IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.01.2024	Pronounced on 19.01.2024

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1962 of 2021
and
C.M.P.No.10591 of 2021

M/s.United India Insurance Company Limited
Legal Department
'Sillingi Buildings'
No.40, Greams Road
Chennai 600 006 ... Appellant

Vs.

1.S.Kumari
W/o Late V.C.Sundar Kumar
2.S.Selvakumar
S/o.Late V.C.Sundar Kumar
3.S.Nisha
D/o.Late V.C.Sundar Kumar
All are residing at
Plot No.4, Door No.75-H
Saminathan Nagar VI Street
Kottivakkam, Tiruvanmiyur
Chennai 600 041

4.D.Elangovan,
S/o Dayalan
Sri Backialakshmi Enterprises
No.34, Bye-Pass Road
Poonamallee
Chennai 600 006 ... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Decree and Judgment dated 19th November, 2020 passed in MCOP.No.915 of 2019, by the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.N.M.Elumalai (for R1 to R3)

R4 - No appearance

J U D G M E N T

The Appeal has been filed against the Decree and Judgment dated 19th November, 2020 passed in MCOP.No.915 of 2019, by the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes) at Chennai.

2.The Insurance Company is the Appellant herein. Challenging the award passed in MCOP.No.915 of 2019, by the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes) at Chennai, the Insurance Company preferred this Appeal on the point of quantum of compensation only. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.Heard the learned counsel for the Insurance Company and the learned counsel for the claim Petitioners.

4.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the 4th Respondent/1st Respondent's vehicle, insured with the Appellant/2nd Respondent are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court that the accident taken place due to the rash and negligent driving of the driver of the 4th Respondent/1st Respondent's vehicle, insured with the Appellant/2nd Respondent are hereby confirmed.

5.During the trial, on the side of the claim Petitioners, PW1 & PW2 were examined & Ex.P.1 to Ex.P.17 were marked and on the side of the Respondents, none was examined and no document was marked.

6.The date of accident is 16.01.2019. As per Ex.P.8/driving license, the date of birth of the deceased is 16.10.1963 and therefore, at the time of the accident, the deceased viz., V.C.Sundar Kumar, is aged about 55 years. Accordingly, the Tribunal adopted right multiplier of '11' as per the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma & Others .Vs. Delhi***

Transport Corporation & another, reported in ***2009 (2) TNMAC 1 (SC)*** and deducted 1/3rd towards personal expenses of the deceased. The Tribunal has added 10% to the monthly income of the deceased towards future prospects. The same are hereby confirmed.

7.Learned counsel for the Insurance Company would contend that for running a Mens Parlour, license from the Government is necessary. But the same was not produced before the Court below.

8.As per PW1, the deceased was running a beauty parlour in the name and style of "Stylein Mens Parlour" and also doing Real Estate business in the name and style of "Shri Amman Real Estate" and earned Rs.40,000/- per month. To substantiate their claim, they have produced Ex.P.5/Visiting Card of Shri Amman Real Estate, Ex.P.6/Rental Agreement of Mens Parlour and Ex.P.7/copy of Membership card issued by Chennai Properties Consultants Welfare Association. But they have not produced any income proof i.e., Bank Statement or Income Tax Returns of the deceased and also not examined any witness to that effect.

9.Even though Ex.P.6/rental agreement was produced, no one related to the said document was examined to prove the avocation of the deceased. Neither Ex.P.5 nor Ex.P7 advanced the case of the claim Petitioners that the deceased was doing real estate business and making money out of it. Hence, I find that the notional income fixed by the Tribunal at Rs.20,000/- is on the higher side and it has to be fixed at Rs.15,000/- only. Though the second and third Petitioners are married son and daughter, they are also entitled to get compensation.

10.Hence, the pecuniary loss sustained by the claim Petitioners are re-assessed as follows:

[Rs.15,000/- + (10% of 15,000/-)] x 2/3 x 12 x 11 = Rs.14,52,000/-

11.The first claim Petitioner as a wife of the deceased is entitled for Rs.40,000/- towards consortium and the claim Petitioners 2 & 3 are entitled for Rs.40,000/- each towards loss of love and affection. A sum of Rs.15,000/- is awarded towards loss of estate, a sum of Rs.15,000/- is awarded towards funeral expenses and a sum of Rs.15,000/- is awarded towards transportation charges.

S.No.	*Head*	*Amount (Rs.)*
1	Pecuniary loss	1452000
2	Loss of consortium	40000
3	Loss Love and Affection	80000
4	Funeral expenses	15000
5	Loss of Estate	15000
6	Transportation	15000
	Total Compensation	1617000

In total, the claim Petitioners are entitled to a sum of Rs.16,17,000/- (Rupees sixteen lakh and seventeen thousand only) and the interest awarded by the Tribunal at the rate of 7.5% per annum is also confirmed.

12.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, reducing the compensation from Rs.20,31,000/- to Rs.16,17,000/- to the extent indicated above. Consequently, connected Miscellaneous Petition is closed. No costs.

(ii) the Insurance Company is directed to deposit the reduced award amount, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, the claim Petitioners are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the Insurance Company is permitted to withdraw the amount already deposited, less the reduced award amount, if any, with accrued interest.

19.01.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To
The Chief Judge
Court of Small Causes
Chennai

RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

C.M.A.No.1962 of 2021
and
C.M.P.No.10591 of 2021

Dated: 19.01.2024