

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 2749 of 2010

The Divisional Manager,
National Insurance Company Ltd.,
Branch Office, Sundaram Building,
25, Coimbatore Road, Pollachi Taluk. ..Appellant/ R3

Vs.

1. D. Masilamani
2. T. Durairajan
3. D. Santosh Kumar ...R1 to R3/ Petitioners
4. K. Ramasamy ...R4 / R1

5. The Secretary K.M. Govindasamy ...R5/R2
Memorial Industrial Training Centre,
V. Kaliapuram, Pollachi Taluk
(The driver and owner of the vehicle, the 4th and 5th
respondents herein remained ex parte in the
proceedings before the Tribunal. Hence, notice to
the 4th and 5th respondents herein may be dispensed
with.) ..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and
decree dated 11.06.2010 passed in M.C.O.P. No. 222 of 2006 by the
Motor Accidents Claims Tribunal (Sub Judge), Udumalpet.

For Appellant :: Mr.K. Suryanarayanan

For Respondents :: Mr.D. Selvaraju for R1 to R3
1 to 3
R4 - R5 ..Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the
Insurance Company only with regard to the quantum of compensation
awarded to respondents 1 to 3/claimants for the death of the 1st

respondent and 2nd respondents' son, namely, D. Prakash @ Jayaprakash, aged about 20 years, an agriculturist and Auto Consultant, earning around Rs.15,000/- per month. In the claim petition filed by respondents 1 to 3, the Tribunal found that the accident, which occurred on 07.04.2006, was due to the vehicle belonging to the 5th respondent and insured with the appellant Insurance Company and awarded a sum of Rs.6,11,000/-. The said award is being challenged before this Court.

2. Heard Mr.K. Suryanarayanan, learned counsel for the appellant and Mr.D. Selvaraju, learned counsel for respondents 1 to 3/claimants.

3. Though Mr. K. Suryanarayanan, learned counsel for the appellant would submit that, in the absence of any material evidence, with regard to the income of the deceased, except P.W.3's evidence, the Tribunal ought not to have fixed the income at Rs.6000/- per month, but, the said determination cannot be found fault with and it is in tune with the judgment of the Honourable Apex Court rendered in Syed Sadiq and others V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), wherein, in respect of an accident of the year 2008, for a vegetable vendor, who sustained injuries, the Honourable Apex Court, fixed the monthly income at Rs.6500/-, even in the absence of any material evidence, regarding his income. Therefore, the determination of the income of the deceased at Rs.6000/- in the instant case, cannot be found fault with.

4. The age of the mother was taken as the criterion for determining the multiplier. The Tribunal adopted multiplier 16 as per the age of the mother of the deceased, namely, 35 years. But, the age of the brother of the deceased is also shown as 35 years, to which, Mr.Selvaraju, learned counsel for the claimants would submit that it should be a typographical error. The said contention is appealing. So, taking the mother's age as 40 years, this Court adopts multiplier 14 and after deducting 50% towards "Personal Expenses", the deceased being a bachelor, "Loss of Income" is calculated as hereunder:

Loss of Income :: (Rs.6000 (-) 50% (Rs.6000/-)) x 12 x 14
:: Rs.3000 x 12 x 14
:: Rs.5,04,000/-

The sum of Rs.30,000/- awarded towards "Loss of love and affection" is too low and the same is enhanced to Rs.50,000/-. No amount was awarded towards "Transportation Expenses". Hence, a sum of Rs.10,000/- is awarded towards the said head. Likewise, the sum of Rs.5000/- awarded towards "Funeral Expenses" is very meagre and the same is enhanced to Rs.15,000/-. Totally, the claimants are entitled to compensation of Rs.5,79,000/-. The rate of interest

awarded by the Tribunal at 7.5% per annum remains intact. The Civil Miscellaneous Appeal is partly allowed reducing the compensation awarded by the Tribunal, namely, Rs.6,11,000/- to Rs.5,79,000/-. No costs.

5. It is submitted that the appellant has already deposited a sum of Rs.4 lakhs before the Tribunal. The appellant shall deposit the remaining amount with interest, as per the modified award passed by this Court, within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made, respondents 1 to 3 are permitted to withdraw their respective shares, as per the ratio fixed by the Tribunal, within a period of one week thereafter.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

nv

To

The Subordinate Judge
MACT (Sub Court), Udumalpet.

1 cc to Mr.T. Suryanarayanan, Advocate, sr. 3286

1 cc to Mr.D.Selvaraju, Advocate, sr. 2738

C.M.A. No. 2749 of 2010

Ev (CO)
kk 3/3

सत्यमेव जयते

WEB COPY