



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD) .No.389 of 2019

Manivel ... Appellant/Claimant

Vs.

1.M/s.Palanimurugan Transport
Door No.50, Spencer Compound
Near Kurinchi Lodge
Dindigul Town 624 003

2.The Divisional Manager
United India Insurance Company Ltd.,
2nd Floor, K.A.R. Towers
R.S.Road
Dindigul Town

... Respondents/Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree passed by the Motor Accident Claims Tribunal/Special Subordinate Judge, Dindigul Made in M.C.O.P.No.261 of 2017 dated 28.04.2018.

For appellant : Mr.A.Saravanan

For Respondent No.1 : No appearance

For Respondent No.2 : Mr.B.Rajesh Saravanan

JUDGMENT

This appeal has been filed against the Judgment and decree passed by the Motor Accident Claims Tribunal/Special Subordinate Judge, Dindigul Made in M.C.O.P.No.261 of 2017 dated 28.04.2018.

2.It is a case of fatal. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.4,35,600/- towards total loss of income; Rs.40,000/- towards loss of consortium; Rs.15,000/- towards funeral expenses, totally a sum of Rs.4,90,600/- as compensation, with 7.5% interest per annum from the date of petition till the date of realization. The Tribunal has directed the respondents to pay the compensation as jointly and severally to the



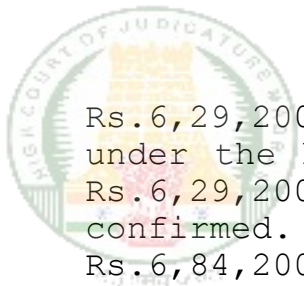
claimant. The appellant / claimant has filed this appeal seeking to enhance the compensation.

3. The learned counsel appearing for the appellant / claimant would submit that before the accident, the deceased was working as agricultural coolie and earning a sum of Rs.7,500/- per month. But, the Tribunal has taken only Rs.6,000/- as the monthly notional income of the deceased and it is on the lower side. By relying upon the decision of the Hon'ble Supreme Court in Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited, reported in 2014 ACJ 627, the learned counsel for the appellant / claimant requested this Court to fix a sum of Rs.6,500/- p.m. as the notional income of the deceased. The learned counsel further requested that to deduct 1/3rd amount towards personal expenses instead of 50%.

4. The learned counsel appearing for the second respondent / Insurance Company would submit that since the claimant has not produced any document in order to substantiate his claim that the deceased was earning a sum of Rs.7,500/- per month, the Tribunal has rightly fixed Rs.6,000/- p.m. as the notional income of the deceased and therefore, the same need not be interfered with and hence, the award passed by the Tribunal may be reduced.

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. The accident is of the year 2016. The age of the deceased at the time of the accident was 52 years. According to the claimant, the deceased was earning a sum of Rs.7,500/- p.m. But, no document produced on the side of the claimant in order to prove the income. In the decision of Syed Sadiq, cited supra, the Hon'ble Supreme Court, keeping in mind the escalation of prices, has fixed a sum of Rs.6,500/- as notional monthly income of a vegetable vendor, even in the absence of documentary evidence to prove the income. In view of the above and also considering the age of the deceased, year of the accident, avocation of the deceased, this Court is inclined to fix Rs.6,500/- as the notional monthly income of the deceased. As per the decision reported in 2017 (2) TN MAC 609 (SC) (National Insurance Company Limited Vs. Pranay Sethi and others), considering the age of the deceased, if 10% of future prospects is added with the notional income of the deceased i.e., Rs.650/- ($6500 \times 10/100 = 650$), the monthly income of the deceased comes to Rs.7,150/- ($6500 + 650 = 7150$). After deducting 1/3rd amount towards personal expenses, the monthly loss of income comes to Rs.4767/- ($Rs.7150/- - Rs.2383/-$) and the annual loss of income comes to Rs.57,204/- ($4767 \times 12 = 57,204$), which can be rounded off to Rs.57,200/-. If multiplier No.11 is adopted as per the decision reported in 2009 (2) TN MAC 1 (SC) (Sarla Verma and others Vs. Delhi Transport Corporation and another), and multiplied with the annual loss of income, the total loss of income comes to Rs.57,200/-.



Rs.6,29,200/- (57,200 x 11 = 6,29,200/-). Thus, the award passed under the head of loss of income is enhanced from Rs.4,35,600/- to Rs.6,29,200/-. In other respects, the award passed by Tribunal is confirmed. Thus, the total compensation comes to Rs.6,84,200/-.

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7. In view of the above, the award is enhanced from Rs.4,90,600/- to Rs.6,84,200/-. The appellant shall pay the required additional court fee for the enhanced amount within two weeks from the date of receipt of copy of this judgment. The respondents jointly and severally shall deposit the amount now awarded ie. Rs.6,84,200/- with interest at 7.5% p.a. from the date of petition till the date of deposit, 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 claimant is permitted to withdraw the entire amount with accrued interest and costs, by filing an application before the Tribunal.

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

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To
The Special Subordinate Judge
Motor Accident Claims Tribunal, Dindigul.

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The Record Keeper, (2 Copies)
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.B. RAJESH SARAIVANAN, Advocate (SR-82276[F] dated 19/08/2019)

+1 CC to M/s.A.SARAIVANAN, Advocate (SR-81903[F] dated 16/08/2019)

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