IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2025

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

C.M.A.No.2387 of 2022 and
C.M.P.No.18603 of 2022

M/s.Future General India Insurance Co. Ltd.,
Office Code-14, 9th Floor, VBC Solitaire,
47 & 49, Bazzullah Road,
T.Nagar, Chennai,
Tamil Nadu - 600 017. ... Appellant

-Vs-

1. Tmt.Latha
2. Kanish (minor)
3. Sakthidhanya (minor)
4. T.Dinesh ... Respondents

PRAYER : Appeal under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.140 of 2019 dated 04.07.2022 on the file of the Motor Accidents Claims Tribunal, Principal District and Sessions Court, Ariyalur.

For Appellant : Mr.M.B.Raghavan
For Respondents : Mr.T.Gobinath for R1 to R3

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.)**

This civil miscellaneous appeal has arisen out of the award passed by the Motor Accidents Claims Tribunal, Principal District and Sessions Judge, Ariyalur dated 04.07.2022 made in M.C.O.P.No.140 of 2019.

2. Due to the fatal accident taken place on 29.06.2018, one Rajavadivu, S/o.Santhanam died. The legal heirs had made a claim and filed the said MCOP seeking a compensation of Rs.75,00,000/-.

3. It is the claim of the claimants that the deceased was running a Photo Studio and Fancy Shop, out of which he was earning several lakhs of rupees per year and according to the Income Tax Returns for the years 2017-18 and 2018-19, the yearly income was more than Rs.3,43,000/- and therefore, based on such evidences produced on behalf of the claimants before the Tribunal, the Tribunal has come to the conclusion that, the average yearly income of the deceased could be fixed at Rs.3,00,000/- and based on which, after the application of the multiplier '15', the 'loss of earnings' was calculated and fixed at Rs.42,00,000/-. Under the head 'loss of love and affection', Rs.15,000/- was awarded, for 'loss of consortium', Rs.40,000/- was awarded and for 'funeral expenses', it was awarded Rs.15,000/-, all together Rs.42,70,000/- was awarded through the impugned award.

4. Challenging the quantum, the Insurance Company had filed this appeal.

5. Assailing the award, Mr.M.B.Raghavan, learned counsel appearing for the appellant / Insurance Company would point out that, with regard to the claim made by the claimants that the deceased was running Photo Studio and Fancy Shop, no evidence has been produced before the Tribunal. Insofar as the claim made with regard to the loss of income, the document, i.e., Ex.P5 filed before the Tribunal is the income tax return for the Assessment Years 2017-18 and 2018-19.

6. In this regard, the learned counsel appearing for the appellant / Insurance Company would contend that the date of the accident is 29.06.2018, after six months period, first time the income tax return has been filed only on 11.01.2019, therefore, it is a clear afterthought of the claimants in order to boost up the income in the name of the deceased, so that a larger quantum of compensation can be claimed.

7. Therefore, the learned counsel appearing for the appellant / Insurance Company would contend that the calculation made by fixing the yearly income of the deceased at Rs.3,00,000/- by the trial Court in the impugned award is erroneous and not based on any documents. Therefore, to that extent, the actual income has to be ascertained and based on which, this Court can interfere with the award impugned and suitably the quantum may be modified, he contended.

8. We have heard Mr.T.Gobinath, learned counsel appearing for the respondents / claimants who would submit that, it is not only for the year 2018-19, but also for the assessment year 2017-18 income tax return has been filed which was produced before the trial Court as Ex.P5. Since the income tax return is a conclusive document to take up the income which was earned by the deceased at the time of the accident, that was taken into account, of course, rightly by the Tribunal and also the Tribunal has not taken the entire income that has been shown as a gross income or net income after paying the tax for the two assessment years, instead the Tribunal has taken only Rs.3,00,000/- as yearly income and accordingly, by applying multiplier properly, that calculation has been made.

9. The learned counsel also pointed out that, under the head 'loss of love and affection', only Rs.15,000/- was awarded, but as per the latest judgment in ***National Insurance Company Limited Vs. Pranay Sethi and Others (2017 (16) SCC 680),*** the Tribunal ought to have awarded Rs.80,000/- towards 'loss of love and affection' and also under the head 'loss of funeral expenses', Rs.25,000/- and Rs.15,000/- for 'loss of estate' ought to have been awarded, therefore on these heads also, enhancement to be made even though no separate civil miscellaneous appeal has been filed by the claimants to make such

enhancement that also to be taken into account in view of the law having been settled in this regard, the learned counsel appearing for the respondents / claimants contended.

