IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM:

**THE HONOURABLE MR. JUSTICE K. RAJASEKAR**

**C.M.A. No. 1904 of 2021**
**C.M.P. Nos.10265 of 2021**

The Divisional Manager,
United India Insurance Co. Ltd.,
TKM. Complex, Katpadi Road,
Vellore Town. ... Appellant / II Respondent

Vs.

1. S. Mubeen
2. S. Ali
3. S. Akbar
4. S. Saddam ... I to IV Respondents/ Petitioners

5. B.S. Selvam ... V Respondents/ I Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 15.12.2016 passed in M.C.O.P. No. 243 of 2012 on the file of the I Additional District and Sessions Judge, Motor Accident Claims Tribunal, Vellore (M.C.O.P. No.354/2012 on the file of PDJ, Vellore).

For Appellant : M/s. I. Malar
For RR 1 to 4 : M/s. R. Nalliyappan
For R5 : No appearance

**CROS. OBJ. No. 85 of 2021**

**CAVEAT No.7308 of 2019**

1. S. Mubeen
2. S. Ali
3. S. Akbar
4. S. Saddam ... Cross Objectors

Vs.

1. The Divisional Manager,
United India Insurance Co. Ltd.,
TKM. Complex, Katpadi Road,
Vellore Town.

2. B.S. Selvam ... Respondents

The Cross objector filed this Memorandum of Cross objections under Order 41 Rule 22 of the Civil Procedure Code, 1908 seeking enhancement of compensation awarded in M.C.O.P. No. 243 of 2012, dated 15.12.2016 on the file of the I Additional District and Sessions Judge, Motor Accident Claims Tribunal, Vellore (M.C.O.P. No.354/2012 on the file of PDJ, Vellore).

| | | |
|---|---|---|
| For Appellant | : | M/s. R. Nalliyappan |
| For R1 | : | M/s. I. Malar |
| For R2 | : | No appearance |

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JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the Judgment and decree passed in M.C.O.P. No. 243 of 2012, dated 15.12.2016 on the file of the I Additional District and Sessions Judge, Motor Accident Claims Tribunal, Vellore (M.C.O.P. No.354/2012 on the file of PDJ, Vellore).

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. On 25.01.2012, at about 6:45 AM, the deceased Shareef was riding a unregistered TVS XL Heavy Duty two wheeler of his brother's son, proceeding to Gudiyatham for registration of new two wheeler on Katpadi to Gudiyatham road, while he reached near Rajapalayam X road, a bus bearing Registration No.TN-23-H-7789, driven by its driver in a rash and negligent manner, dashed against the two wheeler and thereby causing grievous injuries to the deceased. Immediately, the deceased was taken to Government Hospital at Vellore and subsequently, he succumbed to injuries. A criminal case was registered in Cr.No.32 of 2012 under Section 279,

304(A) of IPC on the file of Latheri Police Station. For the loss of deceased Shareef, the claimants who are the wife and sons of the deceased has filed claim petition seeking compensation for a sum of Rs.34,00,000/- under Section 166 of the Motor Vehicles Act.

4. The second respondent – insurance company of the bus has filed a counter and disputed the age, income, occupation of the deceased and contended that the accident was happened only due to the rash and negligence on the part of the deceased, and he has ridden the two wheeler without having valid driving licence. The insurance company also contended that the first respondent's driver has no valid driving licence at the time of accident, hence there is a violation of policy condition and stated that the insurance company is not liable to pay compensation. The owner of bus has not contested the claim and remained ex-parte.

5. Based on the evidences placed on record, the Tribunal has held that the rash and negligence of the first respondent's driver is responsible for the accident. The Tribunal also quantified and awarded compensation for a sum of Rs.16,00,900/- along with interest @ 7.5% per annum from the date

of filing of petition till the date of realization and fixed the liability on the part of the second respondent – insurance company to indemnify the first respondent and to pay compensation to the claimant.

6. Aggrieved over the award, the insurance company has filed this appeal challenging the quantum of compensation awarded and the claimants have also filed cross objection on the appeal seeking enhancement of compensation.

7. The learned counsel appearing for the insurance company submitted that the Tribunal without any evidence fixed the monthly notional income of the deceased as Rs.9,000/- and awarded future prospectus of 30% which is on the higher side and the Tribunal has also awarded Rs.1,00,000/- as compensation each under the head loss of love and affection and consortium, which is not sustainable, hence prays to modify the award.

8. Per contra, the learned counsel appearing for the claimants submitted that the Tribunal has not properly appreciated the evidence placed on record and awarded only Rs.9,000/- as monthly notional income, hence

prays to enhance the compensation.

9. I have considered the submissions made on both sides and perused the materials available on record:

10. The major contention raised by the insurance company and the claimants is with respect to the compensation awarded under the head loss of income. Before the Tribunal, the P.W.1 has deposed that the deceased was doing business in sharpening the knifes and kitchen cutlery in surrounding villages and was earning Rs.15,000/- per month, however there was no oral or documentary evidence adduced on the side of the claimants to prove the income of the deceased, hence the Tribunal based on the socio-economic condition has fixed Rs.9,000/- per month as monthly notional income of the deceased.

