

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1839 of 2017
and CMP No.9893 of 2017

National Insurance Co. Ltd.,
Rep. by its Branch Manager,
Branch Office,
No.1631-1B, Bhavani Main Road, Sangagiri

... Appellant

versus

1. Usha
2. Minor Sathwika
3. Minor Prethwika
4. K.Jayashree
5. S.N.Thangavel

... Respondents

[Minors/respondents 2 and 3, rep. by their mother and next friend,
Mrs.Usha]

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.331 of 2006, dated 03.07.2008, on the file of the Motor Accident Claims Tribunal, [Chief Judicial Magistrate], Krishnagiri.

For Appellant : Mr.K.Suryanarayanan

JUDGMENT

(Judgment of the Court was made by **S.MANIKUMAR ,J.)**

The only challenge in this appeal, is to the quantum of compensation of Rs.33,06,600/- awarded with interest at the rate of 7.5% per annum from

the date of claim till deposit and costs, to the legal representatives of the deceased viz., wife, minor daughters aged 12 & 4 years respectively and mother aged 65 years, on the ground that the monthly income fixed by the tribunal, for the purpose of computing the loss of contribution to the family, is excessive.

2. In the accident, which occurred on 06.12.2003, involving a Tata Indica Car bearing Regn.No.KA17-M-2938 and a lorry bearing Regn.No.KA-01-AC-6688, insured with the appellant insurance company, a 43 years old, Manager [Sales] in Universal Capsules Private Limited, Bangalore, who travelled in a Tata Indica Car, sustained fatal injuries and died on the spot. Under various heads, his legal representatives, claimed compensation of Rs.60,00,000/- in M.C.O.P.No.331 of 2006 on the file of the Motor Accident Claims Tribunal, [Chief Judicial Magistrate], Krishnagiri.

3. On analysis of oral and documentary evidence, the claims tribunal fixed negligence on the driver of the lorry bearing Regn.No.KA-01-AC-6688 and insured with the appellant insurance company and awarded a sum of Rs.33,06,600/- as compensation, with interest, at the rate of 7.5% per annum, from the date of claim till deposit and costs, as hereunder

Loss of contribution to the family	: Rs.32,61,600/-
Loss of consortium	: Rs. 25,000/-
Loss of love and affection (Rs.10,000/- to each claimants)	: Rs. 10,000/-

Transportation	: Rs. 5,000/-
Funeral Expenses	: Rs. 5,000/-
Total	: <u>Rs.33,06,600/-</u>

4. Though, Mr.Suryanarayanan, learned counsel for the appellant Insurance company contended that the compensation awarded to the legal representatives of the deceased under the head loss of contribution to the family, by fixing the monthly income of the deceased as Rs.27,180.85p is on the higher side, we are not inclined to accept the same, for the reason that, perusal of the impugned award shows that at the time of accident, the deceased was aged 43 years and the tribunal taking into consideration the evidence of PW2-Anand, an employee of Universal Capsules Private Limited and also Ex.P5, Salary certificate, has found that the deceased was drawing a net salary of Rs.27,180.85p per month and in the absence of any contra evidence let in by the Insurance company, disputing the income, fixed the monthly income of the deceased as Rs.27,180.85p and proceeded to compute the loss of contribution to the family, by deducting 1/3rd towards personal and living expenses and applying multiplier '15'. The loss of contribution, thus arrived at is Rs.32,61,600/-. There is no addition towards future prospects.

5. Further, except the award under the head loss of contribution to the family, the tribunal has awarded a very meagre sum under other heads in

particular a sum of Rs.10,000/- alone has been awarded towards loss of love and affection to claimants 1 to 4, ie., wife aged 36 years, two minor daughters, aged 12 and 4 years respectively and mother aged 65 years. Award of Rs.25,000/- to the wife towards loss of consortium, is also less. Likewise, the award of Rs.5,000/- each, under the heads transportation and funeral expenses. There is no award towards loss of estate and conventional damages.

6. In view of the above discussion, the overall quantum of compensation awarded to the legal representatives of the deceased, cannot be said to be on the higher side, warranting interference. Hence the Civil Miscellaneous Appeal is liable to be dismissed.

7. In the result, the appeal is dismissed, confirming the judgment and decree passed in M.C.O.P.No.331 of 2006, dated 03.07.2008, on the file of the Motor Accident Claims Tribunal, [Chief Judicial Magistrate], Krishnagiri. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

8. Consequent to the dismissal of the appeal, the appellant-Insurance Company is directed to deposit the entire award amount along with interest, at the rate of 7.5% per annum with costs, if not deposited earlier, to the credit of M.C.O.P.No.331 of 2006, on the file of the Motor Accident Claims

Tribunal, [Chief Judicial Magistrate], Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, except the minors, other claimants/respondents are permitted to withdraw their share in the award amount, as apportioned by the tribunal, with proportionate interest and costs, by making necessary applications.

9. Shares of the minor claimants/respondents 2 and 3, shall be deposited in to a Nationalised bank under Fixed Deposit scheme in the name of the minor claimants, till they attain majority, and the interest accrued on the fixed deposits, may be withdrawn by mother/1st respondent, once in three months.

(S.M.K., J) (M.G.R., J.)
22.06.2017

Index: Yes/No.

Internet: Yes/No.

Note:

The tribunal is directed to put up a copy of the order made in this appeal, in the notice board, mentioning the names of the parties to MCOP No.331 of 2006 and further directed to disburse the amount after due verification and identity.

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S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

To

1. The Motor Accident Claims Tribunal,
[Chief Judicial Magistrate], Krishnagiri.

2. The Section Officer,
VR Section, High Court, Madras

C.M.A.No.1839 of 2017
and CMP No.9893 of 2017

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