IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.598 of 2021 and C.M.P. No.3690 of 2021

The Oriental Insurance Company Limited,
Oriental House,
2nd Floor, Old No.115,
New No.216, Prakasam Road,
Chennai-600 108. .. Appellant

vs.

1.Jothi

2.D.Paul Varnan

3.V.Mathiyalagan .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 13.12.2019 made in M.C.O.P. No.222 of 2015 on the file of the Motor Accidents Claims Tribunal, (II Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.K.Varadha Kamaraj
for R1 and R2
R3-dismissed

JUDGMENT

This appeal has been filed by the appellant/Insurance Company, challenging the impugned award on the ground that the quantum of compensation awarded by the Tribunal is excessive.

2.The Tribunal, under the impugned award, has directed the Insurance Company to pay the respondents 1 and 2/claimants a compensation of Rs.33,56,600/- as detailed hereunder:

S.Nos.	Head	Amount awarded by the Tribunal
1.	Loss of dependency	Rs.31,41,600.00
2.	Loss of love and affection	Rs. 1,00,000.00
3.	Filial consortium	Rs. 1,00,000.00
4.	Funeral expenses	Rs. 15,000.00
	Total	Rs.33,56,600.00

3.According to the appellant/Insurance Company, the Tribunal has erroneously fixed the monthly income of the deceased at Rs.22,000/- despite the fact that the respondents 1 and 2/claimants had produced Income Tax Return for the deceased for the period of two years prior to the date of the accident. The appellant/Insurance Company contends that since the respondents 1 and 2/claimants have themselves admitted in their evidence that the business of the deceased continues even after his death, the question of fixing the monthly income of the deceased at Rs.22,000/- based on the Income Tax Return is incorrect. The appellant/ Insurance Company also contends that the quantum of compensation awarded by the Tribunal under various heads under the impugned award is also excessive and it has to be reduced.

4.In support of the appellant's contention that the fixation of the monthly income of the deceased at Rs.22,000/- by the Tribunal is incorrect, learned counsel for the appellant drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of **New India Assurance Co. Ltd. vs. Yogesh Devi and others reported in 2012 (1) TN MAC 371 (SC)**. Relying upon the said decision, the learned counsel for the appellant/Insurance Company would submit that since the business of the deceased continues even after the death of the deceased and the said business has been running by the brothers of the deceased as the deceased was a bachelor, the Tribunal has committed an error in accepting the Income Tax Return filed by the the respondents 1 and 2/claimants for the purpose of assessing the monthly income of the deceased at Rs.22,000/-. Learned counsel for the appellant/Insurance

Company drew the attention of this Court to the Income Tax Return, which was marked as Ex.P4 before the Tribunal and would submit that the said Income Tax Return pertains to the period, two years prior to the date of the accident. He would submit that no Income Tax Return has been filed by the respondents 1 and 2/claimants for the years 2013 and 2014 as the date of the accident is on 23.08.2014.

5.Learned counsel for the respondents 1 and 2/claimants, in support of the impugned award, would submit that only based on the evidence available on record, which includes the Income Tax Return, the Tribunal has correctly assessed the compensation payable by the appellant/Insurance Company to the respondents 1 and 2/claimants. In support of his contention that even the dependants are entitled to compensation for loss of income even if businesses or properties of the deceased were bequeathed to them, learned counsel for the respondents 1 and 2/claimants relied upon a judgment of the Hon'ble Supreme Court in the case of **K.Ramya and others vs. National Insurance Company Limited and another reported in 2022 Live Law (SC) 816**.

6.In all motor accident claims, the Tribunal will have to award just compensation to the accident victims. In the case on hand, admittedly, the respondents 1 and 2/claimants had produced Income Tax Return, which was marked as Ex.P4 for the period two years prior to the date of the accident. The said Income Tax Return discloses that the deceased was earning Rs.22,000/- per month from and out of his provision store business.

7.Though the learned counsel for the appellant had relied upon a decision rendered by the Hon'ble Supreme Court reported in 2012 (1) TN MAC 371 (SC) in New India Assurance Co. Ltd. vs. Yogesh Devi and others, referred to supra, the said decision does not stipulate that the Tribunal cannot assess the loss of income of the respondents 1 and 2/ claimants just because the business of the deceased has not ended after the death of the deceased and it continues even thereafter. However, it was made clear in the judgment of the Hon'ble Supreme Court that the respondents 1 and 2/claimants are expected to adduce evidence as to what would be the quantum of depletion in the income subsequent to the date of death of the deceased.

