



C.M.A.(MD)No.1925 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.09.2022

Delivered On : 23.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1925 of 2013

and

M.P.(MD)No.3 of 2013

National Insurance Company

135/1, Rose Building Main Road,

Kovilpatti, Thoothukudi District.

.. Appellant /2nd Respondent

Vs.

1.R. Murugeswari

2.Minor R.Sriram

3.Minor R.Rani Samyuktha

(Minors 2 & 3 Represented
Through their Mother R1)

... Respondents 1 to 3 / Petitioners

4.V.Ramnath

5.Kaliammal

... Respondents 4 &5 / Respondents 1 &3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award, made in M.C.O.P.No.230 of 2007, dated 28.09.2012, on the file of the Motor Accidents Claims Tribunal-Sub Court, Srivilliputhur.



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For Appellant

: Mr.D.Sivaraman

For Respondents

: Mr.M.Ashok kumar for R1 to R3

: No appearance for R4 & R5

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.230 of 2007, dated 28.09.2012, on the file of the Motor Accidents Claims Tribunal-Sub Court, Srivilliputhur. The appellant herein is the second respondent, the respondents 1 to 3 herein are the claimant and the respondents 4 and 5 herein are the respondents 1 and 3 in the original M.C.O.P. Petition. A joint trial was conducted in M.C.O.P.No.230 of 2007 and 273 of 2007 and a common judgment was pronounced by the Tribunal, on 28.09.2012.

2. Brief substance of the claim petition in M.C.O.P.No. 230 of 2007, is as follows:

On 10.3.2007, at about 12.30 pm., when the deceased-Radha krishnan and others were travelling in a Car bearing Registration No.TN-59-B-5284 along the Sengottai - Madurai main road, near Duraisamy puramvilakku, the driver of the vehicle drove the vehicle in a rash and



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negligent manner, and tried to avoid hitting buffaloes that were crossing the road, he dashed the vehicle on a road side tamarind tree and caused the accident. The deceased sustained grievous injuries and died on his way to the Hospital. The deceased was working as an Engineer in Sengottai Municipality and he was earning Rs.15,505/- per month. The claimants are his dependants and they claimed a sum of Rs.40,00,000/- as compensation.

3. Brief substance of the counter filed by the second respondent in M.C.O.P.No. 230 of 2007 is as follows:

The manner of the accident is wrongly narrated in the petition. The age, profession and income of the deceased are all denied. Only 5 persons can travel in the car, but, at the time of accident including the driver 6 persons travelled in the Car. Since the number of persons are excessive, it causes inconvenient to the driver, thereby, the driver lost his control over the Car. The policy conditions are violated. The passengers in the Car can claim compensation only up to a limit of Rs.1,00,000/- per head. The father of the deceased-Velusamy is separately living with the third respondent-Kaliammal. The petition is bad for non-joinder of necessary party.



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4. In the joint trial, 5 witnesses were examined and 13 documents were marked, on the side of the claimants. 1 witness was examined and 1 document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.29,70,000/- as compensation to the claimants.

5. Against the award, the second respondent / appellant has filed this appeal on the following grounds:-

The Tribunal fixed the monthly income of the deceased at Rs.40,000/-, by taking into consideration the probability of an increase in the salary after the implementation of 5th pay commission. There was no oral or documentary evidence before the Tribunal, to prove that the income of the deceased was to be enhanced under the 5th pay commission or that there was a proposal in the report of the 5th Pay Commission to increase the salary as Rs.40,000/- per month. The deceased was 37 years, at the time of accident and that the Tribunal is wrong in adopting multiplier '16', the proper multiplier is only '15'. The tribunal is wrong in deducting 1/4th of the income.



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6. On the side of the appellant, it is stated that the award of Rs.50,000/- towards loss of consortium is excessive and the Tribunal failed to deduct the income tax. The award is excessive.

7. On the side of the respondents, it is stated that the Tribunal has failed to consider the future prospects. After considering the pay commission report and considering the future prospects, the claimants are entitled to much more amount than that was awarded by the Tribunal.

8. The Tribunal has calculated the monthly income as Rs.40,000/- keeping in mind the proposal for enhancement of salary, after the 5th pay commission. Fixing the salary on a future proposal of a pay commission report is wrong. The appellant has mentioned that the salary of the deceased was Rs.15,505/- at the time of accident. After deducting 1/4th of the income towards his own expenses, the deceased might have contributed Rs.11,628.75 to his family. The amount is rounded off to Rs.11,630/-. The age of the deceased at the time of accident was 38 years. It is seen that the Tribunal has failed to add future prospects in calculating the income of the deceased. After considering the future prospects (40%), the monthly income is calculated as Rs.16,282/- (Rs.11,630 + Rs.4,652/- = Rs.16,282/-).



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After applying correct multiplier '15' and the loss of income is calculated as

Rs.29,30,760/- (Rs.16,282/- X 12 X 15 = Rs.29,30,760/-). The claimants

are entitled for Rs.70,000/- towards conventional charges.

9. The total compensation is calculated as follows:-

Loss of income	:	Rs. 29,30,760/-
Conventional charges	:	Rs. 70,000/-
Total compensation	:	 Rs. 30,00,760

10. But, considering the fact that the claimants have not filed any appeal or cross objection, it is decided that the award fixed by the Tribunal is reasonable.

11. Hence, it is decided that the appeal is to be dismissed and the award of the Tribunal is hereby confirmed. This appeal is dismissed.

(i) The appellant - Insurance Company, is directed to deposit the entire compensation amount of Rs.29,70,000/- (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 with costs, within a period of eight weeks from the date of receipt of a copy of this order.



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(ii) On such deposit being made by the Insurance Company, the major claimant / first respondent herein is permitted to withdraw her share amount as apportioned by the Tribunal with proportionate interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by her.

(iii) The Tribunal is directed to deposit the share of the minor claimants /respondents 2 & 3 herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. The claimants are not entitled for interest for the default period, if there is any. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Internet : Yes/No

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R. THARANI, J.

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To

- 1.The Sub Judge,
Motor Accidents Claims Tribunal,
Srivilliputhur.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
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