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C.M.A.No.1466 of 2021 and Cross Obj.No.91 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.M.A.No.1466 of 2021 and Cross Obj.No.91 of 2021
and CMP.No.7636 of 2021

C.M.A.No.1466 of 2021

M/s.United India Insurance Co. Ltd.,
Erode 11.

...appellant

Vs.

1. Rajika
2. Minor Akshaya Manohar
3. Minor Ananya Manohar
[Minors rep. by next friend/mother Rajika]
4. Rajeswari
5. Mohan Rao
6. V.Rajamanickam

...respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 06.12.2019 made in MCOP.No.69 of 2018 on the file of the Motor Accidents Claims Tribunal (III Additional District Court, Villupuram @ Kallakurichi).

For Appellant : Mr.S.Arunkumar

For Respondents

for RR1 to 5 : Mr.A.Sathishkumar

for R6 : Notice returned as "No such address"



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1. Rajika
2. Minor Akshaya Manohar
3. Minor Ananya Manohar
- [Minors rep. by next friend/mother Rajika]
4. Rajeswari
5. Mohan Rao

...appellants

VS.

1. V.Rajamanickam
2. M/s.United India Insurance Co. Ltd.,
Erode 11.

...respondents

Prayer: Cross Objection filed under Order XLI, Rule 22 of the Code of Civil Procedure, seeking to enhance the award dated 06.12.2019 in MCOP.No.69 of 2018 on the file of the Motor Accident Claims Tribunal/ III Additional District Court, Kallakurichi.

For Appellants : Mr.A.Sathishkumar

For Respondents

for R1

: Notice returned as "No such address"

for R2

: Mr.S.Arunkumar



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COMMON JUDGMENT

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[Judgment of the Court was delivered by R.SUBRAMANIAN, J]

Aggrieved by the award of the Motor Accidents Claims Tribunal (III Additional District Court, Villupuram @ Kallakurichi) in MCOP.No.69 of 2018, wherein an award of Rs.61,33,550/-, was made for the death of one Manohar Rao in a road accident that occurred on 06.12.2017, the present appeal has been filed by the Insurance Company. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed cross-objection, seeking enhancement.

2. According to the claimants/respondents 1 to 5, when the deceased Manohar Rao was riding a motorcycle bearing Registration No.AP.15-AU-5436 near Puthiragoundampalayam in Attur-Salem Highway, the Tanker Lorry owned by the sixth respondent bearing Registration No.TN-38-BA-8700 came from behind and dashed against the motorcycle resulting in instantaneous death of the rider of the motorcycle. Claiming that the deceased was working as an Assistant Manager in a Hotel in Salem drawing a salary of Rs.31,950/- per month, the claimants sought for a compensation



of Rs.1 Crore.

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3. The claim was resisted by the Insurance Company contending that there was no negligence on the part of the Lorry driver and it was the negligence of the rider of the motorcycle that caused the accident. The claim that the deceased was earning a sum of Rs.31,950/- was stoutly disputed by the Insurance Company.

4. Before the Tribunal, the first claimant/wife of the deceased examined herself as PW1 and 2 co-workers were examined as PWs.2 and 3. Exs.P1 to P18 were produced. Ex.P5 is the salary certificate and Exs.P17 and 18 are the vouchers and monthly statements for the salary paid to the deceased and other workers of the establishment. The Insurance Company did not let in any evidence on its behalf.

5. The Tribunal on the assessment of the evidence accepted Exs.P17 and 18 and took the income of the deceased at Rs.31,950/-, added 40% towards future prospects, deducted 1/4th towards personal expenses and fixed the Loss of Dependency at Rs.60,38,550/-. It also awarded a sum of Rs.80,000/- towards Loss of Consortium and Loss of Love and Affection and



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Rs.15,000/- towards Funeral Expenses. Thus, the Tribunal awarded a sum of

Rs.61,33,550/- as compensation to the claimants.

6. On the question of negligence, the Tribunal found that the FIR was filed against the driver of the Lorry and in the absence of any evidence on the side of the Insurance Company, refused to accept the defence of the Insurance Company and held that the Lorry driver alone was responsible for the accident. The theory of contributory negligence was also rejected by the Tribunal.

7. We heard Mr.S.Arunkumar, learned counsel for the appellant and Mr.A.Sathishkumar, learned counsel appearing for the respondents 1 to 5/ claimants.

8. Mr.Arunkumar, learned counsel appearing for the appellant would argue that the quantum of compensation awarded is on the higher side. According to the learned counsel, the Tribunal erred in accepting the claim that the deceased was earning a sum of Rs.31,950/- based on the vouchers and monthly statement of accounts without any supporting documents. The learned counsel would submit that the cash payment of salary, that too in the



year 2017 supported by vouchers cannot be recognised by the Courts.

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9. Contending contra, Mr.A.Sathiskumar, learned counsel appearing for the respondents 1 to 5/claimants would submit that the veracity vouchers stood established by the very fact that they contain the signature of the deceased. Therefore, according to him the vouchers cannot be disputed. He would further submit that though there is an infraction of law in accepting payments in cash supported by vouchers, the same cannot be put against the claimants, particularly, in a case where the claimants are seeking compensation for the death of the sole breadwinner of the family.

10. We have considered the rival submissions. No doubt Mr.Arunkumar, is right in his submissions that payment of salary in cash supported by vouchers cannot be recognised by the Courts. However, in dealing with the motor accident cases, where we are required to fix compensation payable to the dependents of the victim of an accident, we cannot apply strict rule of evidence. There will have to be necessarily a sympathetic approach and all that we have to do is to look for an aid to assess the compensation and not legally valid evidence. We better rely on



some evidence than no evidence.

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11. In the case on hand, Ex.P17, is a set of 11 vouchers spanning over a period of at least a year. These vouchers are also supported by the monthly salary statements of all the employees of the establishment including the deceased. All the vouchers pertain to the deceased and contain the signature of the deceased on revenue stamps.

12. We are unable to reject these vouchers solely on the ground that there is an infraction of law and the employer has paid the salary of more than Rs.20,000/- by cash. Such an infraction is punishable, but the transaction is not invalid. We are therefore unable to find fault on the Tribunal for having accepted these vouchers as evidence for income and conclude that the claimants would be entitled to a sum of Rs.60,38,550/- for Loss of Dependency. We also find that the compensation awarded under the conventional heads, viz., Loss of Consortium, Loss of Love and Affection and Funeral Expenses, of a sum of Rs.95,000/- have been granted as fixed by the Hon'ble Supreme Court. We therefore do not find any reason to interfere with the award.



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13. In such view of the matter, this Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1, 4 and 5 are permitted to withdraw their respective shares as apportioned by the Tribunal, less, the amount, if any, already withdrawn together with proportionate interest and costs. Insofar as the minor claimants 2 & 3 are concerned, their respective shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother, once in three months.

14. In view of the above, Cross objection stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

(R.S.M.J.) (R.N.M.J.)
14.12.2022

Index : No
Speaking order: Yes
pvs



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To

1. The III Additional District Court
Motor Accidents Claims Tribunal, Villupuram @ Kallakurichi
2. The Section Officer,
VR Section High Court, Madras.



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R.SUBRAMANIAN, J.

and

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