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CMA NO.371 OF 2022**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED : 26.06.2024****CORAM:****THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

CMA NO.371 OF 2022
AND CMP NO.2571 OF 2022

M/s.United India Insurance Co. Ltd.,
 Subramaniam Building, II Floor,
 No.1, Club House Road,
 Anna Salai, Chennai – 600 002.

... Appellant /
 2nd Respondent

Versus

1.R.Anjamani
 2.B.Rajendran

... Respondents 1 &2 /
 Petitioners

3.M.J.Sagayaraj
 HP Sriram City Union Finance Ltd.,
 No.27/14, Carpenter Street,
 Sembium, Perambur, Chennai – 600 011.

... 3rd Respondent /
 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award and decree dated 10.01.2020 made in M.C.O.P.No.7316 of 2016 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar
 For Respondents 1&2 : Mr.C.Richard Sureshkumar

J U D G M E N T



CMA NO.371 OF 2022

WEB COPY

Feeling aggrieved with the Award passed by the 'Motor Accident Claims Tribunal (II Court of Small Causes), Chennai' [henceforth 'Tribunal' for brevity] in M.C.O.P.No.7316 of 2016, the second respondent / Insurance Company has preferred this Civil Miscellaneous Appeal.

2.For the sake of convenience, the parties will hereinafter referred to as per their rank in the Motor Claim Original Petition.

3.The case of the petitioners is that on September 27, 2016 at about 12.30 hours, the petitioners' son R.Babu was travelling as a pillion rider on the Motorcycle bearing Registration No.TN05-BC-6010 from Chennai towards Tada at NH-16 Road. While nearing Akkampet Village, due to the rash and negligent riding of the rider of the Motorcycle, the petitioners' son fell off the bike onto the road. Due to the accident, the petitioners son sustained severe head injuries and immediately, he was admitted in Global Hospital and then referred to Rajiv Gandhi Government General Hospital, Chennai for further treatment where he succumbed to the injuries on the same



day viz., September 27, 2016. At the time of the accident, the petitioners' son was working as a Computer Operator in a Private concern. Hence, the petitioners filed a Motor Claim Original Petition before the Tribunal seeking compensation for a sum of Rs.75,00,000/- (Rupees Seventy Five Lakh Only). The first respondent is the owner of the vehicle. The first respondent's vehicle was insured with the second respondent. Hence, the petitioners seek compensation against both respondents.

4.The first respondent - owner of the vehicle remained *ex-parte* before the Tribunal.

5.The second respondent/Insurance Company filed a counter whereby, it denied the age, occupation and monthly income of the deceased. Further, the second respondent / Insurance Company denied the manner of the accident.

6.At trial, on the side of the petitioners, the first petitioner was examined as P.W.1 and one Mr.Mageshkumar, was examined as P.W.2 and Ex-P.1 to Ex-P.12 were marked. On the side of the second respondent, one Mr.Senthilvel was examined as R.W.1 and Ex-R.1 to Ex-R.3 were marked.



CMA NO.371 OF 2022

WEB COPY

7. After hearing both sides, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent riding of the rider of the first respondent. The Tribunal further held that though the petitioners have stated that their son / deceased earned a sum of Rs.15,000/- per month as salary, they have not produced any documents to substantiate their claim. Hence, the Tribunal fixed a sum of Rs.10,000/- as notional income of the petitioners son / deceased R.Babu. At the time of accident, the petitioners' son was a Bachelor. Hence, the Tribunal awarded a sum of Rs.19,50,000/- as compensation under various heads as tabulated hereunder:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1	Loss of Dependency	Rs.16,20,000.00
2	Loss of Love and Affection	Rs.1,00,000.00
3	Filial Consortium	Rs.2,00,000.00
4	Medical Expenses	Rs.15,000.00
5	Funeral Expenses	Rs.15,000.00
	Total	Rs,19,50,000.00

8. Challenging the quantum of compensation, the second respondent / Insurance Company has preferred this Civil Miscellaneous



CMA NO.371 OF 2022

Appeal.

