



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2017

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1141 of 2013

1.Selvarani
2.Minor.Gayathri
3.Minor.Chelladurai
4.Minor.Manikandan
(Minors 2 to 4 Appellants are rep.by through Mother, Guardian and next friend the Ist appellant)
5.Malaiyathal ... Appellants / petitioner 1 to 4 and 6

Vs.

1.A.P.Selvam
2.The Branch Manager,
National Insurance Company Limited,
T.S.No.4132, East Main Street,
Pudukkottai. ... Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 24.11.2011 made in MCOP.No.290 of 2008 by the Motor Accident Claims Tribunal (Principal District Judge), Pudukkottai.

For Appellant :Mrs.A.Banumathy
For R1 : No Appearance
For R2 : Mr.R.Srinivasan

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the order of the learned Tribunal in M.C.O.P.No.290 of 2008, dated 24.11.2011 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Pudukkottai.

2. The case of the claimants before the tribunal is briefly narrated hereunder:

On 06.05.2007, when the deceased was riding a motor cycle, bearing registration No.TN 55 F 7939, near Pudukkottai Marthandapuram Matha Kovil, a lorry bearing registration No.TN 63/1369, which was coming from the opposite direction was driven by its driver in a rash and negligent manner and insured with the second respondent, dashed against the petitioner/claimant, as a result of which the deceased succumbed to his grievous injuries. Hence, the legal heirs of the deceased filed a petition before the Tribunal claiming a compensation amount of Rs.20,00,000/-.



3. Before the Tribunal, on the side of the petitioner, P.Ws.1 to 5 were examined and Exs.P1 to P19 were marked. On the side of the respondent, no one was examined and no document was marked.

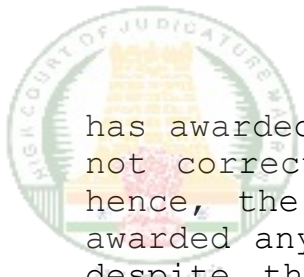
4. On a careful consideration of the evidence on record, the learned Tribunal has awarded a sum of Rs.4,92,000/- as compensation with interest at the rate of 7.5%. Aggrieved over the said award, the claimants are before this Court.

5. The learned counsel for the appellants/claimants by relying upon the Judgement of this Court in **SYED SADIQ v. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD.**, reported in **2014 (1) TN MAC 459**, would submit that the monthly income adopted by the tribunal is not proper and the Tribunal has not considered the future prospects of the deceased and hence, prayed for appropriate orders.

6. Per contra, the learned Standing Counsel appearing for the second respondent would submit that the tribunal has rightly awarded the compensation, which does not require any interference at the hands of this Court.

7. Heard the learned counsel for the petitioner as well as the learned standing counsel for the first respondent.

8. It is apt to mention that Supreme Court has held in the case of **SYED SADIQ v. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD.**, reported in **2014 (1) TN MAC 459**, that in the absence of definite income a sum of Rs.6,500/- can be taken as monthly income of the deceased. However, in the present case, the claimants have produced documentary proof with regard to the income of the deceased, which has been marked as Ex.P.19 (salary certificate) to substantiate the fact that the deceased was receiving Rs.7,552/- as salary per month. The said fact has also been cross examined by the other side. Despite the overwhelming evidence, the tribunal has taken Rs.2,500/- as monthly income of the deceased which is not proper. Considering the nature of the work done by the deceased and as per the settled position, I am of the view that the income of the deceased can safely be arrived at as Rs.6,500/- p.m. Further, as per the judgment in **Sarla Varma Vs. Delhi Transport Corporation**, reported in **2009 SC 3104**, if 50% of the income is taken for future prospects of the deceased, which comes to Rs.3,250/- and put together, it would be around Rs.9,750/-. After deducting 1/3 for his personal expenses, his monthly income can be arrived at Rs.6,500/- per month and as per tabular column, if 16 multiplier is adopted, it works out to Rs.6,500 x 12 x 16 = Rs.12,48,000/- towards his loss of income. Further, the Tribunal has awarded only a sum of Rs.10,000/- for loss of consortium. In the case on hand, the wife of the deceased age is just 30 years old at the time of accident. In no minute, her cherished dreams and her longings were shut down by the fateful accident and hence, this Court deems it fit to award a sum of Rs.1,00,000/- towards loss of consortium. Further, the Tribunal



has awarded a sum of Rs.2,000/- for funeral expenses, which is also not correct in view of escalation of prices in the year 2007 and hence, the same is enhanced to Rs.10,000/-. The Tribunal has not awarded any amount for loss of love and affection for the claimants despite the fact that there are minor children, young widow and beloved mother are available and hence, a sum of Rs.50,000/- each is awarded to the claimant and totally, a sum of Rs.2,50,000/- is hereby awarded.

9. In the result, the claimants are entitled to the enhanced compensation of Rs.16,08,000/- (Rupees Sixteen Lakhs and Eight Thousand Only) along with interest at the rate of 7.5%. The second respondent / Insurance Company is directed to deposit the entire award amount, less the amount already deposited, with accrued interest at the rate of 7.5% per annum, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the claimants are entitled to withdraw their award amount as apportioned by the Tribunal, with proportionate interest and costs, without filing any formal petition before the Court below.

10. The compensation due to the minor claimants shall be deposited in any one of the Nationalized Banks till they attained majority. The first appellant/claimant/mother, who is the guardian of the minor claimants is entitled to receive the interest once in six months directly from the bank.

11. The appellants/claimants are directed to pay the additional Court fee, if any, within a period of two weeks from the date of receipt of a copy of this order.

12. In the result, the Civil Miscellaneous appeal is allowed. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To,

1. The Principal District Judge, (MACT) Pudukkottai.

2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. R. SRINIVASAN Advocate in SR. NO.68144

+1cc to M/s. A. BANUMATHY Advocate in SR. No.68476

RJ2

JS/MR.KKR/SAR.2/24.08.2017/ 3P-5C

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