10. We have considered the said submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

11. In this appeal, the only issue to be decided is, as to whether the quantum fixed by the Tribunal through the impugned award to arrive at the 'loss of earnings' of the deceased whether was correct or not. In this context, even though the income tax return has been filed and Ex.P5 marked before the Tribunal. It is to be noted that, for the assessment years 2017-18 and 2018-19, income tax returns were filed only on 11.01.2019, i.e., after six months of the date of the accident. It is further to be noted that, before such filing, on behalf of the deceased no income tax return has never been filed, therefore the said Ex.P5 cannot be taken as a conclusive proof to come to the conclusion as to the income of the deceased at the time of the accident.

12. But at the same time, it must be taken note of that the deceased if not conducted any Photo Studio or Fancy Shop, for his livelihood and to take care of his family, he might have earned through his profession called Photographer and assuming that, if he is a professional photographer or freelance photographer, normally he would have earned the income which we can easily fix at Rs.20,000/- per month for which, no separate evidence is required.

13. Therefore, if the monthly income is fixed at Rs.20,000/-, his yearly income would be Rs.2,40,000/- and if 40% future prospects is added, altogether it would come to Rs.3,36,000/-. Out of which, if 1/3rd for his personal expenses to be deducted, the remaining would be Rs.2,24,000/-. If Rs.2,24,000/- is taken into account as the 'loss of income' and based on his age, the correct multiplier as applied by the Tribunal, i.e., multiplier '15' is applied, then the amount would come to a sum of Rs.33,60,000/-.

14. Hence, insofar as the head with regard to the 'loss of earnings,' instead of Rs.42,00,000/- as awarded by the Tribunal, we fix it at Rs.33,60,000/-.

15. Insofar as the other heads are concerned, for 'loss of love and affection', as per the judgment of the Hon'ble Supreme Court, it must have been awarded at Rs.80,000/-, instead of Rs.15,000/-, i.e., Rs.40,000/- each for two children. Insofar as 'loss of consortium' is concerned, Rs.40,000/- fixed by the Tribunal is to be approved. Insofar as the funeral expenses', it must be fixed at Rs.25,000/- and for 'loss of estate', the Tribunal ought to have awarded a sum of Rs.15,000/-. Therefore, as per the present modification, the quantum would be fixed under the following heads.

S.No	***Head of Compensation***	***Amount awarded by the Tribunal (Rs)***	***Amount awarded by this Court (Rs)***
1	Loss of Earnings	42,00,000/-	**33,60,000/-**
2	Loss of Love and Affection (Rs.40,000/- * 2)	15,000/-	**80,000/-**
3	Loss of Consortium	40,000/-	40,000/-
4	Loss of Funeral Expenses	15,000/-	**25,000/-**
5	Loss of Estate	-	**15,000/-**
	Total	**42,70,000/-**	**35,20,000/-**

16. Hence in view of the aforestated discussions, the calculation that we have made, shall be the proper compensation payable to the claimants in the name of the victim and therefore, the award impugned dated 04.07.2022 passed

by the Tribunal is hereby modified to the aforestated amount and calculation under various heads. Accordingly, the respondents / claimants are entitled for a sum of Rs.35,20,000/-.

17. To that extent, this Civil Miscellaneous Appeal is allowed in part. Accordingly, the claimants are entitled to apportion the award amount as per the same apportionment fixed by the Tribunal. It is brought to our notice by the learned counsel appearing for the appellant / Insurance Company that only 50% of the award impugned through the impugned award alone has been deposited, the remaining amount as per the modified award amount shall be deposited within a period of one month from the date of receipt of a copy of this judgment with interest as awarded by the Tribunal. It is open to the claimants to withdraw the said amount as per the apportionment and the percentage fixed by the Tribunal. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) **(A.D.M.C., J.)**
13.02.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
vji

To

1. The Motor Accidents Claims Tribunal,
   Principal District and Sessions Court,
   Ariyalur.

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

R.SURESH KUMAR, J.
and
A.D.MARIA CLETE, J.

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