BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.04.2022**

CORAM:
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN
C.M.A(MD).No.285 of 2021
and
C.M.P(MD).No.2410 of 2021

HDFC ERGO General Insurance Company Limited,
248B-B1, C-C1, Rekha Towers,
Kamarajar Salai Road,
Madurai-625 009. ...Appellant/3rd respondent

Vs.

1.T.Sobana Bai
2.J.Jenitha Jebamalar
3.J.Jose
4.J.Jones
5.Sundara Bai ... 1 to 5th respondents/petitioners
6.Kannan ... 6th respondent/1st respondent
7.Nirmala K.S ... 7th Respondent/2nd respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in M.C.O.P.No.40 of 2015 dated 02.03.2020 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Padmanabhapuram and allow the appeal with costs.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.G.Mohan Kumar
for R1 to R5

JUDGMENT

This Civil Miscellaneous Appeal is filed by the HDFC ERGO General Insurance Company Limited, challenging, the judgment and decree passed in M.C.O.P.No.40 of 2015, on the file of the learned Motor Accident Claims Tribunal, Subordinate Court, Padmanabhapuram.

2. The learned counsel for the appellant submitted that the Tribunal wrongly deducted 1/5th towards personal expenses of the deceased. Since there are five dependents depending on the income of the deceased, 1/4th has to be deducted towards his personal expenses as per the decision laid down in **National Insurance Co. vs Pranay Sethi and others reported in 2017 (2) TNMAC 601**.

3. Heard both sides and perused the materials available on record.

4. On perusal of records, I find that there are 5 claimants before the Tribunal. The first claimant is the wife of the deceased and the claimants 2 to 4 are the sons and daughter and the fifth claimant is the mother of the deceased. There are five dependents depending on the income of the deceased, as per the decision laid down in **National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601**, 1/4th has to be deducted towards his personal expenses, but the Tribunal has wrongly taken 1/5th deduction. Except this point, no other point is raised in this appeal. Accordingly, the compensation awarded by the Tribunal under the heads of loss of pecuniary benefits is re-assessed as under:-

Calculation:

Notional income = Rs.11,000/-
25% Future Prospects = Rs.2,750/-
Total = Rs.11,000/- + Rs.2,750 = Rs.13,750/-

Loss of dependency

= Rs.13,750/- x 12 x 13 x 1/4 deduction
= Rs.16,08,750/-.

5. The Tribunal has properly considered all the evidence on record and arrived at a reasonable compensation for the other heads, which are neither excessive nor exorbitant and therefore, this Court is of the considered opinion that it does not warrant interference, at this juncture.

6. In the result, this Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

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To
1.The Motor Accidents Claims Tribunal,
Subordinate Court,
Padmanabhapuram.

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

+1 CC to M/s.J.S. MURALI, Advocate (SR-18523[F] dated 13/04/2022)

C.M.A.No.285 of 2021
12.04.2022

RK(31/05/2022) 3P 5C