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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.M.A.(MD)No.388 of 2019

and CMP(MD) No.4726 of 2019

and

Cross Objection (MD) No.19 of 2019

In CMA(MD)No, 388 of 2019

The Manager,
National Insurance Company Limited,
1st Floor, Karthikeya Complex,
No.403, Mettur Main Road,
Bhavani, Erode District. ... Appellant/2nd Respondent

Vs.

1.Kalaiyarasi (Died)

2. Suresh

3.Suthakar

4.Sukumar ... Respondents 1 to 4/Petitioners

(RR2 to 4 who are already on record are recorded as lrs of the deceased R1 vide court order dated 15.10.2020 made in CMP(MD) NO.4726 of 2019 by NSSJ)

5.M.Sivakumar ...5 th Respondent/1st Respondent
(R5 set Exparte in Tribunal: Notice Dispensed with)

PRAYER: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.500 of 2017 dated 16.11.2018 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Karur.

For Appellant :Mr.J.S.Murali
For Respondent:Mr.K.Suresh Kumar

In Cross Objection No. 19 of 2019:

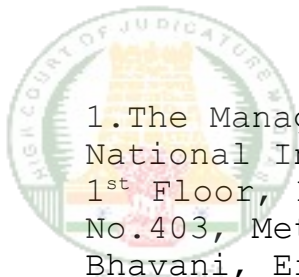
1.Kalaiyarasi (Died)

2. Suresh

3.Suthakar

4.Sukumar .. Cross objectors /Respondents

Vs.



1.The Manager,
National Insurance Company Limited,
1st Floor, Karthikeya Complex,
No.403, Mettur Main Road,
Bhavani, Erode District.

..1st Respondent/Appellant

2. M.Sivakumar

..2nd Respondent/5th Respondent

(R2 set Exparte in Tribunal: Notice Dispensed with)

PRAYER: This Cross Objection is filed under Order 41 Rule 22 C.P.C r/w Section 173 of Motor Vehicles Act to enhance the award of compensation passed in M.C.O.P.No.500 of 2017 dated 16.11.2018 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Karur.

For Cross objectors : Mr.K.Suresh Kumar
For R1 : Mr.J.S.Murali

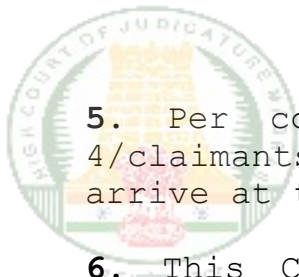
J U D G M E N T

The appeal is filed by the insurance company challenging the quantum of compensation awarded by the Tribunal, primarily on the ground that even though the Tribunal has taken the notional income of the deceased at Rs.10,000/-, it had applied the multiplier '9' instead of '7' since the victim of the road accident is aged about 61 years.

2. The brief facts of the case are that on 10.09.2017 at about 06.00 a.m, one Periyasamy aged about 60 years, said to be running a provisional shop, was riding a two wheeler bearing Registration No.TN-47-AT-2219 along Karur-Erode main road, where the accident took place, and he was dashed by a Car bearing Registration No. TN-29-AT-2373. He was admitted in the hospital and died in the next day of the accident, on 11.09.2017.

3. Claiming compensation, his wife and sons have laid the Claim Petition before the Tribunal. The Tribunal has arrived at the monthly income of Rs.10,050/- out of which it reaches 1/4th deduction towards personal expenses and applied multiplier '9' and arrived at Rs.8,10,000/- towards loss of income.

4. The learned counsel for the appellant would submit that the deceased has driven the motorcycle in a rash and negligent manner and attempted to cross the road from south to north and invited the accident and the occurrence occasioned only due to the negligence of the deceased. The main ground on which the learned counsel argued is that the tribunal has wrongly adopted multiplier '9' and the correct multiplier is '7' and on that point, the learned counsel prays for modification.



5. Per contra, the learned counsel for the respondents 1 to 4/claimants would argue that the Tribunal has reasonable enough to arrive at the compensation it has arrived.

6. This Court has carefully perused the materials available on record.

7. The Tribunal rightly fixed the notional income at Rs.10,000/- and after deducting 1/4th for personal expensed, it would come to Rs.7,500/-. As regards the multiplier adopted by the tribunal, the tribunal ought to have adopted multiplier '7' since the age of the victim is 61 years at the time of accident. If the correct multiplier '7' is adopted, the loss of income would be Rs.6,30,000/- (10,000 - 2500 = 7500) (7500 X 12 X 7 = 6,30,000).

8. Therefore, the amount awarded under the head 'for loss of income' would be Rs.6,30,000/-. In all other heads, the compensation as has been awarded by the tribunal stands unaltered.

9. The learned counsel for the cross objectors/claimants submitted that even though the claimants have produced a medical bill for Rs.1,33,879.50/-, the same has not been considered by the Tribunal. This Court is inclined to grant Rs.1,33,879.50/- for medical expenses.

10. Accordingly, the respondents 1 to 4/claimants are entitled to get the following compensation:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of Income	8,10,000.00	6,30,000.00
2.	Loss of estate	15,000.00	15,000.00
3.	Loss of consortium	40,000.00	40,000.00
4	Loss of love and affection	50,000.00	50,000.00
5	Medical Expenses	-	1,33,879.50
6	For funeral expenses	15,000.00	15,000.00
	Total	9,30,000.00	8,83,879.50 rounded off to 8,84,000/-

11. The appellant would be entitled to any amount in excess of the amount that is now determined by this Court with accrued interest. The claimants/respondents 1 to 4 are entitled to the balance amount available in the Court deposit.

12. In the result, this Civil Miscellaneous Appeal is partly allowed



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and the Cross Objection is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

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/ /2021

Sub Assistant Registrar (CS)

Cm

To

1.The Motor Accidents Claims Tribunal,
Principal District Court, Karur.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.K.Suresh Kumar, Advocate, SR.No.24116 dated 07/12/2020

C.M.A. (MD) No.388 of 2019
and CMP (MD) No.4726 of 2019
and

Cross Objection (MD) No.19 of 2019
03.12.2020

SGS (CO)

KB (27.01.2021) 4P 5C