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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.08.2022

Pronounced on : 14.10.2022

CORAM

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

C.M.A(MD)No.674 of 2020
and
C.M.P. (MD)No.6737 of 2020
and
Cros.Obj. (MD)No.9 of 2022

C.M.A(MD)No.674 of 2020 :-

The Branch Manager,
National Insurance Co.Ltd.,
No.40, Peraira Street,
Tuticorin.

... Appellants/ -- 2nd respondent

Vs

- 1.Jothi
- 2.Puvaneswari
- 3.Minor Kiren
- 4.Minor Rajesh
(Minor respondents 3 and 4 are represented through their Mother first Respondent)
- 5.Kuyilammal
- 6.The Proprietor,
M/s.Natures Coir Private Limited,
No.59 A, Twoway puram 10th street,
Tuticorin Town,
Tuticorin District.
- 7.Balamurugan
- 8.The Branch Manager,
United India Insurance Co.Ltd.,
No.52, SNJ Complex,
South Masi Street,
Madurai Town,
Madurai District.

... Respondents / Respondents

PRAYER in C.M.A(MD)No.674 of 2020 :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree passed
<https://www.mhc.in.gov.in/judis>



by the Motor Accident Claims Tribunal cum Additional District Sessions Judge, Theni at Periyakulam, made in M.C.O.P.No.31 of 2017 dated 10.04.2019 and allow this appeal with costs.

For Appellant : Mr.M.Rajamani

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For R1 to R5 : Mr.G.Vanjinathan

Cross Objection (MD)No.9 of 2022 :

1. Jothi
2. Buvaneshwari
3. Minor. Kiren
- 4.Minor. Rajesh
(Minor Petitioners 2 and 3 are Represented through their Mother
1st Petitioner)
5. Kuyilammal ... Petitioners

- Vs. -

- 1.The Branch Manager, National Insurance Co. Ltd.,
No. 40, Peraira Street, Tuticorin.
2. The Proprietor,
Natures Coir Pvt. Ltd.,
No. 59a, Twowaypuram 10th Street,
Tuticorin Town, Tuticorin District.
- 3.Balamurugan
- 4.The Branch Manager,
United India Insurance Co. Ltd.,
No. 52, Snj Complex,
South Masi Street, Madurai Town, Madurai District.
... Respondents

PRAYER in Cross Objection (MD)No.9 of 2022 :

This Cross Objection is filed under Order 41 Rule 22 of CPC read with Section 173 of Motor Vehicles Act, 1988, to call for the records pertaining to the fair and decreetal order dated 10.04.2019 in M.C.O.P.No.31 of 2017 on the file of Motor Accidents Claims Tribunal cum Additional District and Sessions Judge, Theni at Periyakulam and set aside the same and thereby enhance the compensation from Rs.16,39,400/- to Rs.23,36,000/-.

For Appellant : Mr.G.Vanjinathan

For R1 : Mr.M.Rajamani



JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.31 of 2017 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Periyakulam. The appellant is the second respondent, respondents 1 to 5 herein are the claimants and respondents 6 to 8 are the respondents 1,3 and 4 in the claim petition.

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

On 20.02.2017, at about 7 a.m., the deceased Kumaresan was travelling in a car bearing registration number TN 69 AD 2009 from Koodalur to Pollachi, along the Theni-Cumbum main road, near Veerapandi by pass junction, by observing the road rules, a lorry bearing registration number TN 60 F 6626 driven by its driver in a rash and negligent manner dashed against the car, the deceased sustained injuries. He was admitted in Theni Medical College Hospital then he was admitted in Madurai Rajaji Government Hospital. He died on 28.02.2017. The deceased was working as a mason and was earning Rs.700/- per day. The claimants are his dependants. They claim a sum of Rs.65,00,000/- as compensation.

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

The averments in the petition are all denied. The petitioners has to prove that the vehicle was insured with the second respondent. The vehicle driver was not having valid driving license. The first respondent failed to inform the accident to the second respondent. Policy conditions are violated. The first respondent alone is responsible for the accident. The accident took place due to the rash and negligent driving of the lorry driver. Lorry owner was not implicated as a party to the case. The age of the deceased, profession, income are all denied.

