

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.08.2022

Pronounced on : 19.09.2022

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

C.M.A(MD)No.367 of 2021

1.Rasu

2.Murugammal

...Appellants / Claimants

Vs

1.Ponnusamy

2.The Branch Manager,
National Insurance Company Ltd.,
Office at Sub Collector Office Road,
Opposite to District Court,
Dindigul.

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree dated 16.12.2019 made in M.C.O.P.No.186 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Court), Dindigul and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.M.Ashok Kumar

For R1 : No appearance

For R2 : Mr.A.L.Mathialagan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.186 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Court), Dindigul. The appellants are the claimants, respondents herein are the respondents in the claim petition.

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

On 26.05.2011, at about 6.40 p.m., the deceased Vellimalai was riding a TVS Star City Motor Cycle bearing registration number TN 57 C 5173 with one Saravanan as a pillion rider, along the Padukaikadi to Anjukulipatti road near Dam, keeping the extreme left side of the road. At that time, a Bajaj Boxer Motor Cycle bearing registration number TN 63 C 0851, came from the opposite direction in a rash and negligent manner, dashed against the deceased. He was taken to Dindigul Government Hospital. After getting first aid, he was taken to Madurai Meenakshi Mission Hospital and there he died. The deceased was 19 years old and was earning Rs.3,300/- as agricultural coolie. The claimants are his dependants and they claim a sum of Rs.15 Lakhs as compensation.

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

The mode of accident is denied. The deceased has no driving licence to drive two wheeler. He was proceeding in the wrong side of the road. The First Information Report is only against the deceased. The petitioner has no locus standi to claim compensation. The deceased was responsible for the accident. The claim petition to be rejected.

4.One witness was examined and four documents were marked on the side of the petitioner. Two witnesses were examined and three documents were marked on the side of the respondent. The Tribunal has awarded a sum of Rs.1,96,500/- as compensation.

5.Against the award, the appellants filed this appeal for enhancement of compensation on the following grounds:

The Tribunal ought to have considered that the deceased was the only breadwinner and his future prospects was very bright. The Tribunal has wrongly come to the conclusion that the income of the deceased was Rs. 1,500/- per month. Without considering the fact that agricultural coolie get Rs.300/- per day. Irrespective of various decisions of the Hon'ble Apex

Court, the Tribunal failed to fix future prospects. The Tribunal ought to have awarded Rs.1 Lakhs towards loss of love and affection. The Tribunal awarded Rs.2,000/- towards transport expenses which has to be increased. The Tribunal is wrong in fixing the monthly income as Rs.1,500/- per month. The loss of income to be refixed.

6.On the side of the respondent, it is stated that the deceased was a bachelor, agricultural coolie. There was no proof of income. Considering, the age of the deceased and considering that there is no documentary or oral evidence, the Tribunal has correctly fixed the monthly income as Rs.1,500/-. The Tribunal is wrong in deducting 1/3rd of the income. Considering the number of claimants and considering the fact that the deceased is a bachelor, the Tribunal ought to have deducted 50% of the income for the own expenses of the deceased.

7.On the side of the appellant it is stated that the notional income at the time was Rs.4,500/- per month. The Tribunal failed to award any amount towards future prospects, funeral expenses and loss of estate. The award amount towards, transport charges to be increased. There is no appeal filed by the insurance company, questioning the liability.

8.Considering the date of accident, the notional income of the deceased is fixed at Rs.4,500/-. The appellants are entitled to claim future prospects at the rate of 40%. After adding 40% towards future prospects, the monthly income is Rs.6,300/- [4500+1800(40% 4500)]. Since the deceased was a bachelor, 50% to be deducted for his own expenses. After deducting 50% towards personal expenses Rs.3,150/- and after applying multiplier 18, the loss of income is fixed at $3150 \times 12 \times 18 = \text{Rs.}6,80,400/-$. The claimants are entitled to Rs.6,80,400/- towards loss of income. As per the dictum of the Hon'ble Supreme Court in Pranay Sethi case, the claimants are entitled to Rs. 70,000/- as conventional charges.

Loss of income	-	Rs.6,80,400/-
Conventional charges	-	Rs. 70,000/-

Total	-	Rs.7,50,400/-

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

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,96,500/- to Rs.7,50,400/- (Rupees Seven Lakhs Fifty Thousand and Four Hundred only) which shall carry interest at the rate of 7.5% per annum.

(ii) The second respondent /Insurance company, is directed to deposit the entire compensation of Rs.7,50,400/- (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.186 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Court), Dindigul, within a period of eight weeks from the date of receipt of a copy of this order. The petitioners are not entitled for any interest for the default period.

(iii) The claimants are directed to pay the court fee for the enhanced amount.

(iv) On such deposit being made by the second respondent /insurance company, the first appellant / 1st claimant is permitted to withdraw a sum of Rs.3,50,400/- (Rupees Three Lakhs Fifty Thousand and Four Hundred only) and the second appellant / second claimant is permitted to withdraw a sum of Rs.4,00,000/- (Rupees Four Lakhs only), along with proportionate interest as apportioned by the Tribunal. Consequently, connected miscellaneous petition stands closed.

19.09.2022

Index: Yes / No

Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal (Principal District Court), Dindigul.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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