8.In the case on hand, the respondents 1 and 2/claimants have produced Income Tax Return for the period two years prior to the date of the accident. The said Income Tax Return (Ex.P4) has also not been disputed by the appellant/Insurance Company as seen from the evidence available on record. The only contention in this appeal is that the Tribunal ought not to have accepted the Income Tax Return (Ex.P4) for the purpose of assessing the monthly income of the deceased at Rs.22,000/- since the said Income Tax Return pertains to the period two years prior to the date of the accident. As rightly contended by the appellant, no evidence has been adduced by the respondents 1 and 2/claimants to prove that even during the period 2013-2014, the deceased was earning Rs.22,000/- per month as disclosed in the Income Tax Returns (Ex.P4). The accident happened in the year 2014. Having produced evidence before the Tribunal that the deceased was running a provision store and in the year 2012, he was earning Rs.22,000/- per month as disclosed in the Income Tax Return (Ex.P4), this Court cannot reduce the assessment of the monthly income made by the Tribunal to a very low figure as the period for which no evidence has been produced to prove the monthly income of the deceased is only for a period of two years. In the decision relied upon by the learned counsel for the appellant i.e. in New India Assurance Co. Ltd. vs. Yogesh Devi and others, referred to supra, it was made clear that the respondents 1 and 2/ claimants are expected to adduce evidence as to what would be the quantum of depletion of income due to the death of the deceased.

9.In the instant case, the respondents 1 and 2/claimants have adduced evidence only upto the year 2012 though the accident happened in the year 2014. Since there is no evidence produced by the respondents 1 and 2/claimants for the two year period prior to the date of the accident, necessarily, the monthly income of the deceased has to be reduced by this Court though not to the extent as claimed by the appellant in this appeal.

10.In the deposition, during the course of the cross examination of the first respondent/first claimant (mother/P.W.1), she has admitted that the business of the deceased is still continuing. This Court has taken note of the said fact for refusing to fix the monthly income of the deceased at Rs.22,000/- as fixed by the Tribunal.

11.After giving due consideration to the overall evidence available on record and in view of the fact that the respondents 1 and 2/claimants have not adduced any evidence with regard to the income of the deceased for the period of two years prior to the date of the accident, this Court re-assesses the monthly income of the deceased from Rs.22,000/- to Rs.18,000/- based on preponderance of probabilities. The Tribunal has rightly adopted the corrected multiplier and has also correctly deducted

50% towards personal expenses of the deceased since the deceased was a bachelor at the time of the accident. The Tribunal has also rightly added 40% towards loss of future prospects under the impugned award. Since the income of the deceased is reduced to Rs.18,000/- by this Court from Rs.22,000/-, the loss of dependency is re-assessed by this Court in the following manner:

18000+40%=25200x12x17x50/100=Rs.25,70,400/-

Therefore, the compensation towards loss of dependency is reduced from Rs.31,41,600/- fixed by the Tribunal to Rs.25,70,400/- by this Court.

12.Insofar as the compensation awarded by the Tribunal under the head 'Funeral expenses' is concerned, this Court is of the considered view that the same is a just compensation and therefore, the same is hereby confirmed.

13.The Tribunal has committed one more error by awarding separate compensation towards filial consortium and loss of love and affection. Since the respondents 1 and 2/claimants are the parents of the deceased, the compensation can be awarded only towards loss of love and affection and cannot be awarded towards filial consortium. As per settled law, each of the respondents 1 and 2/claimants are entitled to Rs.40,000/- towards loss of love and affection. Therefore, the compensation awarded towards filial consortium is hereby set aside by this Court and the compensation towards loss of love and affection is reduced to Rs.80,000/- from Rs.1,00,000/- erroneously awarded by the Tribunal.

14.Similarly, the Tribunal has failed to award any compensation towards loss of estate, which the respondents 1 and 2/claimants are legally entitled to as per the settled law. Therefore, they are entitled to the compensation of Rs.15,000/- towards Loss of estate.

15.For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is reduced from Rs.33,56,600/- to Rs.26,80,400/- as detailed hereunder:

S.Nos.	Head	Amount awarded by this Court
1.	Loss of dependency	Rs.25,70,400.00
2.	Loss of love and affection	Rs. 80,000.00
3.	Loss of estate	Rs. 15,000.00
4.	Funeral expenses	Rs. 15,000.00

S.Nos.	Head	Amount awarded by this Court
	Total	Rs.26,80,400.00

16.Accordingly, the Insurance company is directed to deposit the reduced award amount of Rs.26,80,400/-, 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.222 of 2015 on the file of the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment.

17.The excess amount deposited with the Tribunal in accordance with the impugned award is permitted to be withdrawn by the appellant Insurance Company by filing an appropriate application before the Tribunal.

18.The claimants are permitted to withdraw the said amount, once it is deposited by the Insurance Company, by filing an appropriate application. On such application being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P. No.222 of 2015 to the bank account of the appellant directly through RTGS, within a period of one week thereafter. Accordingly, this appeal is partly allowed. No costs. Consequently, connected petition is closed.

01.07.2024

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To

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

2.The Section Officer,
V.R. Section, High Court, Madras.

ABDUL QUDDHOSE, J.

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