11. This Court consistently following the dictum laid down in the Division Bench judgment in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]***, wherein for a self employed or a manual labourer, the notional income is fixed based on the Cost of Inflation

Index issued by the Central Board of Direct Tax (CBDT) by considering the date of accident with respect to the monthly notional income of the base year of 2008. In this case, the date of accident is 25.01.2012 and accordingly, the monthly notional income fixed for the financial year 2011 – 2012, which comes to Rs.9,271/-, hence **Rs.9,271/-** is fixed as the monthly notional income of the deceased herein.

13. The claimants claimed the age of the deceased is 50 years at the time of accident, but they have not adduced any document to substantiate the same, the Tribunal based on the age of the deceased mentioned in the claim petition and Ex.P.4 – Postmortem certificate has held that the age of the deceased is 50 years and by following the dictum laid down in ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the multiplier is fixed as '13' and one-fourth of his income is deducted towards his personal and living expenses. This Court finds no infirmity in the above finding of the Tribunal and inclined to confirm the same.

14. The Tribunal has followed the guidelines laid down in the

Hon'ble Apex Court judgment in ***Rajesh and others vs. Rajbir Singh and others [2013 (2) TNMAC 55(SC) : 2013 (9) SCC 54]*** and fixed the future prospectus of 30%. This Court consistently following the guidelines laid down Hon'ble Apex Court judgments in ***National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]***, for fixing the future prospectus, hence considering the age of the deceased and the fact that he is a self employed person, the future prospectus is fixed as 25%. Accordingly, the loss of income for the modified monthly notional income of Rs.9,271/- and 25% future prospectus is assessed as follows:

| | |
|---|---|
| Annual income (Rs.9,271/- x 12) | = Rs.1,11,252/- |
| Future prospects @ 25% | = Rs.27,813/- |
| Yearly income of the deceased | = Rs.1,39,065/- |
| Yearly contribution to his family(deducting 1/4) | = Rs.1,04,297.75 |
| Applicable Multiplier | = 13 |
| Total compensation (Rs.1,04,297.75 x 13) | = Rs.13,55,870.75 |
| | **= Rs.13,55,871/-** |

15. On perusal of the award, it shows that the Tribunal has awarded Rs.1,00,000/- each under the head loss of love and affection and consortium. As per the Hon'ble Apex Court judgments in ***United India Insurance Co. Limited v. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780]*** and ***Magma General Insurance Co. Ltd., vs Nanu***

***Ram [2018 ACJ 2018]***, the compensation awarded under loss of love and affection is comprehended in loss of consortium and it also laid a dictum that all the claimants are entitled to consortium of Rs.40,000/- each. Accordingly, the compensation awarded under the head loss of love and affection is rejected and the claimants who are the wife and children of the deceased are entitled to Rs.40,000/- each as compensation under the head loss of consortium.

16. The Tribunal has awarded compensation of Rs.25,000/- as funeral expenses, Rs.5,000/- as transport expenses and Rs.2,000/- towards damage to clothes and articles. As per the Hon'ble Apex Court judgments in ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** cited supra, the Constitution Bench held that in death cases, the compensation would be awarded only under three conventional heads, viz. Loss of estate, loss of consortium and funeral expenses. Accordingly, this Court is inclined to modify the compensation awarded under Funeral expenses to Rs.15,000/- and grant Rs.15,000/- towards loss of estate and the compensation awarded under the head damage to articles and transportation expenses are hereby rejected.

17. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

| S. No | Description | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or reduced |
|---|---|---|---|---|
| 1. | Loss of income | 13,68,900/- | 13,55,871/- | Reduced |
| 2. | Loss of consortium | 1,00,000/- | 1,60,000/- | Enhanced |
| 3. | Loss of Love & Affection | 1,00,000/- | --- | Rejected |
| 4. | Loss of estate | --- | 15,000/- | Granted |
| 5. | Funeral expenses | 25,000/- | 15,000/- | Reduced |
| 6. | Transport expenses | 5,000/- | --- | Rejected |
| 7. | Damage to articles and clothes | 2,000/- | --- | Rejected |
| | **Total Compensation** | 16,00,900/- | **15,45,871/-** | **Reduced** |

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the Cross Objection filed by the claimants is dismissed. The compensation awarded by the Tribunal at Rs.16,00,900/- is hereby reduced to **Rs.15,45,871/- [Rupees Fifteen Lakh Forty Five Thousand Eight Hundred and Seventy One only]** together along with interest at the rate of **7.5% per annum** from the date of filing of Claim Petition till the date of realization, excluding the default period, if any. The second Respondent - Insurance Company is directed to deposit the amount awarded by this Court

along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.243 of 2012 on the file of the I Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Vellore. On such deposit, the claimant/ appellant herein is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

**30.01.2024**

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

**<u>K. RAJASEKAR, J.</u>**

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To:

1. The I Additional District and Sessions Judge,
   Motor Accident Claims Tribunal,
   Vellore.

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

C.M.A. No. 1904 of 2021

30.01.2024