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C.M.A.Nos.1318 & 1323 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. Nos.1318 and 1323 of 2021 and
C.M.P. Nos.6681 & 6685 of 2021

C.M.A. No.1318 of 2021

M/s.The United India Insurance Co. Ltd.,
rep. by its Branch Manager

.. Appellant

vs.

1.Minor B.Goutham
(rep. by his Natural Guardian
Mother B.Santhamani)

2.V.Rajasekar

3.M.Venkatachalam

.. Respondents

C.M.A. No.1323 of 2021

M/s.The United India Insurance Co. Ltd.,
rep. by its Branch Manager

.. Appellant

vs.

1.K.S.Velusamy

2.V.Ramathal

3.B.Santhamani



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4.Minor B.Gowtham

5.Minor B.Surya

(respondents 4 and 5 rep. by their
Natural Guardian/Mother B.Santhamani)

6.V.Rajasekar

7.M.Venkatachalam

.. Respondents

Prayer in both cases: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 26.04.2019 made in M.C.O.P. Nos.821 & 822 of 2017 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur.

For Appellant in both cases : Mr.J.Chandran

For R1 in C.M.A. No.1318 of 2021
and R3 to R5 in C.M.A. No.1323 of 2021 : Mr.K.Myilsamy

R2 and R3 in C.M.A. No.1318 of 2021 & : Exparte before the
R6 and R7 in C.M.A. No.1323 of 2021 Lower Court

COMMON JUDGMENT

C.M.A. No.1318 of 2021

This appeal has been filed, questioning the quantum of compensation payable to the injured/accident victim, as according to the



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appellant/Insurance Company, the quantum of compensation awarded by the Tribunal to the injured/accident victim is excess.

2.Insofar as the injured/accident victim is concerned, the Tribunal has awarded a total compensation of Rs.9,56,720/- as detailed hereunder:

S.Nos.	Heads	Amount awarded by the Tribunal
1.	Loss of income $12000 \times 40 = 480000 / 100 = 4800$; $12000 + 4800 =$ $16800 \times 12 \times 18 \times 15\%$	Rs.5,44,320.00
2.	Pain and suffering	Rs. 50,000.00
3.	Extra Nourishment	Rs. 40,000.00
4.	Attender charges	Rs. 50,000.00
5.	Transportation expenses	Rs. 15,000.00
6.	Medical bills	Rs. 2,57,400.00
	Total	Rs. 9,56,720.00

3.Insofar as the compensation awarded by the Tribunal to the injured/accident victim is concerned, the appellant/Insurance Company has challenged the impugned award on the ground that the Tribunal has erroneously adopted the multiplier method for awarding compensation to the injured/accident victim. The Medical Board has assessed 15%



permanent disability for the injured/accident victim. The Tribunal has accepted the said assessment and has adopted the multiplier method for assessing the loss of earning capacity of the injured/accident victim. The Tribunal has assessed the notional monthly income of the injured/accident victim, who was aged 17 years at the time of accident, at Rs.12,000/- since the accident happened in the year 2017.

4. Therefore the Tribunal is right in adopting the multiplier method. However, the Tribunal ought to have taken note of the fact that the injured/accident victim was a minor at the time of accident and his injuries, though are grievous in nature, can be treated and after his treatment, his physical condition can be returned to normalcy. Therefore, the Tribunal ought not to have assessed the functional disability at 15%, based on the permanent disability assessment made by the Medical Board for the purpose of calculating his loss of earning capacity.

5. This Court has seen the recent photographs of the injured/accident victim, which were produced by the learned counsel for the injured/accident victim. As seen from the same, the injured/accident victim is able to stand without any support, though scars, due to the



injuries sustained as a result of the accident, happened in the year 2017, are still found in the legs of the injured/accident victim. Therefore, the Tribunal has rightly adopted the multiplier method only after giving due consideration to the grievous injuries sustained by the injured/accident victim. As the injured/accident victim would have certainly suffered loss of earning capacity due to the injuries sustained by him as a result of the accident but however the present physical condition of the injured/accident victim as seen from his photographs establishes that he will be in a position to do his routine work, which includes his regular employment without any difficulty, this Court reduces the functional disability of the injured/accident victim for the purpose of assessing the loss of earning capacity from 15% to 10%. The Tribunal has erroneously, without taking into consideration the functional disability of the injured/accident victim due to the injuries sustained by him as a result of the accident, simply accepted the assessment of the Medical Board, which has assessed the permanent disability of the injured/accident victim at 15%. Though the Medical Board did not assess the functional disability of the injured/accident victim, while determining the disability, the Tribunal ought to have assessed the functional disability of the injured/accident victim for the purpose of assessing the loss of earning



capacity of the injured/accident victim.

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6.After giving due consideration to the aforesaid facts, this Court reduces the permanent disability of the injured/accident victim to 10% instead of 15%, assessed by the Tribunal for the purpose of assessing the loss of earning capacity of the injured/accident victim. The Tribunal has also erroneously fixed notional monthly income of the injured/accident victim at Rs.12,000/- for the accident which happened in the year 2017. Being a minor and school going child, aged 17 years, the fixation of notional monthly income of the injured/accident victim at Rs.12,000/- is excessive.

