



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.10.2021

Delivered on : 01.12.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

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C.M.A(MD) No.1338 of 2014

and

M.P.(MD)No.2 of 2014

The Branch Manager,
Oriental Insurance Company Ltd.,
Tirunelveli.

... Appellant / 2nd Respondent

Vs.

1.Radha

... 1st Respondent/ Petitioner

2.Panneer

... 2nd Respondent/ 1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehilces Act, 1988, against the award, dated 19.08.2013, made in M.C.O.P.No.949 of 2012, on the file of the Motor Accidents Claims Tribunal - II Additional District Judge, Tirunelveli and to set aside the same.

For Appellant : Mr.S.Veeranasamy

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 19.08.2013, made in M.C.O.P.No.949 of 2012, on the file of the Motor Accidents Claims Tribunal - II Additional District Judge, Tirunelveli.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original claim petition.

3.Brief substance of the petition, in M.C.O.P.No.949 of 2012, is as follows:-

On 04.06.2012, at about 11.00 am., the deceased-Sanjeethkumar as pillion rider and one Mathankumar were travelling in a motor cycle bearing Registration No.TN-74-AB-2110 and when they were proceeding near Ozhukinesary Asirwatham Petrol Bulk a lorry bearing Registration No.TN-72-J-7299 driven by its driver in a rash and negligent manner, dashed on the rear side of the two wheeler. Due to the said impact, the deceased sustained injuries and he was



taken to Nagercoil Manuvel Hospital and then, he was admitted in Jeyasekaran Hospital, subsequently, he died on the same day at about 6.50 pm. The petitioners are the dependents of the deceased and they claimed Rs.20,00,000/- as compensation.

4. Brief substance of the counter filed by the second respondent, in M.C.O.P.No.949 of 2012, is as follows:-

The manner of accident is denied. It was the rider of the motor cycle, who suddenly turned the vehicle along the right side and hit on the lorry, the first respondent's lorry driver was not responsible for the accident. The owner and the insurer of the motor cycle are also proper and necessary parties. The deceased was only a College student and he has no income, at the time of accident. The age, income and profession of the deceased are all denied. The claim is excessive.

5. The first respondent was set as exparte. Two witnesses were examined and seven documents were marked, on the side of the petitioner. No witness was examined and no document was marked, on the side of the second respondent. After considering both sides, the Tribunal has awarded a sum of Rs.6,09,000/- as compensation. Against the same, the second respondent / appellant has preferred this Appeal.

6. On the side of the appellant, it is stated that the Tribunal has failed to consider that the driver of the lorry was not responsible for the accident and it was the rider of the two wheeler, who suddenly turned to his right and hit the lorry. The deceased was only a student, studying second year B.Sc. and he was a non-earning member. The deceased was a student and there was no possibility for a student to earn Rs.12,000/-, doing mason work. The multiplier applied by the Tribunal is wrong. The Tribunal is erroneous in fixing Rs.5,000/- per month, as loss of income. The income of a non-earning member is Rs.3,000/- only and the proper multiplier is only '17'. The compensation under various heads is excessive.

7. Name of the respondents was printed and called upon, though sufficient opportunity was given none appeared for the respondents. Hence, no oral argument on the side of the respondents is recorded and the order is passed on merits.

8. The accident took place during the year 2012. No Cross Appeal was filed on the side of the claimant. Considering the fact that the deceased was doing second year Degree course, the notional income fixed by the Tribunal is reasonable. The deceased was a Bachelor and deduction of 50% to his own expenses is reasonable. The age of the deceased at the time of accident is 20 years. Hence, the multiplier applied by the Tribunal is reasonable and the award of compensation under various heads is also reasonable.



9. There is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this Civil Miscellaneous Appeal is dismissed and the award, dated 19.08.2013, made in M.C.O.P.No.949 of 2012, on the file of the Motor Accidents Claims Tribunal - II Additional District Judge, Tirunelveli, is hereby confirmed.

10. The appellant / Insurance Company is directed to deposit the entire compensation of Rs.6,09,000/- along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the claimant is permitted to withdraw the entire amount, after deducting the amount, if any, already received by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL)

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/ /2022

Sub Assistant Registrar(CS)

Ls

To

1. The Motor Accidents Claims Tribunal -
II Additional District Judge,
Tirunelveli.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.S.VEERANA SAMY, Advocate (SR-37155[F] dated 02/12/2021)

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