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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.No.3062 of 2017

1.Ponnambalam

2.Minor. Rithik

3.Minor. Ritheesh

(Minor 2nd & 3rd Petitioners

rep by his next friend

guardian Father Ponnambalam)

...Appellants/Petitioners

Vs.

1.Balakrishnan

2.The National Insurance Company Limited,
Second Floor, No.31/6, Nathan Arcade,
Canara Bank Upstairs, New Bye-Pass Road,
Musiri, Trichy District - 621 211.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.06.2017 made in MCOP.No.1688 of 2016 on the file of the Motor Accidents Claims Tribunal / Principal District Court at Namakkal.

For Appellants : Mr.M. Lokesh for

Mr.Ma.P.Thangavel

For Respondents : Mr.S.Arunkumar for R2

J U D G M E N T

Heard the learned counsel for the Appellant.

2.The husband of the deceased and her minor children are the appellants herein. The appellants herein / claimants filed M.C.O.P.No.1688 of 2016 on the file of the Principal District Court at Namakkal / Motor Accidents Claims Tribunal seeking



compensation for the death of Malathi, who was the wife of the 1st claimant and the mother of the 2nd and 3rd claimants.

3.The accident occurred on 30.05.2016 at around 7.30 p.m near Mahadevi bus stop, Subramaniam house in Namakkal Thathaiyankarpettai Road, when the deceased Malathi was a pillion rider in a two wheeler bearing registration number TN-47-X-9139, which was driven by the 1st claimant. At that point of time, a Tata Indigo ECS car bearing registration number TN-45-BC-3520 came from behind and collided against the motor cycle, owing to which, the said Malathi sustained severe injuries all over her body and died on the way to the hospital. It is claimed that she was aged 21 years and was working as a Tailor and earning a sum of Rs.15,000/- per month.

4.In this connection, a First Information Report in Crime No.81 of 2016 had been registered under Section 279, 337 and 304(A) of IPC by the Thathaiyankarpettai police station.

5.It must also be pointed out that the 2nd respondent / National Insurance Company Limited, Trichy remained exparte before the Tribunal and the judgment passed is actually an exparte judgment. There has been no contest by the 2nd respondent / Insurance Company.

6.The judgment is quite brief in nature and during the course of determining compensation, the Tribunal examined the 1st claimant, Ponnambalam / husband of the deceased as P.W.1 and examined one Srinivasan said to be an eye witness as P.W.2. Documents were also filed. The Motor Vehicles Inspector's report for the two vehicles namely, the two wheeler driven by the 1st claimant and the Tata Indigo car had been marked as Exs.P4 and P5. The insurance policy had been marked as Ex.P3. The First Information Report and the charge sheet had been marked as Exs.P1 and P6.

7.The Tribunal had the benefit of hearing only the evidence adduced by the claimants alone and that evidence was not contested, since the Insurance Company had been set exparte.

8.The Tribunal, proceeded to determine the monthly income of the deceased at Rs.6,000/- and adopted a multiplier of 18 and substracted 1/3rd towards personal exepenses and finally worked out the total loss of income at Rs.8,64,000/-. That is the only aspect, which is urged in this appeal.



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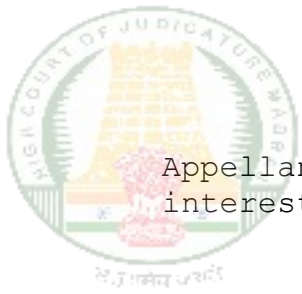
9. In the present appeal, the Insurance Company has participated but it was stated by the learned counsel that though an application was preferred to set aside the exparte decree, but that was not filed.

10. Having recorded the facts of the case, let me not disturb the findings of the Tribunal with respect to the finding that it was only due to the rash and negligent driving of the vehicle of the 1st defendant bearing registration number TN-45-BC-3520 / a Tata Indigo ECS Car that the accident occurred.

11. With respect to the compensation which is to be granted, let me interfere with respect to the monthly income, which could have been earned by the deceased and I revise that amount to Rs.6,500/-. Let me grant 40% of the aforesaid amount towards future prospects and I would, grant a sum of Rs.8,000/- towards loss of love and affection for the minor children. In fine, the compensation granted is modified as follows:

Heads	Amounts
Loss of future income	Rs.13,10,400/-
Loss of Estate	Rs.3,000/-
Funeral Expenses	Rs.5,000/-
Love and affection	Rs.8,000/-
Transportation	Rs.2,000/-
Total	Rs.13,28,400/-

12. The Civil Miscellaneous Appeal is allowed to that extent enhancing the compensation which had been determined as Rs.8,79,000/- to Rs.13,28,400/-. The Insurance company shall deposit the difference in compensation amount i.e., Rs.4,49,400/-, less the amount, if any already deposited with interest at 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. On such deposit, 1st Appellant is entitled to 50% of the award amount and the minors / Appellants 2 and 3 are entitled to remaining 50% of the award amount. So far as Minors' / appellants 2 and 3 amount is concerned, it is ordered to deposit in anyone of the Nationalized Bank till they attaining majority and the 1st



Appellant / father of the minors is permitted to withdraw the interest alone once in three months.

13. In view of the above observations, this Civil Miscellaneous Appeal is allowed. No order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To-

The Motor Accident Claims Tribunal,
Principal District Judge
Namakkal.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.Ma.P.Thangavel, Advocate sr 14535.

C.M.A.No.3062 of 2017

RP (CO)
SP (28/04/2022)