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In the High Court of Judicature at Madras

Dated: 08.02.2021

Coram

The Honourable Mr. Justice D.KRISHNA KUMAR

C.M.A.No.1859 of 2013

and

M.P.No.1 of 2013

The National Insurance Co. Ltd.,
D.O.I. L.R.N. Complex,
Saradha College Main Road,
Salem-7.

... Appellant /2nd Respondent

..Vs..

1.Thayilnayagi

2.Minor Sumathi

3.Minor Mahesh

4.Kaveri

...Respondents 1 to 4/Claimants

5.Shanthi

Minors are rep. by their mother
Thayilnayagi as next friend and natural
guardian.

...5th Respondent/1st Respondent

Prayer in CMA.1859 of 2013: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Judge (FTC-1), (MACT), Salem in M.A.C.T.O.P.No.138 of 2007 dated 24.02.2012.

For Appellant	:	Mrs.N.B.Surekha
For Respondent	:	No Appearance
Nos.1 to 5		

J U D G M E N T

Being aggrieved by the award passed by the Motor Accident Claims Tribunal / learned Judge (FTC-1), (MACT), Salem in M.A.C.T.O.P.No.138 of 2007 dated 24.02.2012, the Insurance Company has preferred the present appeal.



2. This matter is heard through Video Conferencing today. Heard Mrs.B.Surekha, learned counsel appearing on behalf of the Insurance Company. Though notice have been served on the respondents 1 to 3 & 5, none appears on their behalf. Hence with the consent of the learned counsel for the appellant, the appeal is taken up today for final disposal.

3. The brief facts of the case are as follows:

a) On 15.05.2006 at about 5.15 a.m., when the deceased Marimuthu was standing in front of the Murugesan Hotel at Salem-Attur Main Road, a lorry bearing registration No.TN-25-J-8377 insured with the appellant herein, which was driven by its driver in a rash and negligent manner, hit the deceased and he succumbed to the injuries on the spot. Hence the claim petition has been filed by the legal heirs of the deceased Marimuthu, claiming a sum of Rs.25 lakhs as compensation to the death of Marimuthu.

b) Before the Tribunal, witnesses P.W1 to P.W.3 were examined and exhibits P.1 to P4 were marked on the side of the claimants and exhibits X1 and X2 were marked on the side of the respondents. After considering the oral and documentary evidences, the Tribunal had come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry which was insured with the appellant herein and directed the respondents therein, to jointly or severally to pay the compensation of Rs.20,38,000/- to the claimants with interest at the rate of 7.5% p.a. from the date of claim till the date of realisation.

c) The break-up details of the award passed by the Tribunal is as follows:

S.No.	Heads	Amount (Rs.)
1	Loss of income	20,22,852
2	Transportation	5,000
3	Loss of love and affection	10000
	Total	20,37,852 rounded off to 20,38,000/-

4. The learned counsel for the appellant/Insurance Company submitted that the Tribunal had erred in fixing the monthly income of the deceased taking into account the pay commission revised salary even though he has not received the same at the time of his death and also contended that gross income has been taken instead of take home income of the deceased. She further submitted that the Tribunal ought not to have taken the age of



the deceased by considering the post mortem certificate and legal heirship certificate and contended that adopting the multiplier based on that age is unsustainable. She also disputed the entire negligence fixed on the driver of the lorry and made the Insurance company liable to pay the compensation to the claimants.

5. On perusal of records, it is seen that the deceased was a P.G. Assistant working in the Government Higher Secondary School, Vazhapadi, at the time of accident as per the evidence adduced by P.W.2/Selvaraj, who was working as Headmaster in the said school. The learned counsel for the appellant/Insurance Company contended that the deceased have not received the revised scale of pay at the time of his death and the Tribunal had erred in fixing the income of the deceased taking the same into consideration. This Court accepts the said contention of the learned counsel for the appellant and fixes the monthly income of the deceased at Rs.13,347/- since at the time of his death, his last drawn salary as per Ex.P1/photocopy of service certificate was Rs.13,347/- as he has not drawn the revised scale of pay. But, however considering the aspect that he was a Government servant and is eligible for Pay Commission revised pay, this Court is inclined to grant 30% for future prospectus and accordingly, 30% of his monthly income shall be added to the actual salary of the deceased toward future prospects, which comes to Rs.17,351/-. As a government servant, he would be paying tax and hence deducting 10% towards the same, the income of the deceased comes at Rs.15,616/-. Taking into account, the dependants of the deceased, this Court deducts 1/4th amount towards the personal expenses of the deceased instead of 1/3rd deducted by the Tribunal in arriving at the family income of the deceased and therefore, the income comes to Rs.11,712/-. Ex.P3/Death Certificate and Ex.P4/legal heir certificate are only issued by competent authority and their authenticity cannot be disputed as contended by the learned counsel for the appellant/Insurance Company and therefore, the multiplier 13 years adopted by the Tribunal warrants no interference for arriving at the loss of income of the deceased. Accordingly, the loss of income arrives at Rs.18,27,072/- (11,712 x 12 x 13). No amount has been granted for funeral expenses and loss of estate, hence this Court awards a sum of Rs.15,000/- and Rs.14,000/- respectively towards the said heads. Since at the time of accident, the deceased was 48 years, the Tribunal ought to have awarded amount for the wife under the head of loss of consortium. Hence, this Court awards a sum of Rs.30,000/- to the wife under the said head. A sum of Rs.10,000/- awarded by the Tribunal towards loss of love and affection is meagre and therefore, a sum of Rs.30,000/- each for two children and Rs.10,000/- for mother of the deceased are granted by this Court. The amount of Rs.5,000/- awarded by the Tribunal towards



transportation is enhanced to Rs.10,000/- by this Court. In view of the above modifications, the award passed by the Tribunal is reduced and the break-up details of the same are as follows:-

S.No	Heads	Amount awarded by the Tribunal (Rs.)	Amount granted by this Court (Rs.)
1	Loss of income	20,22,852	18,27,072
2	Transportation	5,000	10,000
3	Loss of love and affection	10,000	70,000 (Rs.30,000/- to each children & Rs.10,000/- for mother of the deceased)
4	Loss of consortium	-	30,000
5	Funeral expenses	-	15,000
6	Loss of estate	-	14,000
	Total	20,37,852 rounded off to 20,38,000/-	19,66,072 rounded off to 19,66,000/-

6. For all the foregoing reasons, the Civil Miscellaneous Appeal is allowed in part. Consequently, the award passed by the Tribunal is reduced from Rs.20,38,000/- to Rs.19,66,000/- by this Court. It is brought to the notice of this Court that 50% of the award amount has been deposited by the appellant/Insurance Company. Therefore, the appellant/Insurance Company is directed to deposit the balance compensation amount with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation. On such deposit being made, the claimants are entitled to the compensation amount as per the apportionment made by the Tribunal and shall be permitted to withdraw their proportionate share along with interest on filing appropriate petition. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

DP



To

1.The Fast Track Court-1,
(The Motor Accident Claims Tribunal),
Salem.

Copy to:

2.The Record Keeper,
V.R. Section,
High Court, Madras.

+1cc to Mrs.N.B.Surekha, Advocate, S.R.No.7750

C.M.A.No.1859 of 2013
and
M.P.No.1 of 2013

SSI (CO)
CB(15/09/2021)