4.Brief substances of the counter filed by the fourth respondent is as follows:

All the averments, except those are specifically admitted herein, are all denied. The Fourth respondent is not liable to pay compensation. It was the driver of the Xylo car who was rash and negligent. First Information Report was registered against the driver of the car. The third respondent vehicle was insured with the fourth respondent. The third respondent vehicle driver drove the vehicle in a slow and cautious manner. It was the Xylo car, that came from the opposite direction, came in a rash and negligent manner and dashed against the lorry. The First Information Report was registered against the driver of the car and hence the fourth respondent is not liable to pay compensation. The age and income of the deceased are all denied. The fourth respondent is not liable to pay compensation and the fourth respondent is to be exonerated from the case. The claim is excessive.



5. One witness was examined and nine documents were marked on the side of the petitioner. Four witnesses were examined and two documents were marked on the side of the respondent. The Tribunal awarded a sum of Rs.16,39,400/- as compensation.

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6. Against the award, the second respondent filed this appeal on the following grounds:

The Tribunal erroneously fixed the monthly income as Rs.10,000/- and wrongly applied multiplier 15 instead of 14 for the deceased who was aged about 43 years. The Tribunal awarded Rs.13,19,400/- towards loss of income, Rs.2,50,000/- towards loss of love and affection, Rs.1,00,000/- towards consortium to the wife, which all are excessive. The total award amount of Rs.16,39,400/- is excessive.

7. Brief substance of the cross objection filed by the claimant is as follows:

The Tribunal is wrong in fixing the age of the deceased, fixing the multiplier, making deduction for personal expenses and fixing future prospectus. The Tribunal wrongly relied upon Ex.P6- Ration Card and fixed the age of the deceased as 43 instead of 33 without considering that the Ration Card was not issued in the year 2005 and without considering the endorsement in the bottom, where it was mentioned that the ration card was issued in the year 2015 and that in the ration card, the age of the deceased was mentioned as 31 years. The accident took place in the year 2007 and that the age of the deceased is 33 years. Even in the post mortem certificate Ex.P8, the age of the deceased was mentioned as 33 years. Therefore, multiplier 16 has to be adopted. But the Tribunal adopted multiplier 15 erroneously. The Tribunal deducted 1/3rd towards personal expenses. Considering the number of dependants, the Tribunal ought to have deducted only 1/4 for the own expenses of the deceased. The Tribunal has erred in fixing the future prospectus at 10%. Future prospects are to be fixed at 40%. Even if the age is taken as 43 years, the future prospects will be 25% and not 10%. The Tribunal ought to have fixed Rs.20,16,000/- towards loss of income instead of Rs.13,19,400/- and the total compensation amount is to be enhanced from Rs.16,39,400/- to Rs.23,36,000/-.

9. On the side of the appellant it is stated that the age of the deceased is 43 years and applying multiplier 15, is wrong. Only multiplier 14 is applicable. No proof of income was filed on the side of the claimants. Fixing notional income at 10,000/- per month is wrong. During the year 2017, as per minimum wage ratio, in Tamilnadu, the notional income is only Rs.8,000/- per month. The second petitioner is a married daughter. She was not depending on the deceased at the time of accident.

10. On the side of the respondent it is stated that the ration card was printed in the year 2005-2009. It was renewed in the year



2015. The age was mentioned in the year 2015 as 31 years. At the time of accident, the wife was aged about 28 years. The daughter was aged about 13 years. In the post mortem report it is clearly stated that the deceased was 33 years old.

11. In the claim petition, the age of the second petitioner / daughter of the deceased was mentioned as 19 years. The age of the third petitioner was mentioned as 16 years. The fourth petitioner was mentioned as 15 years. In view of the age of the second petitioner, it is decided that there is no possibility of the deceased to be 33 years old at the time of accident. The claimants have not chosen to file any other document, birth certificate, or educational certificate to prove the age of the deceased. In the above circumstances, it is decided that the age, fixed by the Tribunal is correct.

12. On the side of the appellant it is stated that for a 43 years old man, multiplier 14 ought to have been adopted and the Tribunal is wrong in adopting multiplier 15. On the side of the respondent it is stated that the age fixed by the Tribunal is wrong and multiplier 16 is to be adopted. As already discussed, the age of the deceased is 43 years at the time of accident and hence multiplier 14 has to be adopted.

