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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.842 of 2019

The Branch Manager,
M/s.United India Insurance Company Limited,
D.No.95-1st Floor, Big Street,
Thiruvannamalai. ... Appellant/2nd Respondent

Vs.

1.S.Bagya Roopavathy

2.Gnanaraj

3.Manohar Rajadurai

4.Muthukumar ...1 to 4 Respondents/Petitioners

5.Mathi ...4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to set aside the order passed by Learned the Motor Accident Claims Tribunal/Additional Sub Court, Tenkasi in M.C.O.P.No.5 of 2013 dated 08.12.2017 as against the appellant.

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For Appellant : Mr.N.Dilip Kumar

For R-1 to R-4 : Mr.S.R.Sathan Boopathy

For R-5 : No Appearance

JUDGEMENT

The present Appeal has been filed by an Insurance Company challenging the negligence and quantum arising out of the award in M.C.O.P.No.5 of 2013 on the file of Motor Accident Claims Tribunal, Thenkasi.

2. The claimants are the sons and daughters of one deceased Subbiah who is said to be a pensioner and working as a Manager in a School. According to the claimants, while the deceased was driving in a two wheeler from South to North and taking a turn towards right side, he was hit by a TataSumo coming from North to South. According to the claimants, the vehicle was driven from North to South in a rash and negligent manner and this accident has happened only due to the said rash and negligent driving of the driver of the TataSumo.

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3. The owner of the vehicle has remained ex-parte and counter was filed only by the Insurance Company disputing the negligence and quantum claimed in the Claim Petition.

4. The Tribunal after considering the oral documentary evidence arrived at a following findings:

(i) There is no proof on record to establish that the deceased was working in a School and earning a sum of Rs.9,000/- per month. The Court has taken the notional income at Rs.8,000/- per month.

(ii) It has deducted 1/4th towards personal expenses of the deceased who was 70 years old at that point of time and it has applied the correct multiplier namely 5. The Tribunal has proceeded to award Rs.3,60,000/- towards loss of income and Rs.10,000/- to each one of the claimant for loss of love and affection, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.10,000/- towards transport expenses and Rs.80,060/- towards medical expenses as per the bill. This award is under challenge in the present appeal.

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5. According to the learned counsel appearing for the appellant, there was negligence only on the part of the deceased who was attempting to turn right side without properly considering the fact that it is Thenkasi Madurai National Highways. Therefore, negligence should be attributed only to the deceased person and the Insurance Company of the TataSumo vehicle cannot be imposed with any liability to pay compensation amount. He further contended that the deceased was 70 years old at the time of accident and all the claimants are his major sons and daughter who were residing away from the deceased. Further, no proof has been placed before the Court to establish the fact that the deceased was employed and he was receiving the salary of Rs.9,000/- per month. Hence, he prayed for setting aside the award of the Tribunal.

6. Per contra, the learned counsel appearing for the respondents have contended that the deceased is a retired High School Headmaster and was working as a Manager in a School and was receiving the salary of Rs.9,000/-. Even the major dependants namely, the sons and daughter are eligible to get compensation amount for the death of their father. He further contended that though they have prayed for Rs.9000/- income per

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month, the Tribunal has only taken into consideration Rs.8000/- per month and therefore, the said award may be confirmed.

7. He further pointed out that for the loss of love and affection, only Rs.10,000/- has been awarded to each one of the claimants. Therefore, readjusting the amount of compensation under different heads, the total award amount may be confirmed.

8. I have carefully considered the submissions made on either side.

9. Though the Insurance Company has raised the plea of negligence on the part of the deceased person, after going through the sketch and other records, this Court is of the view that negligence cannot be attributed to the deceased person and the accident had taken place only due to the rash and negligence driving of the offending vehicle belonging to the first respondent in the Claim Petition which is insured with the second respondent.

10. Though the claimants have pleaded that their father was working as a Manager in the School, no records have been placed before

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the Court to establish the same. Therefore, the Court was constrained to take into consideration a sum of Rs.8,000/- as notional income. When there are no records, the notional income of a 70 year old man cannot be taken into consideration at the rate of Rs.8,000/- per month. Therefore, this Court is of the view that the notional income could be taken at the rate of Rs.6,000/- per month. That apart, there are 4 claimants, therefore the Tribunal was not right in deducting just 1/4th amount towards personal expenses. The Tribunal ought to have deducted 50% towards personal expenses. Considering the above said fact, the income could be arrived at the rate of Rs.3,000/- per month.

11. Calculating the monthly income at Rs.3,000/- and applying the multiplier of 5, the loss of income would come to Rs.1,80,000/-. However, the Tribunal was not right in awarding just Rs.10,000/- towards loss of love and affection to each one of the claimants. Therefore, this Court is of the considered view that Rs.40,000/- could be awarded to each one of the claimants. Totally, a sum of Rs.1,60,000/-can be awarded towards loss of love and affection. This Court is of the view that the compensation awarded under the other heads are not liable to be interfered with. Therefore, adjusting the heads namely, the loss of

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income and loss of love and affection, the total compensation amount would come to Rs.4,60,060/- (Rupees Four Lakhs Sixty Thousand and Sixty only). Each claimant shall be entitled to receive Rs.1,15,015/-. The said amount shall be paid by the appellant/Insurance Company with interest at the rate of 7.5%.

12. Hence, the Civil Miscellaneous Appeal is allowed and award of the tribunal is modified to the extent as stated above. No costs.

09.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal/
Additional Sub Court, Tenkasi.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR, J.

Nsr

Order made in
C.M.A(MD)No.842 of 2019

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