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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.11.2017

PRONOUNCED ON : 20.12.2017

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A (MD) No.529 of 2017

and

C.M.P (MD) No.5661 of 2017

The United India Insurance Company Limited,
Rep. by its Branch Manager,
Assisi Complex, Xavier Building,
PWD Road Office,
Nagercoil & Village,
Agasteeswaram Taluk,
Kanyakumari District.

.. Appellant/3rd Respondent

Vs.

1.Rosakutti @ Sr. Rosali

2.Sr.Sobi Kernsalaves @ Ani Perpet sobi

.. Respondents 1 and 2/
Petitioners

3.T.Manikandan

4.N.Murugan

.. Respondents 3 & 4/
Respondents 1 & 2

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree, dated 30.09.2014 made in M.C.O.P.No.25 of 2013, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Nagercoil.

For Appellant	: Mr.G.Prabhu Rajadurai
For RR 1, 3 & 4	: No appearance
For R - 2	: Mr.V.Meenakshi Sundaram

JUDGMENT

(Judgment of the Court was made
by V.BHAVANI SUBBAROYAN, J.)

This Civil Miscellaneous Appeal has been filed by the
<https://hcservices.ecourts.gov.in/hcservices/>
appellant/Transport Corporation against the Judgment and Decree
dated 30.09.2014 made in M.C.O.P.No.25 of 2013, on the file of the



Motor Accident Claims Tribunal, (Chief Judicial Magistrate),
Nagercoil.

2.The brief facts of the case are as follows:

It is a case of death caused in an accident that took place on 03.01.2007 at about 04.00 p.m., when the deceased-S.Mercy was travelling along with Vimala and Jeyasuriya in a Maruti car bearing Registration No.TN-74-C-7533 and the said car was driven by one Vincent, while nearing Ayaneri Bus-stop, the first respondent drove a mini-lorry bearing Registration No.TN-33-D-4500, which belongs to the second respondent, in a rash and negligent manner, dashed against the car. Due to the said impact and collusion of the mini-lorry on the said Maruthi Car, the car was crushed and fully damaged. The said Vimala and Vincent, who drove the Maruthi Car, had died on the spot. The deceased-Mercy and another person were immediately taken to the Hospital, but the deceased-Mercy had died due to the fatal injuries sustained by her on the way to the hospital and she was reported to have died in the hospital, by the Doctor who had examined her. Moontadiaippu Police has registered a case against the first respondent in Crime No.1 of 2007 for the offences under Sections 279, 337, 338 and 304-A I.P.C. The deceased-Mercy was a nun and worked as Reader/Head of the Department of Zoology in the Holy Cross College, Nagercoil and had drawn a sum of Rs.36,161/- per month as salary. All the amounts were spent and utilised by her for the social service for the betterment and welfare of the poor and she had been contributing substantial amounts for the maintenance and administration of the Congregation, which is conducted in the name of Holy Cross Convent. Due to the sudden and unexpected death of the deceased-Mercy, the first respondent/claimant has lost the financial assistance and help, which was given by the deceased-Mercy to the Congregation which is headed and administered by the first respondent/claimant-Mother Superior. Hence, the first respondent/claimant as the Mother Superior is entitled to inherit the estate of the deceased-Mercy, as her legal representative, claimed a sum of Rs.20,00,000/- as compensation.

3.The appellant/United India Insurance Company filed a counter-affidavit and stated that the accident had not occurred due to the rash and negligent act on the part of the first respondent and they are not liable to pay any compensation.

4.Before the Tribunal, on the side of the claimants, one witness viz., P.W.1 was examined and twenty four documents viz., Exs.P.1 to P.24 were marked. On the side of the respondents, one witness viz., R.W.1 was examined and one document viz., Ex.R.1 was marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing on either side and also appreciating the evidence available on record,



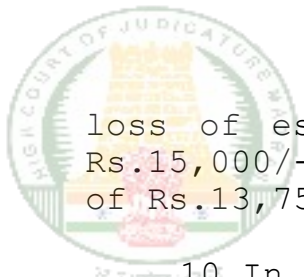
had awarded a sum of Rs.38,93,000/- as compensation to the claimants and directed the appellant/United India Insurance Company to deposit the said amount.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent.

7. The learned counsel appearing for the appellant/United India Insurance Company submitted that the Tribunal has committed an error in not considering the fact that the claimants are not the dependants of the deceased and the Tribunal had erred in not deducting 50% from the income of the deceased towards personal expenses, when the deceased was unmarried spinster.

8. The learned counsel appearing for the first respondent/claimant would submit that based on the available oral and documentary evidences, the Tribunal has rightly come to the conclusion and arrived at a correct compensation, under various heads.

9. From the perusal of Ex.P.1-F.I.R, it is seen that the police had registered a case in Crime No.1 of 2017 against the first respondent for the offences under Sections 279, 337, 338 and 304 I.P.C and further, it is seen that the accident had occurred due to negligent act of the first respondent. Further, from the perusal of the records, it is seen that the deceased was aged 56 years at the time of the accident and the Tribunal has fixed the income of the deceased at Rs.54,000/- per month and arrived at Rs.6,48,000/- per annum and the Tribunal has deducted one-third amount towards personal expenses and applied multiplier '9' and the same arrived at Rs.38,88,000/-, which in the considered opinion of this Court is very high, since the original income received by the deceased at the time of death is only Rs.36,161/- per month as salary. There was no proof filed by the claimants and that only a part of the amount has been taken and spent by the deceased and rest of the amount has been paid to the congregation. Hence, we are of the view that it would be correct to fix a sum a sum of Rs.36,161/- and adding 15% future prospects, the same is arrived at Rs.5,424/- and totally, the income of the deceased is arrived at Rs.41,585/- per month and fixed Rs.4,99,020/- per annum and after deducting half of the amount towards personal expenses, the same is arrived at Rs.2,49,510/- and since the deceased was aged 56 years at the time of accident and had only two more years of service, the same is arrived at Rs.4,99,020/- (Rs.2,49,510 X 2) and for the remaining seven years period of service, after deducting half of the amount, the same is arrived at Rs.8,73,285/- (Rs.1,24,755 X 7). Further, the Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses, which in the considered opinion of this Court is not reasonable and we are of the view to increase the same to Rs.15,000/- towards funeral expenses. Further, the Tribunal has not awarded any amount towards



loss of estate and we are of the considered view that a sum of Rs.15,000/- can be awarded towards loss of estate and in total a sum of Rs.13,75,305/- is awarded to the respondents/claimants 1 and 2.

10. In the result, this Civil Miscellaneous Appeal is partly allowed by reducing the compensation from Rs.38,93,000/- to a sum of Rs.13,75,305/-, in the award dated 30.09.2014 passed in M.A.C.O.P.No.25 of 2013, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Nagercoil. The appellant/United India Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs, by filing formal petition before the Tribunal. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Nagercoil.

2. The Section Officer,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.G.Prabhu Rajadurai, Advocate, SR.No.93779

+One cc to Mr.D.Nallathambi, Advocate, SR.No.94106

ps

RL/6C/4P/KKR/SAR1/23/1/2018

JUDGMENT MADE IN
C.M.A(MD) No.529 of 2017