected by the appellant by way of filing additional counter, wherein, the appellant pleaded that though the deceased's annual income was mentioned at Rs.4,24,296/-in the sworn affidavit, to prove same, no document with regard to the payment of revenue tax by the deceased was adduced on behalf of the claimant. Had the deceased earned monthly income of Rs.44,000/- by running such Hatchery Farm, obviously, he would have paid income tax, for having run such a large Farm, but, no document relating to ITR was filed by the claimant. Further, the learned counsel submitted that the document, viz., the Account Ledger, maintained by M/s.Shanthi Feeds Pvt. Ltd., which was marked as Ex.P.11, through P.W.4, is merely a computer generated copy in a plain paper, without seal or Letter Head of the Firm and though the Tribunal has rightly disregarded the same, however, proceeded to determine the compensation towards Loss of Dependency by hastily fixing his monthly income at Rs.20,000/- which has resulted in awarding such an exorbitant sum of Rs.19,20,000/-. Hence, the learned counsel prayed that the monthly income of the deceased may be fixed in an appropriate manner.

9.2 The learned counsel further submitted that the compensation awarded towards Damages to Clothes and articles at Rs.25,000/- is on the higher side. Similarly, the compensation awarded by the Tribunal towards Love and Affection at Rs.2,00,000/- and Funeral Expenses at Rs.50,000/- are high and against the ratio laid down by the Hon'ble Supreme Court, in the case of **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **2017 (2) TN MAC 601.** Therefore, the learned counsel contended that the award passed by the Tribunal on the aforesaid heads requires appropriate reduction.

10. Refuting the contention putforth by the learned counsel appearing for the appellant/Insurance Company, Mr.Ma.P.Thangavel, learned counsel for first respondent/claimant would contend that the deceased was a Self Employed (running Hatchery Farm) and since he was in the business for a long time, obviously, he would have earned more than Rs.25,000/- per month. In order to prove the income of the deceased, the Accountant, Mr.Rajan of M/s.Shanthi Poultry Pvt Ltd., was examined as P.W.4, and through him, account ledger maintained by the said Firm, (wherein, a sum of Rs.4,24,000/- was stated to have been paid to the deceased towards his annual income, as per the statement of account from 01.04.2004 to 31.03.2005) was marked as Ex.P.11. Therefore, the learned counsel submitted that all these documents would *per se* prove that the deceased was earning more than Rs.25,000/- per month, however, Tribunal regardless of the same, fixed the monthly income of the deceased at Rs.20,000/- and arrived at a sum of Rs.19,20,000/-towards the Loss of Dependency. It is further submitted that the Tribunal also failed to add any amount towards future prospects, and therefore, prayed that the same may be granted.

10.1 The learned counsel for the first respondent/claimant further submitted the compensation awarded by the Tribunal towards

Transportation at Rs.10,000/- is on lower side as the deceased sustained grievious head injuries and primary brain stem injury due to the accident occurred on 27.08.2005, and took medications and treatments at Hospital for a period of six months and spent more than sum of Rs.10,000/- towards transportation. Hence, the learned counsel prayed to enhance the compensation under the said head.

10.2 Insofar the compensation awarded by the Tribunal towards Damages to Clothes at Rs.25,000/- is concerned, the learned counsel fairly admitted the Tribunal's award is on the higher side and the same may be modified appropriately. The learned counsel also fairly admitted that the compensation awarded by the Tribunal towards Love and Affection at Rs.2,00,000/- and Funeral Expenses at Rs.50,000/-are also on the higher side and submitted that the same may be reduced appropriately.

11. I have given due consideration to the submissions made by the learned counsel for the appellant/Insurance Company and the learned counsel for the first respondent/claimant and also produced the materials placed on record.

12. On a perusal of the award passed by the Tribunal, it is seen that, initially, the claimant filed a claim petition on 01.04.2011, seeking a compensation of Rs.24,00,000/-, by stating that the deceased was an agriculturists and running Hatchery Farm and earning a sum of Rs.25,000/- as monthly income. Subsequently, in a sworn affidavit annexed to claim petition filed for amendment of the compensation from Rs.24,00,000/- to Rs.70,00,000/-, dated 22.09.2015, it is stated that the deceased was earning a sum of Rs.44,000/- per month and to buttress the same, one Mr.Rajan, the Accountant of M/s.Shanthi Poultry Pvt. Ltd., was examined as P.W.4 and Ex.P.11, viz., account ledger maintained by the said Firm, (wherein, it is stated that as per the statement of account from 01.04.2004 to 31.03.2005, deceased earned annual income of a sum of Rs.4,24,000/-) was marked through him (P.W.4.). However, as rightly pointed out by the learned counsel for the appellant/Insurance Company, Ex.P.11 is merely a computer generated copy in a plain paper, neither it consists of any seal or Letter Head of the Firm and therefore, it cannot be relied upon. Had the deceased had really earned monthly income of Rs.44,000/- by running such Hatchery Farm, he would have, perhaps, paid income tax for the concerned financial year, for having run such Hatchery Farm, but, no document relating to ITR was filed by the claimant and this is only a revenue that arose out of sale of chicks but not the profit earned and all these aspects were rightly considered by Tribunal and brushed aside Ex.P.11. Further, Tribunal also found that no document was produced on the side of the claimant to prove that the deceased was earning Rs.25,000/- from his agricultural activities.

