



C.M.A(MD)No.551 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.10.2022

Pronounced on : 28.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.551 of 2022

1.V.Karunanithi

2.K.Vasugi

3.K.Balamurugan

: Appellants

Vs.

1.C.Ganesan

2.M/s.Reliance General Insurance Company Ltd.,
Meenakshi Plaza 1st Floor, HIG-55,
80 Feet Road, Anna Nagar, Madurai -20.
through its Branch Manager.

3.M/s.Thirupathy,
Venkatachallapathy Lorry Service,
285, Railway Feeder Road,
Sattur - 626 203,
Virudhunagar District.

4.M/s.Oriental Insurance Company Ltd,
Saradha Complex,
Divisional Office at Simmakal,
Madurai - 1.

: Respondents



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PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order dated 20.09.2019 passed in M.C.O.P.No.754 of 2017 on the file of the IV Additional District Judge, Madurai.

For Appellants : Mr.K.Mahendran

For Respondents : Mr.K.Kumaravel, for R1.

: Mr.J.S.Murali, for R2.

: Mr.E.Chandrasekaran, for R4.

: No Appearance, for R3.

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.754 of 2017, dated 20.09.2019 on the file of the Motor Accident Claims Tribunal/IV Additional District Judge, Madurai.

2.The Appellants/claimants, who were awarded with compensation of Rs.8,76,400/- for the death of one Manimaran, who died consequent to an accident occurred on 06.02.2017, challenged the quantum of compensation awarded at by the Tribunal and claimed enhancement of the same.



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3. Admittedly, the first appellant/claimant is the father ; the second appellant/second claimant is the mother and third appellant/ third claimant is the brother of the deceased - Manimaran.

4. During trial, the claimants have examined the first claimant as P.W.1 and one Udhayachandran as P.W.2 and exhibited 12 documents as Ex.P.1 to Ex.P.12. The respondent/third respondent remained ex-parte before the Tribunal. On the side of the respondents 1, 2 and 4, the first respondent has examined himself as R.W.1 and four others witnesses as R.W.2 to R.W.5 and exhibited 9 documents as Ex.R.1 to Ex.R.9.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award, dated 20.09.2019, holding that the driver of the first respondent's lorry and the driver of the third respondent's Omni Bus are responsible for the accident and apportioned the liability at 40% on the second respondent and at 60 % on the fourth respondent. The learned Tribunal has awarded total compensation of Rs.8,76,400/- with interest at 7.5% per annum and costs. Aggrieved by the said award, the claimants have come forward with the present appeal.



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6.The learned counsel for the appellants would contend that the Tribunal having presumed that the deceased was working as a lorry cleaner, fixed the monthly income of the deceased at Rs.6,000/-, which is very low and the same is to be enhanced to Rs.9,000/- per month. He would further submit that the Tribunal erred in deducting half of the income towards personal expenses of the deceased on the ground that his wife got separated from him and by treating the deceased as bachelor.

7.The learned counsel for the appellants would further contend that the Tribunal has failed to consider the fact that the first appellant was aged 60 years at the time of the death of his son; the Tribunal awarded only a sum of Rs.40,000/- as filial consortium and ought to have awarded Rs.1,00,000/- under the said head; that the Tribunal has also failed to award any amount toward mental agony caused to the appellants due to the sudden demise of their son and ought to have awarded Rs.1,00,000/- under the said head.

8.The case of the claimants is that the deceased was hale and healthy and was aged 32 years at the time accident; that he was earning Rs.11,600/- per month by working as a cleaner; that the deceased had



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married one Lavanya and subsequently, their marriage was dissolved as per caste and custom on 19.06.2007; that the said Lavanya got married to one Thiruvassagam and she had two children through her second husband and that therefore, the parents are the only legal heirs of the deceased. But as rightly observed by the learned Tribunal, the evidence of P.W.1 regarding the avocation of the deceased was not at all shaken during his cross examination and there is no contra evidence. The Tribunal has rightly observed that the accident was occurred while the deceased was travelling as a cleaner in the lorry owned by the first respondent.

9. Though the claimants have alleged that the deceased was earning Rs.11,600/- per month by working as a cleaner, they have not produced any material or evidence to substantiate the same. The Tribunal, in the impugned award, has specifically observed that “considering the background of the family of the deceased, age of the deceased, nature of the work and the present cost of living, has fixed the monthly income of the deceased at Rs.6,000/-.”

10. The learned counsel for the appellants has relied on the decision of this Court in *New India Assurance Company Vs. R. Nagaraj and*



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another (C.M.A.No.420 of 2013), dated 16.04.2018, wherein the Division Bench of this Court taking note of the salary certificate produced and the evidence of the employee, has confirmed the finding of the Tribunal fixing the monthly income of Rs.9,000/-.

11.As already pointed out, in the present case, there is absolutely no evidence to show the income of the deceased.

12.Considering the above and also taking note of the nature of work done by the deceased, the fixation of monthly income at Rs.6,000/- by the Tribunal is definitely on lesser side and the same is fixed at Rs. 8,000/-.

13.The Tribunal, taking note of the Aadhar Card, has rightly fixed the age of the deceased as 34 years at the time of accident. As per the decision of the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, 40% of the income has to be added toward future prospects.

14.Now coming to the deductions, though the deceased was already married, even according to the claimants, the marriage was



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dissolved as per their caste and custom and the divorced wife has already got married to another and is living with him. Considering the above, the Tribunal has rightly deducted 50% of the income towards personal and living expenses of the deceased. On applying the legal dictum laid down by the Hon'ble Supreme Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, the proper multiplier would be '16' and as such, the compensation for the loss of dependency would come to **Rs.10,75,200/-** [(Rs.8,000/- + 40% = Rs.11,200/-) - 50% = Rs.5,600 x 12 x 16 = Rs.10,75,200/-]

15.As rightly contended by the learned counsel for the appellants, the Tribunal has awarded filial consortium at **Rs.40,000/-** only to the first claimant and no amount was awarded to the mother for filial consortium. Hence, this Court awards **Rs.40,000/-** to the second claimant also for loss of filial consortium.

16.The Tribunal has rightly awarded **Rs.15,000/-** for loss of estate and **Rs.15,000/-** toward funeral expenses under the conventional heads. Considering the above, the appellants/claimants are entitled to get total compensation of **Rs.11,85,200/-**.



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17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount is enhanced from **Rs.8,76,400/-** to **Rs.11,85,200/-** with interest at 7.5% per annum and costs, out of which, the second respondent is directed to pay 40% of the award amount at Rs.4,74,080/- and the fourth respondent is directed to pay 60% of the award amount at Rs.7,11,120/-, within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the appellants 1 to 3 /claimants 1 to 3, are entitled to get **Rs.4,00,000/-** ; **Rs.6,85,200/-** and **Rs.1,00,000/-** respectively, and are permitted to withdraw the award amount with accrued interest and costs, on due application before the Tribunal. The parties are directed to bear their own costs.

28.11.2022

Index : Yes : No
Internet : Yes : No
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To

1.The IV Additional District Judge, Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

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