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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2141 of 2009

The National Insurance Company Limited.,
Divisional Office,
Jawaharlal Nehru Street,
Pondicherry.

... Appellant/Respondent 2

Vs

1.M.Dhandapani
2.Rajanayagi
3.Murugan
4.C.Navaraj

...Respondents 1 to 3/Claimants
...Respondent 4/Respondent 1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order made in M.A.C.T.O.P.No.161 of 2006 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Cuddalore, dated 22.12.2008.

For Appellant : Mrs.N.B.Surekha

For Respondents: Served-Memo filed

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 22.12.2008 made in M.A.C.T.O.P.No.161 of 2006 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Cuddalore.

2. The respondents 1 to 3 herein are the claimants in M.A.C.T.O.P.No.161 of 2006 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Cuddalore. They filed the above said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Ramanathan in the accident that took place on 06.10.2005.

3. The case of the prosecution is that on 06.10.2005 at about 09.30PM., when the 1st and 2nd claimant's son Ramanathan was driving his Maruthi Van bearing Registration No.TN-09-T-3142



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along with the occupants from Chennai to Thiruppathi at moderate speed, keeping extreme left of GST Road near ECL Company, Eraiyur, a lorry bearing Registration No.TN-69-C-2845, owned and driven by the 4th respondent came from opposite direction (from Andhra to Chennai) in a rash and negligent manner and dashed against the Maruthi Van. Due to the said accident, the Maruthi Van driver sustained fatal injuries and the occupants of the van sustained injuries. The deceased was immediately moved to Madras Medical College, Chennai, where the doctors declared his death. Postmortem was also done by the Madras Medical College, Chennai. The accident was solely due to the rash and negligent driving of the driver of the lorry.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver-cum-owner of the Lorry belonging to the fourth respondent and directed the appellant-Insurance Company to pay a sum of Rs.4,45,500/- as compensation to the claimants.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal to set aside the compensation.

6. The learned counsel for the appellant would submit that the Tribunal failed to see that the accident is between two vehicles on the opposite direction. Therefore, the deceased had also contributed negligence in causing the accident. The Tribunal, merely because contradictory evidence was not let in, had foisted the entire negligence upon the driver of the insurance lorry in a biased manner. The Tribunal failed to see that the claimant had not adduced any cogent and concrete evidence to establish the entire negligence on the part of the driver of the lorry. P.W.2 evidence cannot be relied upon as he is not the complainant before the police authority. Further, he would submit that the Tribunal, having rightly come to the conclusion that the claimants had not adduced sufficient evidence to prove the avocation and income, in a biased manner fixed the income of the deceased at Rs.4,000/- per month and the Tribunal had failed to follow the ratio laid down by the Hon'ble Apex Court and High Court for fixing notional income, when the avocation of the person is not proved. The learned Tribunal had fixed 13 as the multiplier when the father's age is given as 60 years and mother's age as 45 years. The Tribunal ought to have fixed the mothers age at 55 years and the higher multiplier should be fixed as 10 years. The Tribunal having come to the conclusion that no bills are produced to establish transportation charges, had fixed Rs.7,000/-. Further, the learned counsel would submit that the Tribunal has awarded an exorbitant interest at the rate of 9% interest per annum upon



the compensation ignoring the law laid down by the Supreme Court. The other reasons assigned by the Tribunal for awarding a sum of Rs.4,45,500/- are unsustainable both in law and in facts. The appellant herein craves leave of this Hon'ble Court to raise additional grounds of appeal at the time of preparing this appeal. Hence, the learned counsel for the appellant prays to set aside the award passed by the Tribunal.

7. Despite serving notice, there is no representation on behalf of the respondents.

8. It is seen that the deceased was a driver and was earning not less than Rs.6,000/- per month, which was not refuted by the contesting appellant. Normally, in claims case, the tendency of the claimants is to boost the income of the deceased, for obvious reasons. Hence, the evidence of P.W.1 in this regard cannot be taken as such. Therefore, the income of the deceased has to be taken only notionally for the purpose of the claim petition. Accordingly, considering the fact that the deceased was a driver, which of course was not refuted by the appellant, the income of the deceased is notionally taken as Rs.4,000/- per month or Rs.48,000/- per annum. As pointed out in para supra, the Tribunal fixed the notional annual income of the deceased as Rs.48,000/- and after deducting $\frac{1}{3}$ rd of such income towards personal expenses, the income of the deceased for the purpose of calculating the compensation payable is taken as Rs.32,000/- per annum. Accordingly, the general compensation payable to the claimants is Rs.32,000/- X 13 = Rs.4,16,000/- towards "Loss of earning/general compensation". This Court feels that the amount awarded by the Tribunal is on the higher side and the same is hereby reduced to Rs.4,08,000/- ($4,000/- \times 12 \times \frac{17}{2}$). The Tribunal has awarded a sum of Rs.7,000/- towards "Transportation", which is exorbitant. Hence, this Court is inclined to reduce the same to Rs.1,000/-. The learned Tribunal has awarded a sum of Rs.2,500/- towards "Funeral Expenses", which is just and reasonable and the same is hereby confirmed. The Tribunal has awarded a sum of Rs.20,000/- towards "love and affection", which is also confirmed. The Tribunal has not awarded any amount towards "loss of personal belongings" and "loss of interest". This Court is inclined to award a sum of Rs.2,000/- and Rs.3,000/- respectively. 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



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1.	Loss of earning/ general compensation	4,16,000/-	4,08,000/-	Reduced
2.	Transportation	7,000/-	1,000/-	Reduced
3	Funeral Expenses	2,500/-	2,500/-	Confirmed
4.	Loss of love and affection	20,000/-	20,000/-	Confirmed
5.	Loss of personal belongings	-----	2,000/-	Granted
6.	Loss of interest	-----	3,000/-	Granted
	Total	Rs.4,45,500/-	Rs.4,36,500/-	Reduced by Rs.14,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,45,500/- is hereby reduced to Rs.4,36,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the reduced award amount along with interest and costs now determined by this Court, if not already deposited. If the Insurance Company has already deposited the entire amount, it is needless to state that it is entitled to withdraw the excess amount already deposited. On such deposit, the claimants shall withdraw the award of compensation with equal share. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Motor Accident Claims Tribunal,
The Principal District Judge,
Cuddalore.



2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mrs.N.B.Surekha, Advocate Sr.7963

C.M.A.No.2141 of 2009

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srg 10/08/2021