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C.M.A.(MD)No.761 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.08.2021

Delivered On : 13.09.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) No. 761 of 2014

1.Selvi

Kalaijothi (Died)

2.Minor Rethish

3.Minor Ragu

(Minor appellants 2 and 3 represented by
their mother and natural guardian,

first appellant herein) .. Appellants/Petitioners 1,3 and 4

Vs.

1.Muthuraja

(1st Respondent set exparte before the Tribunal. Hence, he may be
dispensed with)

2.Unnikrishna Kurup

3.The Oriental Insurance Co. Ltd.,

represented by its Branch Manager,

Having office at Ramakrishna Complex,

Near Aristo Junction, East Thambanur,

Thiruvananthapuram,

Kerala - 695 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 25.03.2014 passed in M.C.O.P.No.105 of 2013, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Nagercoil.

For Appellants

: Mr.N.Sudhagar Nagaraj

For 2nd Respondent

: Mr.R.Anand

For 3rd Respondent

: Mr.C.Jawahar Ravindran

For 1st Respondent

: Exparte

ORDER

This Civil Miscellaneous Appeal has been filed against the judgment and decree passed in M.C.O.P.No.105 of 2013 dated 25.03.2014 on the file of the Motor Accident Claims Tribunal (Chief

<https://hcservices.ecourts.gov.in/hcservices/>



Judicial Magistrate), Nagercoil.

2.The appellants herein are the petitioners 1, 3 and 4 and the respondents herein are the respondents in the claim petition. The appellant herein has filed a claim petition in M.C.O.P.No.105 of 2013, claiming compensation for the death of one Suyambulingam, in an accident that took place on 07.08.2012. The Tribunal has awarded a sum of Rs.8,74,000/- (Rupees Eight Lakhs and Seventy Four Thousand only) as compensation. Against which, the appellant has filed the present appeal.

3.Brief substance of the claim petition in M.C.O.P.No.105 of 2013 is as follows:

On 07.08.2012, at about 02.30 p.m., the deceased was riding his bicycle along the Kanyakumari - Nagercoil National Highways near Palpanabhanputhooor, keeping the left edge of the road. At that time, a maruti omni van bearing registration No.KL-01-Y-9257 was driven by its driver in a rash and negligent manner dashed against the deceased from backside. The deceased died on the way to the hospital. The claimants are his dependants and they claimed Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as compensation.

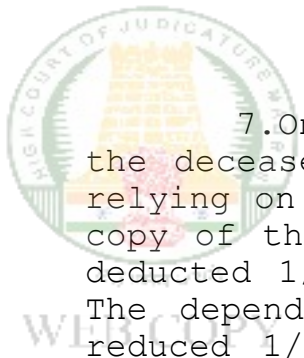
4.A brief substance of the counter filed by the second respondent herein is as follows:

The driver of the omni drove the van in a slow and cautious manner observing the road rules. It was the deceased, who suddenly dashed against the maruti van and then dashed against an electric post. The deceased invited the accident. The vehicle was insured with the third respondent and the third respondent is liable to pay compensation and the petition has to be dismissed as against the second respondent.

5.A brief substance of the counter filed by the third respondent herein is as follows:

The date, income and profession of the deceased are all denied. The first respondent is not responsible for the accident. It was the deceased, who crossed the road without observing the traffic and he invited the accident. The policy conditions are violated. The driver and the insurer of the vehicle failed to inform the insurance company about the accident. The claim is excessive.

6.On the side of the claimants, three witnesses were examined and 9 documents were marked. On the side respondents in the claim petition, no witness was examined and one document was marked. After considering both the sides, the Tribunal has awarded a sum of Rs.8,74,000/- (Rupees Eight Lakhs and Seven Four Thousand only) as compensation. Against which, the appellant has preferred this appeal.