12.1 Thus, Tribunal having considered all these aspects in a rightful manner, and brushed aside Ex.P.11, proceeded to fix the monthly income of the deceased at Rs.20,000/- in a hasty manner. This Court is at loss to understand as to on what basis, Tribunal has fixed the monthly income at Rs.20,000/- Though it is the contention of the learned counsel for the first respondent/claimant that the deceased was doing the aforesaid business for a long time, and hence, he would earn more than Rs.25,000/- per month, and in order to prove the income of the deceased, Accountant, Mr.Rajan, was examined as P.W.4, and Ex.P.11 was marked, there is no other substantiative documentary evidence to show that the deceased was earning Rs.25,000/- per month and in the absence of the same, this Court is inclined to take the monthly income of the deceased Rs.7,500/-. Hence, monthly income fixed by Tribunal at a sum of Rs.20,000/- is set aside and it is re-fixed at Rs.7,500/-. Since the Tribunal failed to add amount towards future prospects, and as per the ratio laid down by the Hon'ble Supreme Court, in the case of **Pranay Sethi (cited supra)** 40% is added towards Future

Prospects. Thus, by fixing the monthly income of the deceased at Rs.7,500/-; adding 40% towards future prospects; deducting 1/3 towards his personal expenses and by applying right multiplier of '16' (since the deceased was aged 33 years), the total Loss of Dependency of the deceased works to Rs.13,44,000/- in the manner as stated hereunder:-

Monthly income + 40% future prospects
(i.e. Rs.7,500/- + Rs.3,000) = Rs.10,500/-

(Deduction of 1/3rd x (Multiplier of '16')
towards personal expenses)

10,500 x12 x 1/3 x 16 = Rs.13,44,000/-

Loss of Dependency = Rs.13,44,000/-

12.1 So far as the grievance expressed by the learned counsel for the first respondent/claimant with regard to the low fixation of compensation towards Transportation at Rs.10,000/- is concerned, since it is stated that the due to the accident, deceased sustained grievious head injuries and primary brain stem injury and for such treatments, often, he went to Hospital and thereby, incurred more than Rs.10,000/- towards

Transportation, this Court is inclined to award additional sum of Rs.10,000/-. Accordingly, the compensation awarded by the Tribunal towards Transportation is modified and enhanced to Rs.20,000/-.

12.2 As far as the compensation awarded by the Tribunal towards Damages to Clothes and articles at Rs.25,000/- is concerned, since the same is high, this Court is inclined to modify the same. Accordingly, the sum of Rs.25,000/- awarded towards Damages to Clothes and Articles is hereby modified and reduced to Rs.15,000/-. Similarly, the compensation awarded by the Tribunal towards Love and Affection at Rs.2,00,000/- and Funeral Expenses at Rs.50,000/-are on the higher side and is against the ratio fixed by the Hon'ble Supreme Court, in **Pranay Sethi's case (cited supra)** this Court is inclined to modify the same. Accordingly, the compensation awarded by the Tribunal towards Love and Affection at Rs.2,00,000/- is modified and reduced to Rs.40,000/- and the compensation awarded towards Funeral Expenses at Rs.50,000/- is modified and reduced to Rs.15,000/-. Thus, this Court has modified the compensation awarded by the Tribunal under all other heads, excluding the compensation awarded under the head, Medical Bills at Rs.2,29,000/-.

12.3 Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

Sl.No.	***Heads***	***Tribunal Award***	***High Court Award***
1	Loss of Dependency	Rs.19,20,000/-	Rs.13,44,000/-
2	Transportation	Rs. 10,000/-	Rs.20,000/-
3	Medical Expenses	Rs. 2,29,000/-	Rs.2,29,000/
4	Damage to Cloth and articles	Rs. 25,000/-	Rs.15,000/-
5	Loss of Love and Affection	Rs. 2,00,000/-	Rs.40,000/-
6	Funeral Expenses	Rs. 50,000/-	Rs.15,000/-
	Total	**Rs.24,34,000/-**	**Rs.16,63,000 /-**

13. Consequently, the total compensation amount of **Rs.24,34,000/-** awarded by the Tribunal is hereby modified and reduced to **Rs.16,63,000/-** which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit.

14. In the result, this Civil Miscellaneous Appeal filed by the appellant/Insurance Company is partly allowed on the following terms:-

(i) The appellant, United India Insurance Company Ltd.,is directed to deposit the modified amount awarded by this Court equally along with interest and costs before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) As regards the award amount to be disbursed to the minor claimant is concerned, it is seen that, at the time of filing of the claim petition i.e., in the year 2011, the claimant was a minor aged 6, and by this time, his age is 17. Therefore, on deposit of the award amount being made by the Insurance Company, Tribunal shall transfer the entire award amount in the name of minor claimant, in any of the Nationalized Bank, in an interest bearing FD Account till the minor attains majority and the interest accrued thereon shall also be retained in his account, and once, the minor attained Majority, Tribunal shall take steps to settle the award amount to the claimant in accordance with law.

(iv) However, there shall be no order as to costs.

(v) Consequently, connected Miscellaneous Petition is closed.

10.07.2023

Internet : Yes / No

Index : Yes / No

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To

The Motor Accident Claims Tribunal

(Chief Judicial Magistrate), Tirupur District.

Krishnan Ramasamy, J.,

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C.M.A.No.2578 of 2019

10.07.2023