



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 08.07.2021
Delivered On : 25.08.2021
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI
C.M.A.(MD)No.859 of 2014

WEB COPY

United India Insurance Co. Ltd.,
Rep. Through its Divisional Manager,
SNS Complex, 1st Floor, DO IV,
52, South Masi Street, Madurai -1.

... Appellant/2nd Respondent

Vs.

1.Fouzil Hinaya
2.Minor Jazam Suhail
(Minor Respondent No.2
Represented by his mother and guardian 1st Respondent)
3.Yasmin Roase ...1 to 3 Respondents/Petitioners
4.P.Thenappan ...4th Respondent/1st Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 30.10.2012 passed in M.C.O.P.No.1937 of 2010 on the file of the Motor Accidents Claims Tribunal/IV Additional District Judge, Madurai.

For Appellant : Mr.G.Prabhu Rajadurai
For Respondents 1 to 3 : Mr.S.Ramesh @ Ramiah
For 4th Respondent : Mr.C.Arun @ Arunachalam

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.1937 of 2010 dated 30.10.2012, on the file of the Motor Accidents Claims Tribunal/IV Additional District Judge, Madurai.

2.The appellant herein is the second respondent, the respondents 1 to 3 herein are the petitioners and the first respondent herein is the first respondent in the claim petition. The appellant has filed a claim petition in M.C.O.P.No.1937 of 2010, claiming compensation for the death of one Jahangeer, in an accident that took place on 25.10.2009. The Tribunal has awarded a sum of Rs.25,06,000/- (Rupees Twenty Lakhs and Six Thousand only) as



compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.1937 of 2010 is as follows:

On 25.10.2009, at about 11.30 a.m., the deceased Jahangeer was driving a Maruti car bearing Registration No.TN-63-V-6953 from Madurai to Karaikudi. The deceased Haseena Rehman, Haleetha Cherry, Jhasika were travelling as occupants in the maruti car. When the deceased drove the vehicle in a careful and cautious manner, a tipper lorry bearing registration No.TN-59-AL-9034 came from the opposite direction in a rash and negligent manner dashed against the car and caused fatal injuries to the driver and the passengers. At the time of the accident, Jahangir was aged about 32 years and was earning Rs.15,000/- (Rupees Fifteen Thousand only) per month. The claimants are his dependants and they claim a sum of Rs.25,00,000/- (Rupees Twenty Lakhs only) as compensation.

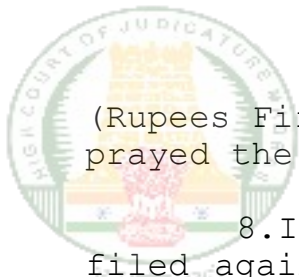
4.The brief substance of the counter filed by the second respondent therein is as follows:

The tipper lorry was driven by its driver in a slow manner due to heavy load of crusher jalli. There is no possibility of the lorry to drive in a rash manner. It was the car, which was driven by its driver in a rash and negligent manner and the car dashed against the lorry. The driver of the maruti car was not having valid driving licence. The owner and insurer of the car are necessary parties to the proceedings.

5.On the side of the petitioners, 3 witnesses were examined and 27 documents were marked. On the side of the respondents, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.25,06,000/- (Rupees Twenty Five Lakhs and Six Thousand only) as compensation to be paid by the appellant. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the compensation awarded is exorbitant. The deceased was only a temporary worker and hence, fixing the monthly income as Rs.15,000/- (Rupees Fifteen Thousand only) is excessive. The Tribunal is erroneous in awarding a sum of Rs.1,60,000/- (Rupees One Lakh Six Thousand only) towards loss of bonus. The deceased was working only for the period of seven months before the date of accident and that adding future prospects at 30% is wrong. The Tribunal instead of deducting 10% towards tax liability has deducted 7%. No permission under Section 170 of Motor Vehicles Act is required to contest the claim on all grounds and prayed the award to be set aside.

7.On the side of the respondents, it is stated that the claimants lost their bread winner. There is no negligence on the driver and the deceased was earning Rs.15,000/-



(Rupees Fifteen Thousand only) per month at the time of accident and prayed the appeal to be dismissed.

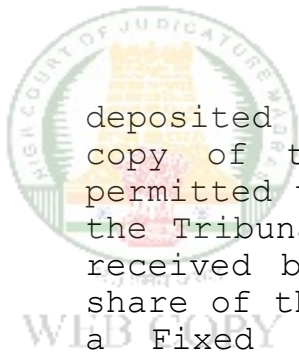
8.It is seen that Ex.P1, Ex.P5, FIR and chargesheet were filed against the lorry driver, hence it is decided that the lorry driver is responsible for the accident. The post mortem report of the deceased Jahangir was marked as Ex.P2. The age of the deceased at the time of accident is 32 years. The date of birth of the deceased as per Ex.P12 is 25.02.1977. P.W.3 has deposed that the monthly income of the deceased was Rs.15,000/- (Rupees Fifteen Thousand only). Pay certificate was marked as Ex.P13. Ex.P23 is the Registration Certificate and Ex.P24 is the income tax returns filed by the Siraj Foundry was marked. The ledger account was marked as Ex.P25. On the basis of the evidence of P.W.3 and on the basis of Ex.P23, Ex.P25, Ex.P13, the monthly income of the deceased is fixed at Rs.12,000/- (Rupees Twelve Thousand only). After deducting 1/4th, the deceased might have contributed Rs.9,000/- (Rupees Nine Thousand only) to his family members.

9.On the side of the appellant, it is stated that the deceased was working only as a temporary employer and that he worked in the unit only for seven months and that there is no permanency in the employment and that fixation of 30% future prospects is not necessary. For a person working in an unauthorized sector, the Tribunal has fixed 30% as future prospects and hence, the same is reasonable. After including the future prospects, the monthly loss of income is Rs.10,800/- (Rupees Ten Thousand and Eight Hundred only). The age of the deceased is 32 years at the time of accident. Multiplier '16' is applicable. The loss of income is fixed as Rs.20,73,600/- (Rupees Twenty Lakhs Seventy Three Thousand and Six Hundred only).

10.A sum of Rs.10,000/- (Rupees Ten Thousand only) was awarded towards bonus. The Tribunal after applying multiplier method awarded a sum of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) towards bonus. Bonus is an incentive given to the worker and it cannot be treated as a permanent income and the award of Rs.1,60,000/- towards bonus is not reasonable. As per **Praney Sethi** case, the compensation under various other heads is fixed as Rs.70,000/- (Rupees Seventy Thousand only).

11.In the result, this Civil Miscellaneous appeal is partly allowed. The claimants are entitled to a sum of Rs.21,43,600/- (Rupees Twenty One Lakhs Forty Three Thousand and Six Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

12.The appellant is directed to deposit Rs.21,43,600/- (Rupees Twenty One Lakhs Forty Three Thousand and Six Hundred only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be



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

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

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

1.The Motor Accidents Claims Tribunal,
IV Additional District Judge,
Madurai.

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

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-27474[F] dated 26/08/2021)

C.M.A. (MD) No.859 of 2014
25.08.2021

RK (08.10.2021) 4P 5C