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CMA No. 1010 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1010 of 2022
and
C.M.P. No. 7478 of 2022

United India Insurance Co.Ltd.,
42, Mutt Street, First Floor,
Kumbakonam.

... Appellant

Versus

1.Gnanasoundari

2.Karpagavalli

3.Minor Annalakshmi

4.Minor Kanimozhi

(Minors are rep. by their mother
Gnanasoundari)

5.Ravichandran

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 18.12.2017 made in M.C.O.P. No. 114 of 2017 on the file of the Motor Accident Claims Tribunal (Sub-Court) at Jayamkondam (M.C.O.P. No. 54 of 2011 – Sub Court, Ariyalur).

For Appellant : Ms. I. Malar.

For Respondents : Mr. P. Parthikannan for R1 to R4.



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R5 - died.

J U D G M E N T

The appeal has been filed by the appellant challenging the award passed by the Tribunal in M.C.O.P. No. 114 of 2017 dated 18.12.2017.

2.The respondents 1 to 4 had filed a claim petition before the Tribunal stating that on 06.02.2011, while the deceased was standing in the Gangai konda Sozhapuram bus stand, a two wheeler bearing Registration No. TN 68 A 6261 driven by its rider in a rash and negligent manner hit the deceased, as a result of which the appellant sustained severe injuries and was admitted in the hospital and was taking treatment till 10.02.2011. However, he died on 16.02.2011. Thus, the respondents 1 to 4 filed claim petition seeking compensation.

3.The appellant filed counter denying all the averments made in the claim petition stating that the accident occurred due to the negligence of the deceased; that the deceased did not die due to the accident; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.



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WEB COPY 4.The fifth respondent remained exparte before the Tribunal.

5.The respondents 1 to 4 examined three witnesses as PW1 to PW3 on their side and marked Ex.P.1 to Ex.P.7. On the side of the second respondent, RW1 has been examined and Ex.R.1 has been marked.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the negligence of the rider of the two wheeler and directed the appellant to pay a sum of Rs.12,10,200/- as compensation to the respondents 1 to 4. Aggrieved by the said award, the appellant has preferred the instant appeal.

7.The learned counsel for the appellant submitted that the deceased was originally admitted in the hospital on 06.02.2011 and discharged on 10.02.2011. He died on 16.02.2011, six days after he was discharged from the hospital. The deceased was aged 58 years at the time of accident and in the absence of post mortem certificate or other evidence to prove the nexus between the accident and the death, the Tribunal



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erroneously held that the deceased died due to the accident. The learned counsel therefore submitted that the compensation awarded by the Tribunal on the premise that the deceased died due to the accident has to be set aside. The learned counsel further submitted that in any event, the compensation awarded is excessive. Though the Tribunal found that the deceased was aged 58 years, the Tribunal erroneously applied the multiplier 11. Further, the Tribunal awarded Rs.50,000/- each to the respondents 1 to 4 towards loss of love and affection which is on the higher side and prayed for setting aside the award of the Tribunal.

8. The learned counsel for the respondents 1 to 4, per contra, submitted that the death of the deceased was within five days from the date of discharge. The deceased suffered multiple injuries and also underwent a surgery. There is no evidence to suggest that the deceased suffered from any other ailment prior to the accident. Therefore, the Tribunal was right in holding that the deceased died due to the injuries suffered in the accident. The learned counsel further submitted that the notional income fixed by the Tribunal is meagre. The respondents 1 to 4 have established that the deceased was aged 52 years at the time of accident by marking Ex.P.6, ration card. However, the Tribunal



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considered the age found in discharge summary, legal heirship certificate and post mortem certificate to hold that the deceased was aged 58 years which is incorrect. The learned counsel therefore submitted that no ground has been made for interfering with the award of the Tribunal and prayed for dismissal of the appeal.

9. Pending appeal, the fifth respondent died. Since the fifth respondent remained ex-parte before the Tribunal, no notice is necessary to the legal heirs of the fifth respondent.

10. The questions involved in the instant appeal are;

- (i) Whether the deceased died due to the injuries suffered in the accident?
- (ii) Whether the compensation awarded by the Tribunal is just and reasonable?

