IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **25.06.2024**

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2487 of 2021
and
C.M.P.No.14318 of 2021

The General Manager,
IFFCO TOKIO General Insurance Company Ltd.,
No.58-A, II Floor, Anjaneya Tower,
Pavazha Nagar, Puducherry. ... Appellant

Vs.

1.Sugnabai
2.Srinivasan
3.Arun
4.Thangavelan ... Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Award and Decree dated 15.06.2021 made in M.C.O.P. No.575 of 2019 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Puducherry.

For Appellant : Ms.Harini
for M/s.M.B.Gopalan Associates

For Respondents : Mr.T.Ananthasekar
for R1 and R2

R3 and R4 - No Appearance

JUDGMENT

This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal.

2. The appellant Insurance Company has primarily, challenged the impugned award on the ground that the Tribunal has erroneously fixed the notional monthly income of the deceased at Rs.33,022/- despite the fact that the second respondent / second claimant, who is the son of the deceased has deposed during his cross examination that his mother, viz., the first respondent / first claimant is getting family pension amounting to Rs.24,000/- after the death of his father, the accident victim.

3. According to the appellant Insurance Company, the Tribunal ought have deducted Rs.24,000/- from and out of the sum of Rs.33,022/- while fixing the notional monthly income of the deceased, but has erroneously failed to do so under the impugned award.

4. The learned counsel for the appellant Insurance Company reiterated the grounds of appeal filed along with this appeal during the course of her

submissions. On the other hand, the learned counsel for the respondents / claimants would submit that there is no proof to show that the respondents / claimants are earning family pension subsequent to the death of the deceased though the son of the deceased during the course of his cross examination has stated that his mother is receiving family pension amounting to Rs.24,000/-.

5. The learned counsel for the appellant Insurance Company would also submit that the respondents / claimants are also owning agricultural properties and earning agricultural income and if that is also taken into consideration, the sum of Rs.33,022/- fixed as notional monthly income of the deceased by the Tribunal is a correct assessment.

6. Admittedly, as seen from the deposition of PW1, son of the deceased, who is the second respondent herein has admitted that his mother viz., the first respondent / first claimant is getting family pension amounting to Rs.24,000/- subsequent to the death of the deceased. In the claim petition, the respondents / claimants have pleaded that apart from the income of the deceased through his employment, the deceased was also owning the

agricultural lands and was earning agricultural income. Since there is a categorical admission made by the second respondent / second claimant in his cross examination that his mother viz., the first respondent / first claimant is getting family pension amounting to Rs.24,000/- after the death of the deceased, necessarily, the said amount has to be deducted from and out of the monthly income fixed by the Tribunal at Rs.33,022/-. However, the Tribunal has erroneously failed to take into consideration the agricultural income, which the deceased was earning when he was alive for the purpose of assessing the notional monthly income.

7. This Court, after deducting the sum of Rs.24,000/- which the first respondent / first claimant is receiving by way of family pension after the death of the deceased from and out of the sum of Rs.33,022/-, and since the Tribunal has not assessed the agricultural income of the deceased, is of the considered view that a sum of Rs.12,000/- can be assessed as the notional monthly income of the deceased after taking into consideration the fact that the Tribunal has erroneously failed to deduct a sum of Rs.24,000/- from and out of Rs.33,022/- which the deceased was earning as a retired school teacher. The accident happened in the year 2019. This Court fixes the

notional monthly income of the deceased at Rs.12,000/- per month only after taking into consideration the age, avocation and year of the accident.

8. Accordingly, the compensation awarded by the Tribunal towards loss of income to the respondents / claimants is reduced from Rs.18,49,260/- to Rs.6,72,000/- as detailed hereunder:

Heads	***Amount awarded by the Tribunal in Rs.***	***Amount awarded by this Court in Rs.***
Loss of Income	[33,022 - (33,022 x 1/3)] =22,015 x 12 x 7	[12,000 - (12,000 x 1/3)] =8,000 x 12 x 7
Total	**18,49,260**	**6,72,000**

9. In so far as the compensation awarded by the Tribunal under various other heads viz., spousal consortium for first respondent, parental consortium for second and third respondents, funeral expenses and loss of estate are concerned, the same is a just compensation, which does not call for any interference by this Court.

10. For the foregoing reasons, the compensation payable by the appellant Insurance Company is re-worked in the following manner:

Heads	***Amount awarded by the Tribunal in Rs.***	***Amount awarded by this Court in Rs.***
Loss of Income	18,49,260	6,72,000

Heads	*Amount awarded by the Tribunal in Rs.*	*Amount awarded by this Court in Rs.*
Spousal consortium for first respondent	44,000	44,000
parental consortium for second and third respondents	88,000	88,000
funeral expenses and loss of estate	33,000	33,000
Total	**20,14,260**	**8,37,000**
Rounded of to	**20,15,000**	**8,37,000**

11. In the result, this Civil Miscellaneous Appeal is **partly allowed** by reducing the award amount from **Rs.20,15,000/-** to **Rs.8,37,000/-**. The appellant insurance company is directed to deposit the reduced award amount of **Rs.8,37,000/-**, after deducting the amount already deposited, if any, together with interest at the rate of **7.5%** per annum from the date of the claim petition till the date of deposit and cost to the credit of **M.C.O.P. No.575 of 2019** on the file of the **Motor Accidents Claims Tribunal, III Additional District Court, Puducherry**, within a period of **four weeks** from the date of receipt of a copy of this judgment.

12. The claimants are permitted to withdraw the said amount, once it is deposited by the appellant /Insurance Company, by filing an appropriate

application before the Tribunal. On such application being made, the Tribunal shall transfer the amount lying to the credit of **M.C.O.P. No.575 of 2019** to the bank account of the claimants directly through NEFT / RTGS, within a period of **one week** thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

25.06.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1. The Motor Accidents Claims Tribunal, III Additional District Court, Puducherry.

2. The Section officer, Record Section, High Court of Madras.

ABDUL QUDDHOSE. J.,

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