IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.778 of 2023
and C.M.P.No.7142 of 2023

The Oriental Insurance Co-Ltd.,
Rep. by its Authorised Signatory,
Vijayalakshmi Complex,
3rd Party Hub Office, 1st Floor, Phase II,
Sathuvachari, Vellore – 9. .. Appellant

Vs.

1.S.Narasamma

2.Venkatesan

3.R.Latha

4.S.Praveen

5.S.Raja

6.A.Aswin .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and Judgment dated 22.08.2022 passed in M.C.O.P.No.781 of 2019 by the Motor Accident Claims Tribunal / 1st Additional District and Sessions Judge, Vellore and allow the appeal.

For Appellant : Mr.G.Ponnambalathiyagarajan
For RR 1 to 5 : Mr.R.Nalliyappan

JUDGMENT

The Insurance Company has filed the present appeal aggrieved by the award passed by the Motor Accident Claims Tribunal / 1st Additional District and Sessions Judge, Vellore, in M.C.O.P.No.781 of 2019 dated 22.08.2022.

2.The claimants who are the wife, sons and daughter of the deceased Sundaram filed the claim petition on the ground that the deceased Sundaram on 07.10.2019 was riding the two wheeler at Vallimalai – Thiruvalam road and at about 15.00 hours, the offending vehicle which was also a two wheeler, came from the opposite direction and it was driven in a rash and negligent manner and had rammed the two wheeler that was driven by the deceased as a result of which, the deceased was thrown out of the vehicle and he sustained grievous injuries. He died on the spot. FIR was registered in Crime No.397 of 2019 against the rider of the offending vehicle. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the rider of the offending vehicle. The Tribunal having rendered such a finding, proceeded further to determine the total compensation at Rs.19,44,000/- under various heads as follows:

1.Loss of Income	-	Rs.17,82,000/-
2.Towards spouse consortium to the 1st petitioner	-	Rs.44,000/-
3.Towards loss of Love and Affection to the petitioners 2 to 5	-	Rs.80,000/-
4.Loss of estate	-	Rs.16,500/-
5.Funeral expenses	-	Rs.16,500/-
6.Transport expenses	-	Rs.5,000/-
		Rs.19,44,000/-

4.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5.The Insurance Company questioning the quantum of compensation fixed by the Tribunal, has filed the present appeal before this Court.

6.Heard the learned counsel for the appellant and the learned counsel for respondents 1 to 5.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.This Court has also carefully gone through the award passed by the Tribunal.

9.The main grounds that were urged on the side of the appellant Insurance Company are:

> a.)The deceased had completed 60 years at the time of his demise and therefore, the Tribunal ought to have taken '7' multiplier and instead, the Tribunal applied '9' multiplier.
>
> b.)Since the deceased had already crossed 60 years, the Tribunal ought not to have added 10% towards future prospects and

c.)The Tribunal adopted a wrong method while calculating the compensation under the head of loss of income.

10.In so far as the first issue is concerned, the Tribunal took into consideration the pension payment order which was marked as Ex.P13, wherein it has been disclosed that the date of birth of the deceased was 01.06.1959. The deceased died on 07.10.2019. Therefore, on the date of his demise, the deceased was 60 years 4 months and 6 days.

11.The first question is with regard to the multiplier to be adopted. It is not in dispute that the deceased had not reached 61 years and he had merely completed 60 years at the time of the accident. The multiplier '7' will apply only from the range of 61 years and above. Therefore, this Court holds that the Tribunal had applied the correct multiplier in this case.

12.The next issue pertains to the income that was fixed by the Tribunal. The Tribunal took into account the pension that was drawn by the deceased at Rs.21,639/- every month. Ex.P12 and Ex.P13 substantiate the same and it is seen that the deceased was an Ex-Serviceman. It was further claimed that the deceased was working as a Security Guard in Vellore Institute of Technology and was drawing a salary of Rs.30,000/- per month. To substantiate the same, the claimants relied upon Ex.P11. The Tribunal found that no competent person was examined to substantiate Ex.P11 and therefore, thought it fit to fix the notional monthly income earned by the deceased as a Security Guard as Rs.10,000/-. Thereafter, the Tribunal has calculated the total income at Rs.20,000/- per month.

13.The above calculation done by the Tribunal is not correct. The first step to be taken is to see as to what was the actual income earned by the deceased during his lifetime. The deceased was earning a sum of Rs.21,639/- as monthly pension. The Tribunal has fixed a sum of Rs.10,000/- as the income earned by the deceased by working as a Security Guard. Thus, the monthly income that was earned by the deceased during his lifetime is Rs.31,639/- (Rs.21,639/- + Rs.10,000/-). Considering the size of the family, 1/4th must be deducted towards personal expenditure of the deceased. If this amount is deducted from Rs.31,639/-, it comes to Rs.23,730/-. It is also evident from the stand taken by P.W.1 that she was drawing a sum of Rs.12,000/- as family pension. Hence, this amount must be deducted from Rs.23,730/-. If that is done, the total income which the dependants will be entitled to is Rs.11,730/-. This should have been taken as the monthly income and the loss of income should have been calculated.

14.In so far as the future prospects are concerned, there is no doubt that the deceased had completed 60 years. Once the deceased has completed 60 years, there is no question of adding any future prospects. The test that is applied for determining the multiplier cannot be adopted here. The judgment of the Hon'ble Supreme Court makes it clear that on the completion of 60 years, there is no scope for adding future prospects. Therefore, 10% future prospects that was added by the Tribunal also requires the interference of this Court.

15.In the light of the above discussion, the compensation under the head of loss of income is calculated as follows:

Monthly pension received	:	Rs.21,639/-
Notional monthly income fixed	:	Rs.10,000/-
Total monthly income earned	:	Rs.31,639/- (Rs.21,639/- +

Rs.10,000/-)

After deducting 1/4th for personal expenses	:	Rs.23,730/-
Family pension received	:	Rs.12,000/-
Monthly income fixed	:	Rs.11,730/-
Multiplier to be adopted	:	9
Loss of Income Rs.11,730/- X 12 X 9	:	Rs.12,66,840/-

16.The compensation that has been granted under other heads are reasonable and it does not require the interference of this Court. The compensation that was granted by the Tribunal is accordingly modified as follows:

1.Loss of Income	-	Rs.12,66,840/-
2.Towards spouse consortium to the 1st petitioner	-	Rs.44,000/-
3.Towards loss of Love and Affection to the petitioners 2 to 5	-	Rs.80,000/-
4.Loss of estate	-	Rs.16,500/-
5.Funeral expenses	-	Rs.16,500/-
6.Transport expenses	-	Rs.5,000/-
		Rs.14,28,840/-

17.Accordingly, the award passed by the Tribunal is modified and the total compensation fixed by the Tribunal at Rs.19,44,000/- is reduced to Rs.14,28,840/- with interest at the rate of 7.5% per annum. When this appeal was entertained, the appellant was directed to deposit 50% of the award amount along with accrued interest. Hence, the remaining amount shall be deposited with interest at the rate of 7.5% per annum within a period of four (4) weeks from the date of receipt of a copy of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

18.In the result, this Civil Miscellaneous Appeal is partly allowed in the above terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

27.06.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

N.ANAND VENKATESH, J.

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To

1.The I Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
I Additional District and Sessions Court,
Vellore.

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

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