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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.1013 of 2018

- 1.S.Nithya
- 2.S.Chellammal
- 3.S.Munusamy
- 4.S.Athimuthu
- 5.S.Nagalingam

...Petitioners / Appellants

Vs.

1. J.S.Traders
No.1, Sannathi Street,
Veppampattu,
Thiruvallur District.
(R1 remained ex-parte before the
Tribunal hence his presence may
by dispensed with)
2. New India Assurance Company Limited,
No.45, Moore Street, 5th floor,
Chennai - 600 001.

..Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the award against the judgment and decree dated 30.04.2015 in MACTOP No.2158 of 2013 on the file of the Motor Accident Claims Tribunal / II Special Sub Court to deal with MCOP cases, Chennai.

For Appellant : Mr.F.Terry Chella Raja
For R1 : Ex-parte
For R2 : Mr.Krishnamoorthy

J U D G M E N T

The claimants in MACTOP No.2158 of 2013 which was on the file of the learned Special Sub Judge No.II, Chennai / Motor Accident Claims Tribunal, Chennai are the appellants herein.



2. Even before proceeding further, I must point out that any compensation granted can be apportioned only between the 1st and 2nd claimants / appellants herein as the 3rd to 5th claimants / appellants are the brothers of the deceased and in the presence of class 1 heirs namely, the widow and mother, the class 2 heirs namely, brothers cannot lay any claim over any compensation granted either by the Tribunal or by this Court.

3. The necessity for filing the petition seeking compensation arose owing to the death of Sathiyamoorthy who, at around 7.30 am on 22.12.2012 was riding his motor cycle bearing registration No. TN-10-AA-9123 at Kundrathur road, when a lorry bearing registration No. TN-20-CY-5577 came in the same direction and dashed against him owing to which the said Sathiyamoorthy fell down and the lorry ran over on him and he unfortunately died at the spot.

4. It was claimed that the accident occurred due to the rash and negligent manner in which the lorry was driven. The Tribunal also held as above on analysis of the evidence presented before it and therefore that particular fact need not be re-examined again.

5. Mr. Krishnamoorthy learned counsel for the 2nd respondent / Insurance Company has also not contested that particular fact.

6. The point for consideration in the appeal is examining the quantum of compensation granted by the Tribunal.

7. On this aspect heard Mr. F. Terry Chella Raja, learned counsel for the appellants and Mr. Krishnamoorthy learned counsel for the 2nd respondent.

8. The accident as mentioned occurred on 22.12.2012. The deceased Sathiyamoorthy was aged about 30 years. He had no children. He was working as a centering worker. The Tribunal on consideration of that particular nature of work in which he was involved had presumed that he would have earned a sum of Rs.20,000/- per month and had determined that he would have retained a sum of Rs.8,000/- per month. This would, in turn mean, that he would have earned a sum of Rs.320/- per day, if we have to take the employment for a period of 25 days per month. I hold that aspect requires reconsideration.

9. By judgment dated 30.04.2015, the Tribunal had granted a total compensation of Rs.13,13,000/-. The compensation breakup was as follows:

1. Loss of dependency to the deceased	Rs.10,88,000/-
2. Loss of consortium to the 1 st petitioner	Rs. 1,00,000/-



3. Loss of love and affection to the
2nd petitioner
4. Loss of funeral and ritual expenses

Rs. 1,00,000/-
Rs. 25,000/-

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Total

Rs. 13,13,000/-

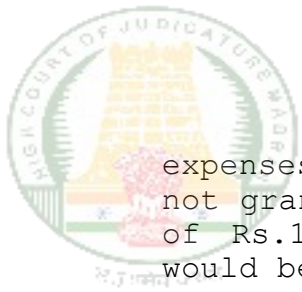
10. I am presented with a judgment of the Hon'ble Supreme Court in Civil Appeal No.7004 of 2019, Chameli Devi & Others v. Jivrail Mian and Others wherein, the Hon'ble Supreme Court had interfered with the compensation granted with respect to a daily wage worker, in that case, carpenter and assessed his daily wage to be Rs.200/- per day in the year 2001.

11. A centering worker is also specialized and skilled worker. He is responsible to ensure that the roof which is put up in a building construction is stable, is balanced, is even, and more importantly the correct measure of concrete is put, so that there are no water leakages in the roof or even air line cracks in the roof. This is very important and requires skill to do such work. They may not be educationally qualified, but, experienced masons alone are engaged to do this particular centering work.

12. I would therefore revise the wage to Rs.400/- per day and at 25 working days to Rs.10,000/ per month.

13. Let me also grant 40% as future increase in the income owing to the nature of specialization and if that is added, the monthly income would come to Rs.14,000/- (Rs.10,000/- + Rs.4,000/-). This should be multiplied for one year. The income per annum would be Rs.1,68,000/- (Rs.14,000/- x 12). There must be some deduction made for the contribution made by the deceased, which he would have made for the family and that is determined at 1/3rd deduction. Then the net amount would be Rs.56,000/- and the net annual income would be Rs.1,12,000/- (Rs.1,68,000 - Rs.56,000/-). If a multiplier of 17 is taken into consideration, then the total compensation, towards loss of dependency to the family of the deceased would come to Rs.19,04,000/-. As pointed out earlier this amount can be apportioned only between the 1st and 2nd appellants, widow and mother of the deceased.

14. The Tribunal granted a sum of Rs.1,00,000/- as loss of consortium to the 1st petitioner / widow and that is to be revised to Rs.40,000/-. The Tribunal granted a sum of Rs.1,00,000/- towards loss of love and affection to the 2nd petitioner / mother and that has to be revised to Rs.40,000/-. The Tribunal granted Rs.25,000/- towards funeral and ritual



expenses and that is revised to Rs.15,000/-. The Tribunal had not granted any amount to loss of estate and I would grant a sum of Rs.15,000/- towards loss of estate. The final calculation would be as follows:

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1.Loss of dependency to the deceased	Rs.19,04,000/-
2.Loss of consortium to the 1 st petitioner	Rs. 40,000/-
3.Loss of love and affection to the 2 nd petitioner	Rs. 40,000/-
4.Loss of funeral and ritual expenses	Rs. 5,000/-.
5.Loss of estate	Rs. 15,000/-

Total

Rs. 20,14,000/-

15.The Civil Miscellaneous Appeal is allowed to that extent enhancing the compensation which had been determined as Rs.13,13,000/- to Rs.20,14,000/-. The Insurance company shall deposit the difference in compensation amount i.e., Rs.7,01,000/- with interest of 7.5% from the date of filing of the petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. I am informed that there is a delay of 415 days in filing the appeal and while calculating 7.5%, sufficient interest for 415 days may be subtracted while determining the amount of interest which was accrued on the difference amount and directed to be paid by the 2nd respondent. On such deposit since both the widow and mother would be required this particular amount, they are at liberty to file necessary application for payment out and it may be paid out in the ratio of 60 : 40. No order as to costs.

Sd/-

Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

smv

To:-

The Motor Accident Claims Tribunal
The II Special Sub Court, Chennai.

+1cc to Mr.F.Terry Chella Raja, Advocate, S.R.No.

CMA.No.1013 of 2018

SPD[co]
NSK 08/04/2022