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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.3425 of 2017  
and  
CMP No.21737 of 2017

The Superintendent of Police,  
Cuddalore District.

...Appellant

Vs

1.Ranjitham  
2.Elango

... 1&2 Respondents/1&2 Petitioners

3.Kumarai  
4.Jayamani  
5.Rani  
6.Tharani

...3 to 6 Respondents/2 to 5 Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.01.2017 made in M.C.O.P.No.176 of 2016 on the file of the Motor Accidents Claims Tribunal, 2<sup>nd</sup> Additional District Court, Tindivanam.

For Appellant : Mr.N.Manikandan  
Government Advocate (CS)

For Respondents : Mr.S.Anbalagan for R1 to R6

#### J U D G M E N T

The appeal is filed by the vehicle owner being aggrieved by the quantum of compensation awarded to the claimants/the dependents of the deceased Muthulinga Padayachi.

2.The case of the claimants is that on 11.06.2008, while the deceased Muthulinga Padayachi trying to cross ECR Road near Bommayarpalayam, the police vehicle bearing Registration



No.TN31G/577 dashed against him and caused fatal injury. Claiming compensation of Rs.10,00,000/-, claim petition was filed by his wife and son. His four daughters were arrayed as respondents.

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3.Before the Tribunal, the respondents contested the claim alleging that it was the negligence of the deceased which caused the accident. At the time of accident, he was around 65 years but in the claim petition, they have wrongly stated as 52 years. Further, he had no income worth mentioning, therefore, the claim is excessive and exorbitant. Further, the claim petition is liable to be dismissed for non joinder of necessary parties.

4.The specific case of the respondent vehicle owner is that the deceased without noting the oncoming vehicle, in a drunken mood crossed the road in a zigzag manner ignoring the warning given by other bystanders. The police who has registered the case has investigated and found that the accident occurred due to the negligence of the deceased.

5.The Tribunal, after considering the material evidence awarded a sum of Rs.6,93,000/- by taking into account, the notional income of the deceased as Rs.4,800/-, after deducting personal expenditure and has fixed multiplier "11" believing the claimants statement regarding the age.

6.In this appeal, the vehicle owner had taken a specific plea that while the post mortem report as well as F.I.R. indicate the age of the deceased as 65 years and one of the claimant, the son of the deceased had also admitted in the cross-examination that his father aged may be around 65 years, the Tribunal ought not to have fixed the age of the deceased as 52 and applied multiplier "11". Regarding the income of the deceased, it is contended that the deceased had no fixed income and he was aged enough to have earning capacity. Further, the accident had occurred due to the negligence of the deceased who in drunken state tried to cross the road negligently. Hence, the contribution of negligence by the deceased ought to have taken note by the Tribunal.

7.On perusing the order of the Tribunal and hearing the submissions of Mr.N.Manikandan, learned Government Advocate appearing for the appellant and Mr.S.Anbazhagan, learned counsel appearing for the respondents, this Court finds that the accident took place on 11.06.2008 and the Tribunal while fixing the age of the deceased had not taken note of the post mortem report and evidence of P.W.1, who had conceded the age of the deceased as 65 years at the time of accident. This Court is of the view that the contention of the learned counsel appearing for the appellant regarding the application of the multiplier by



the Tribunal is erroneous, has to be held up and the age of the deceased has to be fixed as 65 years and multiplier has to be "7" and not "11".

8. This Court finds that the Tribunal fixed the notional monthly income of the deceased as Rs.6,000/- following the judgment rendered in 2015, unmindful of the fact that the deceased at that time was 65 years old and not 52 years old as fixed. However, this Court is of the view that at this length of time, there need not be any cut in the notional income fixed by the Tribunal and except pointing out the error and applying the correct multiplier, other part of the compensation given by the Tribunal is confirmed.

| Compensation under Various Heads                        | Award passed by this Court |
|---------------------------------------------------------|----------------------------|
| Loss of income<br>4800X7X12                             | Rs.4,03,200/-              |
| Loss of Consortium to wife                              | Rs. 25,000/-               |
| Loss of love and affection to the children<br>(5,000X5) | Rs. 25,000/-               |
| Funeral Expenses                                        | Rs. 15,000/-               |
| Total                                                   | Rs.4,68,200/-              |

9. Accordingly, the appellant herein is directed to deposit a sum of Rs.4,68,200/- with with 7.5% interest from the date of numbering the petition till the date of deposit within a period eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants and respondents 1 to 6 are permitted to withdraw their respective shares as apportioned below:

| Claimants                             | Apportionment of compensation |
|---------------------------------------|-------------------------------|
| Claimants 1 and 2/Respondents 1 and 2 | Rs.1,84,100/- each            |
| Respondents 3 to 6                    | Rs.25,000/- each              |



10. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs. The connected miscellaneous petition is closed.

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Sd/-  
Assistant Registrar (CS)

// True Copy //

Sub Assistant Registrar

vri

To

Motor Accidents Claims Tribunal  
2<sup>nd</sup> Additional District Court,  
Tindivanam.

+1cc to Mr.S.Anbazhagan, Advocate, S.R.No.18801  
+1cc to the Special Government Pleader, S.R.No.18929

CMA NO.3425 of 2017

RLD(CO)  
SU(10/08/2021)