

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2894 of 2018
and C.M.P.No.22030 of 2018

National Insurance Co. Ltd.,
Divisional Office, 2nd Floor,
No.81-D, North Car street,
Tiruchengode 637 211,
Namakkal District.

.. Appellant/2nd Respondent

Vs.

1.Ayyammal

2.Venkatachalam

3.Minor Sathya

4.Minor Parthiban

..R1 to R4/ Petitioners

(Minor respondents 3 & 4

rep. By their mother, 1st respondent)

5.A.Ameer

.. 5th Respondent/1st Respondent

(R5 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 29.06.2018, made in M.C.O.P.No.24 of 2015 on the file of the Additional District Court, (Motor Accident Claims Tribunal), Dharmapuri.

For Appellant : Mr.Vadivel S.

For Respondent : Mr.R.Prabakar for R1
(Caveator)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the quantum of compensation granted by the Tribunal by the award dated 29.06.2018, made in M.C.O.P.No.24 of 2015 on the file of the Additional District Court, (Motor Accident Claims Tribunal), Dharmapuri.

2.By consent of both the parties, the appeal is taken up for final disposal at the admission stage itself.

3.The appellant is the 2nd respondent in M.C.O.P.No.24 of 2015 on the file of the Additional District Court, (Motor Accident Claims Tribunal), Dharmapuri. The respondents 1 to 4 filed the said claim petition, claiming sum of Rs.30,00,000/- as compensation for the death of one Krishnan, husband of the 1st respondent and father of the respondents 2 to 4, who died in the accident that took place on 10.10.2011 .

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred solely due to rash and negligent driving by the driver of the taxi belonging to the 1st respondent and 2nd respondent, as the insurer of the vehicle is liable to pay a sum of Rs.16,49,500/- as compensation to the respondents 1 to 4.

5.Challenging the quantum of compensation granted by the Tribunal, the appellant-Insurance Company has come out with the present appeal.

6.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal passed award under table 1 and table 2 and fixed the liability on the appellant, based on the table 2. The amounts awarded by the Tribunal is excessive, following table 2. The respondents 1 to 4 have not proved the occupation and income of the deceased and Tribunal erred in fixing notional income of the deceased at Rs.9,000/- per month. The amount calculated by the Tribunal as per the 1st table fixing Rs.6,500/- is correct. The Tribunal ought to have directed the appellant to pay compensation as per the decision arrived at by the Tribunal in the 1st table. The learned counsel for the appellant-Insurance Company further contended that the age of the deceased was 40 years at the time of accident. The Tribunal while calculating the loss of income, added 40% towards future prospects to the notional income fixed at Rs.9,000/- and prayed for reducing the compensation granted.

7.Per contra, the learned counsel appearing for the respondents 1, 3 & 4-caveator contended that the deceased was an agriculturist and was earning Rs.20,000/- per month. The Tribunal considered the same and calculated the loss of income based on the notional income at Rs.9,000/- per month. Considering the amounts arrived at by the Tribunal, fixing Rs.9,000/- per month as notional income of the deceased, the amount awarded by the Tribunal is a just compensation. The reasoning of the Tribunal is valid. There is no error in the award of the Tribunal and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1, 3 & 4-caveator and perused the materials available on record.

9. From the materials available on record, it is seen that the respondents 1 to 4 have contended that the deceased was an agriculturist and was doing ground nut business and was earning a sum of Rs.20,000/- per month. The appellants have not let in any evidence with regard to avocation and income of the deceased. In the absence of the documents, the notional income has to be fixed by the Tribunal to arrive at loss of income to the respondents 1 to 4. The Tribunal without fixing notional income has prepared two tables. The 1st table is based on the notional income of Rs.6,500/- per month and the 2nd table is based on Rs.9,000/- per month. The Tribunal has awarded compensation based on the 2nd table. While calculating the said amount, the Tribunal has added 40% towards future prospects. The Tribunal has not given any reason for awarding compensation based on 2nd table, fixing the notional income at Rs.9,000/- per month. In view of the above facts, the award of the Tribunal towards loss of income alone has to be reduced. According to the respondents 1 to 4, the deceased was an agriculturist. Considering the age, date of accident and the contention of the respondents 1 to 4, a sum of Rs.7,500/- per month is fixed as notional income of the deceased. After adding 30% towards future prospects and deducting 1/4th towards personal expenses, the amount awarded under loss of income is modified as follows:

$$[\text{Rs.7,500} + \text{Rs.2250 (30\% of Rs.7,500)}] \times 12 \times 15 \times \frac{3}{4} = \text{Rs.13,16,250/-}$$

The amounts awarded by the Tribunal under all other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	15,79,500	13,16,250	reduced
2.	Loss of estate	15,000	15,000	confirmed
3.	Loss of consortium	40,000	40,000	confirmed
4.	Funeral expenses	15,000	15,000	confirmed
	Total	16,49,500	13,86,250	Reduced by Rs.2,63,250/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,49,500/- is hereby modified to Rs.13,86,250/-, with interest and costs. The appellant-Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 and 2/claimants 1 and 2 are permitted to withdraw their share of the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn. The share of the minor respondents 3 & 4 are directed to be deposited in any of the Nationalized Bank, till the minors attain majority. The 1st respondent/mother of the minor respondents is permitted to withdraw the interest, once in three months for the welfare of the minor respondents 3 & 4. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/--

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

gsa

To

The Additional District Judge,
(Motor Accident Claims Tribunal), Dharmapuri.

+lcc to Mr.Vadivel S., Advocate SR.No. 87224

+lcc to Mr.R.Prabakar, Advocate SR.No. 87492

C.M.A.No.2894 of 2018
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A.SK(04/04/2019)