BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.1248 of 2017

1.Noor Faigira Begam

2.Minor Mohammed Rauf

3.Minor Mohammed Manas

4.Minor Mohammed Sadook ... Appellants/ Petitioners / claimants

(Minor 2 to 4 appellants are represented by their mother and natural guardian, the 1st appellant herein)

Vs.

1.O.M.Rameeja Beevi

2.The Divisional Manager,
United India Insurance Company Ltd.,
South Main Street,
Thanjavur Town and Munsif.

3.Sarammal ... Respondents / Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award made in M.C.O.P.No.360 of 2014 on the file of Motor Accident Claims Tribunal / Special District Judge, Thanjavur, dated 29.02.2016.

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| For appellant | : | Mr.G.Karnan |
| For 1st & 3rd respondents | : | No appearance |
| For 2nd respondent | : | Mr.A.S.Mathialagan |

JUDGMENT

Heard the learned counsel appearing for the appellants / claimants and the learned counsel appearing for the 2nd respondent / Insurance Company.

2. It is a case of fatal. The manner of the accident is not in dispute. This appeal has been filed by the appellants / claimants seeking to enhance the quantum of compensation awarded by the Tribunal.

3. The learned counsel appearing for the appellants / claimants would submit that the deceased was a Mini Bus operator and he had owned two mini buses and derived a monthly income of Rs.60,000/- p.m. from the said two Mini Buses. Now, in view of the death of the deceased, the claimants have sold the said vehicles and they could not run the business. Apart from the income derived from Mini Bus operation, the deceased had been earning Rs.5 lakhs per year through cultivation in his agricultural lands. The Court below, without considering the above, has erroneously taken Rs.10,000/- as notional income of the deceased holding that the claimants have not produced any Income Tax certificate of the deceased. Considering the fact that the claimants are in the lurch and the business and agricultural operations are closed in view of the death of the deceased, he requested this Court to fix a minimum of Rs.25,000/- as notional monthly income of the deceased and thereby, to enhance the award amount.

4. The learned counsel appearing for the second respondent / Insurance Company would submit that without any valid proof, the Tribunal has excessively fixed Rs.10,000/- p.m. as the notional income of the deceased and hence, the award passed by the Tribunal need not be interfered with.

5. At the time of the accident, the deceased was aged about 40 years, as per Ex.P2 – Postmortem Certificate. Admittedly, there is no dispute that the deceased had been running two Mini Buses with valid permit. Now, it is submitted that in view of the death of the deceased, they were not able to run the business and the buses were sold. In support of the contention that the deceased had been earning a sum of Rs.8 lakhs per annum, after deducting the expenditure for running buses, the claimants have produced documents relating to the income and expenditure for the bus - Exs.P12 and P13. But, as rightly stated by the Tribunal, the claimants have not produced any valid documents, like Income Tax Return, Income Certificate, etc. However, considering the fact that the deceased was owning two Mini Buses and was running the Mini Buses with valid permit and now they sold the buses and closed the business and also considering the age of the deceased, number of claimants and avocation of the deceased, this Court is of the view that a sum of Rs.10,000/- fixed by the Tribunal as the notional income of the deceased is on the lower side and hence, this Court is of the view that Rs.16,000/- would be a reasonable amount for fixing the notional monthly income of the deceased and accordingly, Rs.16,000/- is fixed as the notional monthly income of the deceased.

6. If 30% of the income is added as future prospects, considering the age of the deceased, the monthly income of the deceased comes to Rs.20,800/- (16,000 + 4800 = 20,800). The Tribunal has rightly deducted $1/4^{th}$ amount towards personal expenses of the deceased. If $1/4^{th}$ amount is deducted towards personal expenses, the monthly income of the deceased comes to Rs.15,600/- (20,800 – 5,200 = 15,600) and the annual loss of income comes to Rs.1,87,200/-

(15600 x 12 = 1,87,200). Considering the age of the deceased, the Tribunal has rightly adopted multiplier No.15. If the annual loss of income multiplied with 15, the total loss of income comes to Rs.28,08,000/-. Instead of the award passed under the head of funeral expenses, loss of estate, loss of love and affection, loss of consortium and transport charges, this Court is inclined to award a sum of Rs.70,000/- on conventional head, as per the decision reported in 2017 (2) TN MAC 609 (SC) (National Insurance Company Limited Vs. Pranay Sethi and others) and accordingly, it is awarded. The Tribunal has awarded a sum of Rs.1,56,430 towards medical bills and the same is confirmed. Thus, the total compensation comes to Rs.30,34,430/-.

7. In view of the above, the award is enhanced from Rs.22,56,430/- to Rs.30,34,430/-. In other respects, the award passed by the Tribunal is confirmed. The second respondent / Insurance company is directed to deposit the entire award amount ie., Rs.30,34,430/-, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first claimant and the 3rd respondent are permitted to withdraw their respective shares with accrued interest and costs, as apportioned by the Tribunal, without filing any formal petition before the Tribunal. As far as the shares of the minors are concerned, the same shall be deposited in any of the nationalised banks till they attain majority and the first claimant is permitted to withdraw the interest thereon once in three months. The claimants are directed to pay the Court fee, if any, to be paid for the enhanced amount, within a period of four weeks from the date of receipt of a copy of this judgment.

8. This Civil Miscellaneous Appeal is accordingly allowed. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Special District Judge,
Motor Accident Claims Tribunal,
Thanjavur.

COPY TO:
The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.G.Karnan, Advocate SR.No. 72983
+1cc to M/S.A.S.Mathialagan, Advocate SR.No. 73068



Judgment in
C.M.A(MD).No.1248 of 2017
16.07.2018

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JM/SV/SAR 1/30.07.2018/4P/6C