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C.M.A.No.4010 of 2019

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 20.09.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.4010 of 2019

and

C.M.P.No.22666 of 2019

National Insurance Company Limited,
rep.by its Manager,
I Floor, R.V.R.Building,
No.157, Karamadai Road,
Mettupalayam,
Coimbatore.

... Appellant/4th Respondent

Vs.

1.Azhagammal @ Azhagi

2.Durian

3.Sridevi

4.Vaijyanthi

... Respondents/Claimants 1 to 4

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 20.09.2018 in M.C.O.P.No.42 of 2013 on the file of the learned IV Additional District Judge, Motor Accidents Claims Tribunal, Bhavani, Erode.



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For Appellant : Mr.N.B.Surekha

For Respondents : Mr.V.Kulanthaivel
for R1 to R4
No appearance for R6
No appearance for R5 and R7

JUDGMENT

The Insurance Company has challenged the Award passed by the learned IV Additional District Judge, Motor Accidents Claims Tribunal, Bhavani, Erode in M.C.O.P.No.42 of 2013 only on the ground of quantum.

2.The Insurance Company is aggrieved by the fact that though the deceased Sri @ Sriram was a bachelor and the claimants are his parents and sisters, the Tribunal has deducted 1/3rd towards his personal expenses instead of 50%. That apart, they had questioned the notional income that has been fixed as Rs.6,500/- and consequently, awarded a sum of Rs.13,10,400/- under the head of loss of dependency. Apart from these two main grounds, the learned counsel for the



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appellant/Insurance Company has not made out any serious grievance to the Award under appeal. She had no doubt made a submission regarding the fact that the petitioners had not proved that the deceased was a Cleaner, however, in the light of the evidence of PW3, that defence may not be available to the 2nd respondent Insurance Company.

3.As regards the contention that the notional income fixed is on the higher side, it is seen that the deceased was working as a Cleaner in the lorry, bearing Registration No.TN 40D 8326 belonging to the 1st respondent and has been earning around Rs.10,000/- per month. PW3, owner of the lorry has deposed in this regard, however, the same was not supported by any document. Therefore, the Tribunal has rightly fixed the notional income of Rs.6,500/-. To that, 40% has been added towards future prospects. Therefore, the total notional income would be a sum of Rs.9,100/-. I see no reason to disagree with the same. However, the argument of the learned counsel for the Insurance Company that though the appellant was a bachelor 1/3rd amount



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towards personal expenses to be deducted is in force that 50% has to be upheld and the same has to be deducted. The monthly income available to the family is Rs.4,550/-. Accordingly, the Award is modified to the limited extent of deduction of 50% from the income towards personal expenses. Considering the age of the deceased, the multiplier that is applicable is 18. Therefore, the total loss of income would be Rs.4,550/- x 12 x 18 = Rs.9,82,800/-. In all other respects, the Award remains unaltered. Therefore, taking into consideration the above aspects, the modified amount is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	Rs.13,10,400/-	Rs.9,82,800/-	Reduced
2.	Loss of love and affection	Rs.80,000/-	Rs.80,000/-	Confirmed
3.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Transportation	Rs.10,000/-	Rs.10,000/-	Confirmed
5.	Loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
	TOTAL	Rs.14,30,40	Rs.11,02,800	



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
		0/-	/-	

4. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

The appellant/Insurance Company is directed to deposit the reduced compensation amount of Rs.11,02,800/- from Rs.14,30,400/-, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.42 of 2013 on the file of the learned IV Additional District Judge, Motor Accidents Claims Tribunal, Bhavani, Erode, within a period of six weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the claimants are permitted to withdraw the entire award amount with proportionate accrued interest and costs as apportioned by the Tribunal, by making necessary applications.



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WEB COPY The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. No costs. Consequently, connected Miscellaneous Petition is closed.

20.09.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The IV Additional District Judge,
Motor Accidents Claims Tribunal,
Bhavani,
Erode District.



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P.T. ASHA, J,

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