7.After giving due consideration to the age of the minor injured/ accident victim and the year of the accident, this Court re-assesses the notional monthly income of the injured/accident victim at Rs.9,000/- instead of Rs.12,000/-, erroneously fixed by the Tribunal. Insofar as the compensation awarded by the Tribunal under various other heads for the injured/accident victim is concerned, there is no scope for any interference by this Court as the same are just compensation.



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8.For the foregoing reasons, the impugned award insofar as the compensation payable to the injured/accident victim, viz. B.Goutham is concerned, the compensation awarded by the Tribunal at Rs.9,56,720/- is reduced to Rs.6,84,560/- as detailed hereunder:

S.Nos.	Heads	Amount awarded by this Court
1.	Loss of income $9000 \times 40 = 360000 / 100 = 3600$; $9000 + 3600 = 12600$ $12600 \times 12 \times 18 \times 10\%$	Rs.2,72,160.00
2.	Pain and suffering	Rs. 50,000.00
3.	Extra Nourishment	Rs. 40,000.00
4.	Attender charges	Rs. 50,000.00
5.	Transportation expenses	Rs. 15,000.00
6.	Medical bills	Rs. 2,57,400.00
	Total	Rs. 6,84,560.00

9.The appellant/Insurance Company is permitted to withdraw the balance amount lying to the credit of M.C.O.P. No.821 of 2017 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur, by filing an appropriate application.

C.M.A. No.1323 of 2021:

This appeal has been filed, challenging the quantum of compensation awarded to the dependants of the deceased, who died in the very same accident, involving a vehicle, insured with the appellant/



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Insurance Company.

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2.Insofar as C.M.A. No.1323 of 2021 filed by the appellant/ Insurance Company, which is also connected to the very same accident, involving the deceased Balakrishnan is concerned, the Tribunal has awarded a total compensation of Rs.27,87,500/- to the dependants of the said deceased as detailed hereunder:

S.Nos.	Heads	Amount awarded by the Tribunal
1.	Loss of income $187500 \times 13 = 24,37,500/-$	Rs.24,37,500.00
2.	Loss of Love and affection	Rs. 1,25,000.00
3.	Loss of consortium	Rs. 2,00,000.00
4.	Funeral expenses	Rs. 15,000.00
5.	Transportation expenses	Rs. 10,000.00
	Total	Rs. 27,87,500.00

3.As seen from the compensation awarded by the Tribunal under various heads, the mistake committed by the Tribunal is only with regard to the compensation awarded under the heads 'loss of love and affection' and 'loss of consortium'. The Tribunal has awarded compensation at Rs.1,25,000/- towards loss of love and affection, which is low as according to the decision rendered in *National Insurance Company Limited Vs. Pranay Sethi and Others* reported in 2017 (16) SCC 680,



each of the dependents are entitled to Rs.40,000/- as compensation towards loss of love and affection.

4.In the case on hand, the deceased has left behind the claimants, viz. his parents, his wife and his two children and they are five in number. As each of them are entitled to Rs.40,000/-, the Tribunal ought to have awarded compensation of Rs.2,00,000/- towards loss of love and affection, but instead has erroneously awarded a lesser compensation of Rs.1,25,000/-. Accordingly, the compensation towards loss of love and affection is enhanced by this Court from Rs.1,25,000/- to Rs.2,00,000/-. The Tribunal has erroneously awarded higher consortium of Rs.2,00,000/- towards loss of consortium. Since the wife alone is entitled for loss of consortium as per the judgment referred to supra, the third respondent/wife is entitled for Rs.40,000/- towards loss of consortium. Therefore, the compensation awarded by the Tribunal towards loss of consortium is reduced to Rs.40,000/- from Rs.2,00,000/- by this Court.

5.The overall compensation awarded by the Tribunal under the other heads is a just compensation. The Tribunal has also adopted the correct multiplier, after giving due consideration to the age of the deceased



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6.For the foregoing reasons, the compensation awarded by the Tribunal to the claimants in respect of the deceased Balakrishnan is re-assessed in the following manner:

S.Nos.	Heads	Amount awarded by this Court
1.	Loss of income $187500 \times 13 = 24,37,500/-$	Rs.24,37,500.00
2.	Loss of Love and affection	Rs. 2,00,000.00
3.	Loss of consortium	Rs. 40,000.00
4.	Funeral expenses	Rs. 15,000.00
5.	Transportation expenses	Rs. 10,000.00
	Total	Rs. 27,02,500.00

7.Accordingly, these appeals are partly allowed. No costs. Consequently, connected petitions are closed. In respect of all other aspects, the award of the Tribunal is confirmed.

26.04.2024

vga

To

1.The Motor Accidents Claims Tribunal,
II Additional District Court, Tiruppur.

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



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ABDUL QUDDHOSE, J.

vga

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