WEB COPY

9.Learned counsel for the appellant / Insurance Company submits that at the time of accident, the deceased was 18 years old. The petitioners have not produced any documents to show that their son R.Babu / deceased was working as a Computer Operator. Under such circumstances, fixing a sum of Rs.10,000/- as notional income is erroneous. Further, the Tribunal awarded a sum of Rs.1,00,000/- under the head 'loss of love and affection' and awarded a sum of Rs.2,00,000/- under the head 'filial consortium' which are all not in consonance with the dictum laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi & Others [2017 (16) SCC 680]***. Accordingly, he prayed to allow this Civil Miscellaneous Appeal.

10.Per contra, learned counsel appearing for the respondents 1 and 2 / petitioners submitted that at the time of accident, the deceased was 19 years old and was earning a sum of Rs.15,000/- per month. However, the petitioners were not able to produce the salary certificate of the deceased.



CMA NO.371 OF 2022

Considering the age of the deceased and cost of living, he submitted that the notional income fixed by the Tribunal is on the lower side. Accordingly, he prayed to dismiss the appeal.

11.This Court has considered the submissions made on either side and perused the materials available on record.

12.There is no dispute with regard to the manner of the accident. The petitioners' son / deceased was a pillion rider and the insurance policy is a package policy. Hence, the policy covers the pillion rider also. On perusal of the records, it is seen that the petitioners did not produce any documents to show that their son / deceased was working as a Computer Operator. They have not produced any document to show the deceased's educational qualification. At the time of accident, the deceased-R.Babu was 18 years old. Considering the age of the deceased, this Court is of the view that the deceased could have easily earned a sum of Rs.10,000/- per month in the year 2016. Therefore, the Tribunal is right in fixing the notional income as Rs.10,000/- per month.



WEB COPY

13.The Tribunal erroneously awarded a sum of Rs.16,20,000/- under the head of 'loss of dependency'. As per the judgment in ***Pranay Sethi's case (cited supra)*** future prospects shall be fixed at 40%. But, the Tribunal fixed future prospects at 50% which is erroneous. Considering the age of the deceased, 40% future prospects will be just and reasonable. The deceased was a Bachelor. Hence, deduction under personal expenses shall be 1/2 of the notional income. Thus, loss of dependency would come as follows:

Rs.10,000 (Notional monthly income) + Rs.4,000 (future prospects) X

$$1/2 \times 12 \times 18 = \text{Rs.15,12,000/-}.$$

14.It is true that the Tribunal erroneously awarded a sum of Rs.1,00,000/- under the head 'loss of love and affection'; and also Rs.2,00,000/- under the head 'filial consortium'. As per ***Pranay Sethi's case (cited supra)***, the petitioners are entitled only a sum of Rs.80,000/- as filial consortium. Hence, this Court is inclined to allow the appeal in part. Accordingly, this Court modifies the Award as hereunder:



CMA NO.371 OF 2022

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1	Loss of Dependency	Rs.15,12,000.00
2	Filial Consortium	Rs.80,000.00
3	Medical Expenses	Rs.15,000.00
4	Loss of Estate	Rs.15,000.00
5	Transportation charges	Rs.15,000.00
5	Funeral Expenses	Rs.15,000.00
	Total	Rs,16,52,000.00
	(Rupees Sixteen Lakhs Fifty Two Thousand Only)	

Accordingly, the Award of the Tribunal is hereby reduced from Rs.19,50,000/- to Rs.16,52,000/-. The petitioner is entitled to interest at the rate of 7.5% per annum from the date of original claim petition till the date of deposit.

15.The second respondent – Insurance Company is directed to deposit the modified amount of Rs.16,52,000/- together with interest, less the amount, if any already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment.

16.On such deposit being made, the petitioners / respondents 1 and 2 are permitted to withdraw their respective share as apportioned by the Tribunal.



CMA NO.371 OF 2022

WEB COPY

17.This Civil Miscellaneous Appeal is partly allowed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

26.06.2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

The II Judge
Motor Accidents Claims Tribunal
II Court of Small Causes
Chennai.



WEB COPY



CMA NO.371 OF 2022

R.SAKTHIVEL, J.

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CMA NO.371 OF 2022

26.06.2024