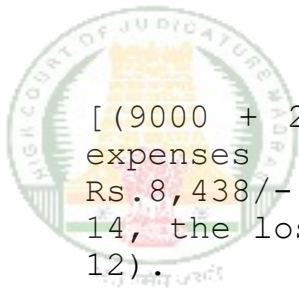
13. On the side of the appellant, it is stated that the notional income in the year 2017, as per the Tamilnadu Minimum Wages Act, is Rs.8,000/- per month and that the tribunal is wrong in fixing the income as Rs.10,000 per month. On the side of the claimants, it is stated that the deceased was a mason and was earning up to Rs.500/- to 700/- per day and the income of Rs.10,000/- as fixed by the Tribunal, is very reasonable. The accident took place in the year 2017. The notional income during the relevant period is Rs.9,000/- per month. Hence, the notional income is fixed as Rs.9,000/- per month.

14. On the side of the appellant, it is further stated that both the daughters are married at the time of accident. They are not dependants and 1/3 of the notional income ought to have been deducted for the own expenses of the deceased.

15. It is admitted that one of the daughter was married at the time of accident. But even then, there are four dependants, including the second claimant. The number of total claimants is 5. Hence deduction of $\frac{1}{4}$ of the income is reasonable.

16. On the side of the claimants it is stated that the Tribunal is wrong in fixing 10% towards future prospects and future prospects to be added at the ratio of 40%. The age of the deceased is fixed as 43 years and hence 25% future prospects will be reasonable.

<https://www.mhc.tn.gov.in/judis> The loss of income is calculated as Rs.11,250/- per month



[(9000 + 2250 (9000 x 25/100))]. After deducting 1/4 for expenses (11250/4 = 2812.50), the deceased might have spent Rs.8,438/- (8,437.50) for his family members. By applying multiplier 14, the loss of income is calculated as Rs.14,17,584/- (8438 x 14 x 12).

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18. The Tribunal has awarded Rs.40,000/- towards loss of consortium, Rs.2,50,000/- towards loss of love and affection, Rs.15,000/- towards transport expenses, Rs.15,000/- towards funeral expenses. As per the dictum of the Hon'ble Supreme Court in **National Insurance Co. vs Pranay sethi and others** reported in **2017 (2) TNMAC 601**, the claimants are entitled only for Rs.70,000/- towards conventional charges and hence the award under various other heads are to be modified.

Loss of Income	-	Rs.14,17,584/-
Conventional charges	-	Rs. 70,000/-

Total	-	Rs.14,87,584/-

19. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

(i) The quantum of compensation awarded by the Tribunal is reduced Rs.16,39,400/- to **Rs.14,87,584/- (Rupees Fourteen Lakhs Eighty Seven Thousand Five Hundred and Eighty Four only)** which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant /Insurance company, is directed to deposit the entire compensation of Rs.14,87,584/- (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.31 of 2017 on the file of the Motor Accidents Claims Tribunal cum Additional District and Sessions Judge, Theni at Periyakulam, 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 first respondent/ claimant is entitled to Rs.6,00,000/- (Rupees Six Lakhs only), the fifth respondent/ claimant is entitled to Rs.2,00,000/- (Rupees Two Lakhs only) and the second respondent / claimant is entitled to Rs.87,584/- (Rupees Eighty Seven Thousand Five Hundred and Eighty Four only) with proportionate interest along with proportionate interest as apportioned by the Tribunal.

(iv) The third and fourth respondents/claimants(minors) herein are entitled for an amount of Rs.3,00,000/- (Rupees Three Lakhs only) each, with proportionate interest, which is ordered to be deposited in any one of the nationalized bank until they attain majority and the first respondent/claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors. Consequently, connected miscellaneous petition is closed.



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20. Accordingly, Cross objection petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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To

1. The Motor Accidents Claims Tribunal cum
Additional District and Sessions Judge, Theni, Periyakulam.

2. The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.R.RAJAMANI, Advocate (SR-50015[F] dated 18/10/2022)

+1 CC to M/s.G.VANJINATHAN, Advocate (SR-50144[F] dated
18/10/2022)

C.M.A(MD) No. 674 of 2020

14.10.2022

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