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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.3663 OF 2019

1.S.Thangapetchiammal
2.S.Premalatha
3.S.Jeyakrishnan
4.S.Vimala
5.S.Rajalingam (Minor)
Represented by M & NF
S.Thangapetchiammal

... Appellants/
Petitioners

Vs.

1. M.Sridhar
2. The United Insurance Co Ltd,
H.O Silingi Building,
No.134, Greams Road,
Chennai - 600 006.

... Respondents/
Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 09.10.2018 made in M.C.O.P.No.5673 of 2011 on the file of the VI Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.K.A.Ravindran for
Mr.A.Shanmugaraj

For Respondents: No appearance for R1
Mr.J.Michael Visuvasam for R2

JUDGMENT

The claimants are the appellant in this appeal. They seek for enhancement of compensation. By the impugned judgment and decree, the Tribunal has awarded a sum of Rs.14,92,500 as compensation under the following heads:-



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Loss of Dependency	Rs. 14,17,500
Loss of Consortium	Rs. 40,000
Loss of Estate	Rs. 15,000
Funeral Expenses	Rs. 15,000
Transport Expenses	Rs. 5,000
Total	Rs. 14,92,500

2.The quantum of compensation awarded by the Tribunal is questioned in this appeal by the appellant on the ground that the Tribunal has considered a very low notional income of Rs.9000/-, even though, it was specifically stated that the deceased, a Bullock Cart rider cum Load Man was earning a sum of Rs.500/- per day.

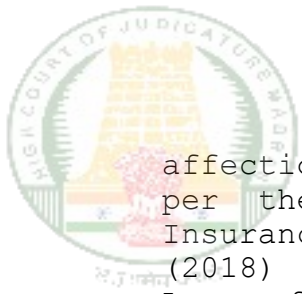
3.It is submitted that the Tribunal ought to have considered the notional income of the deceased as Rs.13,500/- per day. It is further submitted that the Tribunal has not awarded any amount towards Loss of Parental consortium for the minor children who are the appellants Nos.2 to 5. As per the decision of the Hon'ble Supreme Court in Magma Insurance Company Limited Vs Nanuram @ Chuhruram and others, (2018) 18 SCC 130.

4.Defending the impugned judgment and decree, the learned counsel for the 2nd respondent/Insurance Company submits that the no part of the cause of action arose in Chennai in as much as the accident was took place in remote village in Tuticorin District and therefore there is no evidence to justify that the deceased owned either a Bullock Cart and would have earned Rs.500/- per day. It is further submitted that the claimants have the resorted to forum as no part of the cause of action before the Motor Accident Claims Tribunal, Chennai.

5.It is therefore submitted that the Tribunal has awarded an adequate compensation and therefore prays for dismissal of the appeal. He submits that the Tribunal has considered a higher notional income of Rs.9,000/- pm. He submits that the deceased would not have earned Rs.9,000/- per month in a remote village in Tuticorin District.

6.Heard the learned counsel for the appellant and the respondent and perused the impugned judgment and decree and the exhibits that were marked before the Tribunal.

7.The Tribunal has awarded a sum of Rs.14,92,500/- as compensation. In my view, the Tribunal has by and large awarded a just compensation. It requires to slightly tweaked. Though the Tribunal has not awarded any amount towards Loss of Love and



affection/Parental Consortium to the appellant Nos.2 to 5. As per the decision of the Hon'ble Supreme Court in Magma Insurance Company Limited Vs Nanuram @ Chuhruram and others, (2018) 18 SCC 130, they are entitled for a compensation towards Loss of Parental Consortium at Rs.40,000/- each and therefore amount towards compensation parental consortium awarded at Rs.40,000/- each. Though, the appellants have not made out any case to establish that the deceased would have earned not more than Rs.13,500 as was argued, considering the fact that the accident is of the year 2010, I am inclined to consider the notional income of the deceased as Rs.10,000/- per month for the payment of awarding a just compensation. Since the deceased was aged about 39 years, there shall be an additional of 25% to the aforesaid income. Thus, the loss of dependency at (Rs.10,000 + 25% = 12,500/- X $\frac{1}{4}$ X 12 X 14).

Heads and Calculation	Amount
Loss of dependency:-	
Monthly Income : Rs.10,000/-	
Add: Future Prospects at 25 % (10,000 x 25/100) : Rs. 2,500/-	
----- : Rs.12,500/-	
Less: Personal Expenses $\frac{1}{4}$ th (12500x $\frac{1}{4}$ = 3125) : Rs. 3,125/-	
----- : Rs. 9,375/-	
Annual Contribution to the family (9,375 x 12) : Rs. 1,12,500/-	Rs.15,75,000/-
Multiplier 14 (1,12,500 x 14): Rs.15,75,000/-	
Loss of Consortium (40,000 X 4)	Rs. 1,60,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Transport Expenses	Rs. 5,000/-
Total	Rs.17,70,000/-

11.The 2nd respondent/Insurance Company is therefore directed to deposit the enhanced amount of compensation of Rs.17,70,000/- together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of such deposit, less any amount already deposited by it to the credit



of the above M.C.O.P before the Tribunal, within a period of six weeks from the date of receipt of a copy of this Judgment.

12. On such deposit being made by the 2nd respondent/ Insurance Company, the 1 to 4 appellants/1 to 4 claimants are permitted to withdraw their respective shares together with interest accrued thereon, less any amount already withdrawn in the same proportion as was ordered by the Tribunal. Since the 5th appellant/5th claimant is stated to be minor at the time of filing of the claim petition, his share shall be deposited in an interest bearing account and the interest shall be allowed to be withdrawn by his mother for the benefit of the minor. On attaining the age of majority, the 5th appellant/5th claimant may also file appropriate application before the Tribunal for withdrawing his share of compensation.

13. This Civil Miscellaneous Appeal stands partly allowed with the above observations. No costs.

Sd/-
Deputy Registrar (TNMCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The Motor Accidents Claims Tribunal,
VI Judge, Small Causes Court, Chennai.

Copy To

The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.25597

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.25363

C.M.A.No.3663 of 2019

AJS (CO)
CS/21/10/2021