



C.M.A.(MD)No.782 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 26.10.2022

Delivered On : 07.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.782 of 2012

The General Manager,

M/s. Cholamandalam Ms. General

Insurance Co.Ltd.,

“Dare House”, 2nd Floor,

No.2, NSC Bose Road,

Chennai – 600 001.

.. Appellant / 2nd Respondent

Vs.

1.Vijayakumari

2.Praveen

.. Respondents 1&2 /Petitioners

3.Naveen

.. 3rd Respondent /1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 21.11.2011, in M.C.O.P.No.57 of 2011, on the file of the Motor Accident Claims Tribunal – Additional District Judge – Fast Track Court, Virudhunagar.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent No. 3 : No appearance

For Respondent Nos.1 & 2 : Mr.D.Shanmugaraja Sethupathi



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JUDGMENT

This Civil Miscellaneous Appeal has been filed dated 21.11.2011, in M.C.O.P.No.57 of 2011, on the file of the Motor Accident Claims Tribunal – Additional District Judge – Fast Track Court, Virudhunagar. The appellant herein is the second respondent, the respondents 1 and 2 herein are the claimants and the third respondent herein is the first respondent in the original M.C.O.P. Petition.

2. Brief substance of the petition, in M.C.O.P.No.57 of 2011, is as follows:-

On 14.05.2010, at about 3.15 pm., the deceased – Jeyaraman and another person, by name, Vijayakumari travelled in a Car bearing Registration No.TN-07-AB-7277 along the Madurai – Tiruchuli main road, near Thuvarankurichi diversion, the driver of the car drove the vehicle in a rash and negligent manner and dashed against the steel grill in the middle of the road. Jeyaraman died on the spot and Vijayakumari sustained injuries. The said Vijayakumari filed a petition in M.C.O.P. No.56 of 2011. The petitioners, who are the dependents of the deceased- Jeyaraman, filed a petition in M.C.O.P.No.57 of 2011 and they claimed a sum of Rs.26,00,000/- as compensation.



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3. Brief substance of the counter filed by the second respondent, in both the petitions, is as follows:-

The manner and mode of accident is denied. The first respondent, is the owner of the vehicle and he is the son of the deceased, who travelled in the vehicle. The petitioners are not a third parties and they are not entitled to claim any compensation. The first respondent driver drove the vehicle in a moderate speed, observing the traffic rules. There is no negligence on the part of the drive. The parents of the deceased are necessary parties. The age, income, occupation of the deceased are to be proved.

4. M.C.O.P.No.56 of 2011 was filed claiming compensation for injuries sustained by Vijayakumari and M.C.O.P.No.57 of 2011 was filed claiming compensation for the death of the deceased - Jeyaraman in the very same accident. A common trial was conducted and a common judgment was pronounced by the Motor Accident Claims Tribunal –Additional District Judge(Fast Track Court), Virudhunagar.

5. The first respondent remained exparte. In the common trial, on the side of the claimants, 2 witnesses were examined and 19 documents were marked. On the side of the respondents, 1 witness was examined and 1 document was marked. After



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considering both sides, the Tribunal awarded a sum of Rs.23,24,840/- as compensation for the claimants in M.C.O.P.No.57 of 2011 to be paid by the second respondent.

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

The deceased was aged about 58 years, who already retired on superannuation and was in extension of his employment upto May – 2010, due to the non-completion of the academic year. In Educational institution, though the person attained superannuation, they may be permitted to work till the end of the academic year. The Tribunal failed to consider this aspect. The Tribunal is wrong in fixing the loss of income as Rs.35,935/-. Possibility of a hike in pay scale cannot be a criteria to decide the loss of income. The Tribunal ought to have taken into account only $\frac{1}{2}$ of the monthly salary of the deceased, who already attained the age of superannuation. The award is excessive.

7. On the side of the appellant/Insurance Company, it is stated that the deceased was a professor, who attained the age of retirement, he was on extension of employment, till the end of the academic year since he was working in an educational institution. Only income after the superannuation can be taken into account, to fix the



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loss of income. The Tribunal adopted split multiplier, which is not applicable, after the dictum of the Hon'ble Supreme Court in the case of Valli and others V. TNSTC, in Civil Appeal No.1269 of 2022 (Arising out of SLP (Civil)No.20913 of 2018).

8. The appellant has not questioned the liability in the appeal. Only quantum is disputed. On the date of accident, the deceased was 58 years, he was working as Vice Principal of Government Women's Polytechnic College, Madurai and he was earning Rs.38,192/- per month. It is seen that the deceased retired on superannuation on 31.10.2009 and he was re-employed from 01.11.2009 till 31.10.2010 and he died on 14.05.2010, during the tenure of his re-employment.

9. After considering the possibility of revised pay scale, the Tribunal has fixed the monthly income as Rs.71,869/-. Taking into consideration the pension to be received by the deceased, the Tribunal has fixed the income as Rs.35,935/- per month. The salary received by the deceased on the date of accident has to be taken into consideration for fixing the loss of income. In such circumstances, the salary is fixed as Rs.38,192/-. The Tribunal has fixed the monthly income as Rs.35,935/-, which is lesser than the income received by the deceased, at the time of accident. The respondents have not chosen to file any appeal or cross objection. In the above circumstances, it is decided that the income fixed by the Tribunal is reasonable.



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Considering age of the deceased, multiplier 8 is applicable. After deducting 1/3rd for his own expenses and by applying multiplier 8, the Tribunal has fixed the loss of income as Rs.22,99,840/-, which is reasonable. The Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium and Rs.10,000/- towards loss of love and affection, which are all reasonable. Hence, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal.

12. This Appeal is dismissed. The compensation is awarded by the Tribunal is hereby confirmed.

(i) The claimants are entitled to Rs.23,24,840/- as compensation.

(ii) The appellant herein - Insurance Company, is directed to deposit the entire compensation of Rs.23,24,840/- (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.

(iii) On such deposit being made by the Insurance Company, the respondents / claimants are permitted to withdraw their respective shares as per the ratio fixed by the Tribunal with proportionate interest and costs, on filing of proper



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petition before the Tribunal, less any amount, if already withdrawn by them. The

Claimants are not entitled for interest for the default period, if there is any default.

No costs.

07.11.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Additional District Judge –
Motor Accident Claims Tribunal
Fast Track Court, Virudhunagar.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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