7. On the side of the appellants, it is stated that the age of the deceased is only 43 years at the time of accident. Instead of relying on the post mortem certificate, the Tribunal relied on the copy of the ration card, which is not reasonable. The Tribunal deducted 1/3th of the income for the own expenses of the deceased. The dependants were four persons and the Tribunal ought to have reduced 1/4th of the income. The Tribunal failed to apply future prospects in calculating loss of income. The Tribunal has erroneously fixed the monthly income as Rs.6,000/- (Rupees Six Thousand only) per month and the same is to be enhanced as Rs.10,000/- (Rupees Ten Thousand only). Additional amount of Rs.4,00,000/- (Rupees Four Lakhs only) has to be awarded. The insurance company did not file any appeal.

8. On the basis of Ex.P1, Ex.P2, Ex.P3, Ex.P5, it is decided that the accident took place due to rash and negligent driving of the driver of the omni car. The age of the deceased was fixed as 46 years on the basis of Ex.R1, copy of the ration card. The age as per post mortem certificate is 43 years. The age is fixed as 43 years, as per post mortem certificate issued by the doctor, which is a better document.

9. On the side of the appellants, it is stated that the Tribunal is wrong in deducting 1/3th of the income towards own expenses of the deceased. On the side of the respondents 2 and 3, it is stated that one of the claimants died and there are only three claimants and hence, deduction of 1/3rd is sufficient. The second claimant Kalaijothi died on 21.01.2014. At the time of filing of the claim petition, there were four dependants and a deduction of 1/4th will be reasonable.

10. On the side of the appellants, it is stated that the deceased was working as a stone worker and sculpture worker and was earning Rs.550/- per day I.e. Rs.16,500/- per month. The Tribunal has fixed Rs.6,000/- (Rupees Six Thousand only) per month and the same has to be enhanced as Rs.8,000/- (Rupees Eight Thousand only) per month. On the side of the respondents 2 and 3, it is stated that there was no proof regarding the income of the deceased. The accident took place in the year 2012. Hence, the notional income fixed by the Tribunal is reasonable.

11. On the side of the appellants, it is stated that the Tribunal failed to apply 25% future prospects in calculating the loss of income. On the side of the respondents 2 and 3, it is admitted that the claimants are entitled for 25% towards future prospects. Hence, it is decided that the 25% of the income has to be calculated as future prospects.

12. On the side of the respondents 2 and 3, it is stated that the award under various other heads is excessive. The Tribunal has



awarded Rs.25,000/- (Rupees Twenty Five Thousand only) towards funeral expenses, Rs.75,000/- (Rupees Seventy Five Thousand only) towards loss of consortium, Rs.75,000/- (Rupees Seventy Five Thousand only) towards loss of love and affection and this amount ought to be reduced.

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13.By applying multiplier '15', the loss of income is calculated as Rs.10,12,500/- (Rupees Ten Lakhs Twelve Thousand and Five Hundred only). On the basis of **Praney Sethi** case, a sum of Rs.70,000/- (Rupees Seventy Thousand only) is awarded towards non pecuniary damages. In total, a sum of Rs.10,82,500/- (Rupees Ten Lakhs Eighty Two Thousand and Five Hundred only) is awarded as compensation.

14.In the result, this Civil Miscellenaous Appeal is partly allowed. The appellants herein are entitled to a sum of Rs.10,82,500/- (Rupees Ten Lakhs Eighty Two Thousand and Five Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

15.The respondents 2 and 3 are directed to deposit the above said amount if not deposited earlier, within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the first appellant is permitted to withdraw her respective shares with proportionate interest after deducting any amount received by her earlier. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first appellant, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. Excess amount, if any, deposited shall be refunded to the respondents 2 and 3. The claimants are not entitled for interest for the default period, if there is any. No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

Chief Judicial Magistrate
The Motor Accident Claims Tribunal,
(Chief Judicial Court),
Nagercoil.

Copy to

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

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-28879[F] dated
13/09/2021)

C.M.A. (MD) No.761 of 2014
13.09.2021

DKS (CO)
KB (26.10.2021) 5P 5C