11. The admitted facts are that the deceased was admitted immediately in the hospital after the accident on 06.02.2011 and he was discharged on 10.02.2011. The discharge summary issued by the hospital reveals that the surgery was done for the fracture suffered by the deceased. The nature of surgery as mentioned in the discharge summary



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is as follows;

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“Under SA with TQ control

By a midline incision patella tendon split.

Entry point made with bone avil. Guide wire inserted after reducing toe fracture. A 30 cm x 8 mm SSEPL nail hammered in through the guide wire. Distal and proximal locking done. Wound washed with saline and closed in layers.”

The deceased died five days later i.e., on 16.02.2011. PW1 in her evidence would state that the deceased died due to the injuries suffered in the accident; that the deceased complained of continuous head ache after the accident; that he underwent surgery; that on the date of his death, he complained of discomfort and he was taken to the hospital. The evidence of PW1 and the discharge summary states that the deceased had the following injuries at the time of admission.

“A 58 years male patient admitted with alleged H/O RTA

No H/O LOC / vomiting

H/O nasal bleeding (+) no H/O ear and throat bleeding

H/O and injury are noted as per AR copy made at

Jayamkondam GH



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*H/O chest pain and no H/O breathing difficulty
K/C/O CAD and HT since for 3 years”*

Considering the nature of injuries, the evidence of PW1 and the time between the accident and the death, this Court is of the view that the death occurred due to the injuries suffered in the accident. Therefore, the Tribunal was right in awarding compensation on that basis.

12.As regards the quantum of compensation, this Court finds that though the Tribunal found that the deceased was aged 58 years, had erroneously applied the multiplier 11. The learned counsel for the respondents 1 to 4 submitted that the deceased was aged 52 years. However, the documents produced on behalf of the respondents 1 to 4 such as post mortem certificate, death certificate and discharge summary shows that the deceased was aged 58 years. The age mentioned in the ration card cannot be the basis to determine the age as it is not clear as to when the ration card was issued. Therefore, the age fixed by the Tribunal as 58 years is correct and hence, the multiplier applicable is 9. Considering the age, avocation and the year of the accident, this Court is of the view that it would be reasonable to fix Rs.9,000 per month as



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notional income of the deceased. The appellants are entitled to 10% future prospects. Since there are four dependents, $\frac{1}{4}$ th has to be deducted towards personal expenses. Thus, the loss of income would be Rs.9000 + Rs.900 = Rs.9,900 (10% of Rs.9,000) X 12 X 9 X $\frac{3}{4}$ = Rs.8,01,900/-. The award of Rs.2,00,000/- under the head loss of love and affection is on the higher side and the same is reduced to Rs.1,60,000/-. Further, Rs.25,000/- awarded towards funeral expenses is on the higher side and the same is reduced to Rs.15,000/-. Rs. 5,000/- awarded towards loss of estate is meagre and the same is enhanced to Rs.15,000/-. The award of Rs.10,000/- towards transport expenses is just and the same is confirmed. Thus, the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	9,70,200	8,01,900	Reduced
2.	Transport Expenses	10,000	10,000	Confirmed
3.	Funeral Expenses	25,000	15,000	Reduced
4.	Loss of love and affection	2,00,000	1,60,000	Reduced
5.	Loss of estate	5,000	15,000	Enhanced
	Total	12,10,200	10,01,900	Reduced by Rs.2,08,300/-

13. With the above modification, this Civil Miscellaneous



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Appeal is partly allowed and the compensation awarded by the Tribunal

at Rs.12,10,200/- is hereby reduced to Rs.10,01,900/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The appellant is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective shares of the award amount as per the apportionment made by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minor respondents 3 and 4 are directed to be deposited in the interest bearing Fixed Deposit in any of the nationalized bank till they attain majority and the first respondent is permitted to withdraw the accrued once in three months. The appellant is permitted to withdraw the excess amount lying in the deposit, if the entire award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed.

17.08.2023

ay



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal,
Sub-Court,
Jayamkondam.

SUNDER MOHAN, J

ay

2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.

C.M.A. No.1010 of 2022
and
C.M.P. No. 7478 of 2022



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