



C.M.A(MD)No.915 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.915 of 2017

and

C.M.P(MD)No.9702 of 2017

M/s.TATA AIG General Insurance Co. Ltd.,
Peninsula Corporate Part,
Nicholas Primal Tower,
9th Floor, Ganpatrao Road Marg,
Lower Parel, Mumbai-400 013.

... Appellant/2nd respondent

Vs.

1.Uma

2.Minor.Sudarvarman

3.Minor.Sukkivarman

4.Channammal

... Respondents/Petitioners

(Minor respondents 2 & 3 are represented by their mother 1st respondent herein)

5.Selvarani

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the fair and decreetal order, dated 15.09.2016 made in M.C.O.P.No.52 of 2014 on the file of Motor Accident Claims Tribunal, (Addl. District Judge), Virudhunagar.



WEB COPY



C.M.A(MD)No.915 of 2017

For Respondents : No Appearance

JUDGMENT

The present civil miscellaneous appeal has been filed by the Insurance Company, challenging the quantum of award fixed by the Motor Accident Claims Tribunal / Additional District Court, Virudhunagar in M.C.O.P.No.52 of 2014.

2. A perusal of the award indicates that the deceased was a Driver and his notional income is Rs.6,000/- per month. Future prospects of the deceased person has been fixed at 50%. The learned counsel appearing for the Insurance Company relying upon the judgment of the Hon'ble Supreme Court in *National Insurance Company Limited V. Pranay Sethi and others* reported in *2017 (16)SCC 680* contends that the deceased being a Driver and working in an unorganized sector, only 40% should be added as future prospects along with the notional monthly income of Rs.6,000/-. He further contends that the Tribunal was not right in awarding Rs.1,00,000/- under the head of loss of love and affection and another Rs.1,00,000/- under the head of loss of consortium. Hence, he prayed for reducing the amount under these heads.



C.M.A(MD)No.915 of 2017

WEB COPY

3. The appeal was listed on 01.04.2024 and after hearing the submission made on the side of the appellant, it was adjourned to 02.04.2024 for the submission of the learned counsel appearing for the respondents. Even today, there is no appearance on the side of the respondents. Therefore, this Court proceeds to pass orders on merits based upon the submission made on the side of the learned counsel appearing for the appellant.

4. The tribunal has fixed the notional income of the deceased Driver at Rs.6,000/- per month. There is no dispute with regard to the notional income fixed by the tribunal. However, the learned counsel appearing for the appellant relying upon the judgment of the Hon'ble Supreme Court in *National Insurance Company Limited V. Pranay Sethi and others* reported in **2017 (16)SCC 680** had contended that the deceased working in an unorganized sector, the future prospects ought not to have been calculated at 50% but at 40%. I am in agreement with the said submission. In such circumstances, $6000 + 2400 = 8400$, $8400 \times 12 \times 18 \times \frac{3}{4} = 13,60,800$, the total award amount towards loss of dependency would come to Rs.13,60,800/-.

5. A perusal of the award of the tribunal further reveals that the



C.M.A(MD)No.915 of 2017

tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection and another Rs.1,00,000/- towards loss of consortium. In view of the orders of the Hon'ble Supreme Court, the amount cannot be awarded under two different heads. Therefore, towards loss of consortium, a sum of Rs.1,60,000/- is awarded (Rs.40,000/- to 4 dependants).

6. In view of the above said deliberations, the award amount is summarized as follows:

Loss of dependency	: Rs.13,60,800/-
Loss of consortium	: Rs. 1,60,000/-
Funeral expenses	: Rs. 20,000/-
Loss of estate	: Rs. 15,000/-

Total	: Rs.15,55,800/-

7. Therefore, the award of the tribunal is modified from Rs.18,40,000/- (Rupees Eighteen Lakhs and Forty Thousand only) to Rs.15,55,800/- (Rupees Fifteen Lakhs Fifty Five Thousand and Eight Hundred only). The apportionment shall be as per the orders of the tribunal. The appellant Insurance Company is entitled to withdraw the balance amount along with accrued interest. In other respects, the order

<https://www.mhc.tn.gov.in/> of the tribunal stands confirmed.



C.M.A(MD)No.915 of 2017

WEB COPY

8. Accordingly, the Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

02.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

gbg

To

- 1.The Motor Accident Claims Tribunal,
(Addl. District Court),
Virudhunagar.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.915 of 2017

R.VIJAYAKUMAR,J.

gbg

Judgment made in
C.M.A(MD)No.915 of 2017