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C.M.A(MD)No.1022 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.09.2022

Pronounced on : 02.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.1022 of 2012

- 1.Kanmani
- 2.Lingarajan
- 3.Aanandarajan
- 4.Uma Devi
- 5.Elsie
- 6.Yesuvadiyae (Died)
- 7.Lakshmi
- 8.Vasantha
- 9.Rajakani
- 10.Thamaraipuspam
- 11.Suganthi Pappa

... Appellants

(Appellants 7 to 11 brought on record as LR's of deceased 6th Appellant vide Court order dt:22.07.2016 made in C.M.P(MD)No.1 to 3 of 2014 in C.M.A(MD)No.1022 of 2012 by MKKSJ)

(11th Appellant amended vide Court order dt:22.06.2018 made in C.M.P(MD)No. 4793 of 2018 in C.M.A(MD)No.1022 of 2022 by JNBJ)

Vs.

- 1.Vasanthi
- 2.United India Insurance Co.Ltd.,
through its Divisional Manager,
No.1, Post Office Road,
Palayamkottai.

... Respondents



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PRAYER :-

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This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree made in M.C.O.P.No.1266 of 2010 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.2), Tirunelveli, dated 11.04.2011.

For Appellants : Mr.T.Selvakumaran

For R2 : Mr.S.Natarajan

JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.1266 of 2010 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.2), Tirunelveli, dated 11.04.2011. The appellants are the claimants. The respondents herein are the respondents in the original claim petition.

2.Brief substance of the claim petition is as follows:

On 15.10.2010 at about 10.15 a.m., when the deceased Maharajan was travelling in a Tractor bearing registration number TN-32-N-5886 along the Tirunelveli – Nagercoil main road, a lorry bearing registration number TN-72-B-0372 driven by its driver in a rash and negligent manner, dashed against the Tractor and the Tractor capsized. The deceased sustained injuries and was admitted in Aasaripallam hospital, Nagercoil and he died succumbed



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to the injuries. The deceased was the owner cum driver of the Tractor and he was earning Rs.20,000/ per month. The claimants are his dependants and they claim Rs.10,00,000/- as compensation.

3.Brief substance of the counter filed by the respondents is as follows:

The first respondent is not responsible for the accident. The deceased drove the vehicle without a driving license. The accident has happened only due to the driver of the deceased. The age, occupation and income of the deceased are all denied. The Tractor was not having permit or fitness certificate. The policy conditions are violated. The amount claimed as compensation, is excessive.

4.Two witnesses (2) were examined and five (5) documents were marked on the side of the petitioners. No witness was examined and no document was marked on the side of the respondents. The Tribunal has awarded Rs.4,20,000/- as compensation, to be paid by the respondents.

5.Against the order, the appellants have preferred this appeal on the following grounds:



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The Tribunal ought to have fixed the monthly income at Rs.10,000/-.

The Tribunal ought to have deducted only 1/4th of the income for the own expenses of the deceased and after applying multiplier '13', loss of income is to be calculated as Rs.11,70,000/-. The Tribunal ought to have granted Rs.25,000/- towards loss of consortium and Rs.20,000/- towards loss of love and affection.

6.On the side of the appellants, it is stated that the deceased was the owner of the Tractor and he was paying monthly E.M.I and the receipt for payment of EMI was marked as Ex.P4. The R.C.Book was marked as Ex.P5. The deceased was having the capacity to pay the monthly E.M.I. Without considering the same, the Tribunal has fixed monthly income only at Rs. 4,000/- and the same has to be raised to Rs.10,000/-. Even in the year 2008, the Hon'ble Supreme Court has fixed the notional monthly income as Rs. 6,500/-. The deceased was aged about 50 years and the claimants are entitled to 25% future prospectus.

7.On the side of the respondent, it is stated that the Tribunal has wrongly fixed 8% interest and the same has been modified as the appellants



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are entitled for interest only at the rate of 7.5% per annum.

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8.Considering the fact that since the deceased was the owner of the vehicle, the monthly income is fixed at Rs.6,000/-. After deducting 1/4th for the own expenses of the deceased, the income is calculated at Rs.4,500/- (6000 – 1500 [6000/4]). After adding 25% towards future prospectus, the monthly income calculated at Rs.5,625/-[4500 + 1125(25% of 4500)]. Considering the age of the deceased, multiplier '13' is to be adopted. By adopting multiplier '13' the loss of income is calculated at Rs.8,77,500/- (5625 x 12 x 13).

9.On the side of the appellants, it is stated that the petitioners are entitled to Rs.50,000/- for loss of consortium and loss of love and affection. On the side of the respondent, it is stated that the petitioners are not entitled to loss of consortium.

10.Considering the date of accident, it is decided that the appellants are entitled to Rs.70,000/- towards conventional charges. The award is modified as follows:



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Loss of Income	-	Rs. 8,77,500/-
Conventional Charges	-	Rs. 70,000/-

Total	-	Rs. 9,47,500/-

The award is fixed as Rs.9,47,500/-.

11.It is seen that the Tribunal has fixed the rate of interest at 8% p.a which is excessive. The appellants are entitled to interest only at the rate of 7.5%.

12.The Civil Miscellaneous Appeal is allowed in part. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.4,20,000/- to Rs.9,47,500/- (Rupees Nine lakhs Forty Seven Thousand Five Hundred only) which shall carry interest at the rate of 7.5% per annum.

(ii) The second respondent /Insurance company, is directed to deposit the entire compensation of Rs.9,47,500/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.1266 of 2010 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.2, Tirunelveli, within a period of eight weeks from the date of receipt of a



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copy of this order. The petitioners are not entitled for any interest for the default period.

(iii) The appellants are directed to pay the court fee for the enhanced amount.

(iv) On such deposit being made by the second respondent /Insurance Company, the first appellant / 1st claimant is entitled to Rs.4,97,500/- (Rupees Four Lakhs Ninety Seven Thousand Five Hundred only) with proportionate interest and the appellants 2 to 5 are entitled to Rs.1,00,000/- (Rupees One lakh only) each with proportionate interest. The Legal Representatives of the sixth appellant are entitled to Rs.50,000/- (Rupees Fifty Thousand only) with proportionate interest, which can be divided as Rs.10,000/- (Rupees Ten Thousand only) each, by the appellants 7 to 11 with proportionate interest.

02.11.2022

Index: Yes / No
Internet : Yes / No
vsd

To

- 1.The Motor Accident Claims Tribunal (Fast Track Court No.2),
Tirunelveli.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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R.THARANI, J.

vsd

Pre - Delivery Judgment made in
C.M.A(MD)No.1022 of 2012

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