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CMA(MD) No.407 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 26.08.2022

Delivered On : 11.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.407 of 2022

1.Kurshith Banu

2.Baiju Mohammed

3.Sharmila Banu

.... Appellants /Petitioners

Vs.

1.Muralidharan

(set ex-parte in lower court)

2.The Branch Manager,

United India Insurance Company,

No.7A, Pandian Building,

West Veli Veethi,

Madurai – 1.

... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeal and to enhance the compensation awarded made in M.A.C.O.P.No.80 of 2015, dated 29.06.2021, on the file of the Motor Accident Claims Tribunal – Additional District Court, Dindigul.



For Appellants : Mr.B.Pugalendi
For R2 : Mr.C.Karthik
For R1 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed to enhance the compensation award, made in M.A.C.O.P.No.80 of 2015, dated 29.06.2021, on the file of the Motor Accident Claims Tribunal – Additional District Court, Dindigul. The appellants herein are the claimants and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. Brief substance of the claim petition, in M.A.C.O.P.No.80 of 2015, is as follows:

On 26.10.2014, at about 05.45 pm, when the deceased – Hakeem was riding a two wheeler bearing Registration No.TN-64-B-7044 along the Senthurai-Natham road, another two wheeler bearing Registration No.TN-59-AK-8789 was driven by its driver in a rash and negligent manner, dashed against the deceased and the deceased was admitted in Natham Government Hospital, then, he was admitted in Madurai Rajaji Hospital and he died on 27.10.2014. He was aged about 43 years and he was earning Rs.12,000/- per month as a driver in a private institution.



The petitioners are his dependents and they claimed a sum of Rs. 20,00,000/- as compensation.

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3. Brief substance of the counter filed by the second respondent, in M.A.C.O.P.No.80 of 2015, is as follows:

The deceased tried to overtake another vehicle and in that effect, he dashed against the vehicle, that came from the opposite direction. The owner and the insurance Company of the deceased vehicle are necessary parties to the case.

4. On the side of the petitioners, 3 witnesses were examined and 8 documents were marked. On the side of the respondents, no witness was examined and no document was marked. After considering both sides, the Tribunal awarded a sum of Rs.9,70,056/- as compensation.

5. Against the order, the appellants /claimants have filed this appeal on the following grounds:-

The Tribunal ought to have fixed the monthly income as Rs.14,000/-. The Tribunal has awarded a meagre amount towards love



and affection. consortium and transport expenses. The Tribunal has failed to award compensation towards loss of estate and prayed the award amount to be enhanced.

6. On the side of the appellants, it is stated that the deceased was having heavy motor vehicle driving licence. Fixing the monthly income as Rs.6,500/- is not proper. The deceased was having badge endorsement in the driving licence. The Tribunal failed to consider Ex.P8-Driving licence of the deceased and has fixed the meagre income.

7. On the side of the respondents, it is stated that no salary certificate was marked on the side of the claimants. The owner of the private company was not examined as witness. The monthly salary fixed by the Tribunal is reasonable.

8. On the side of the appellants, a judgment of this Court reported in 2019-1-TNMAC-257(DB) (Jebastin Punitha V. S.Selvaraj) is cited, wherein, the monthly income of a heavy motor vehicle driver was fixed as Rs.15,000/-.

9. Another judgment of this Court reported in 2022-1-



TNMAC-535 (Saraswathi V. Pacifica Chennai Project Infrastructure Co. Pct.Ltd.) is cited, wherein, the monthly income was fixed as Rs.15,000/-, under Section 4(1-B), by notification, dated 03.01.2020.

10. On the side of the appellants, another judgment of this Court in C.M.A.No.2005 of 2020 (Santhi Sagayameri V. Murugan), dated 25.01.2021, is cited, wherein, the monthly income was fixed as Rs.15,000/-.

11. Another judgment of this Court reported in C.M.A.No.631 of 2021, dated 20.03.2022, is cited, wherein, the monthly income was fixed as Rs.13,000/- is cited.

12. Another judgment of this Court reported in 2021-2-TNMAC-71(DB) (HDFC Ergo General Insurance Co.Ltd., V. B.Bommi), is cited, wherein, this Court has fixed the monthly income as Rs.14,000/- per month.

13. On the side of the appellants, another judgment of the Hon'ble Supreme Court reported in AIR – 2019- SC -3128 (Parminder



Singh V. New India Assurance Co.Ltd.,) is cited, wherein, the monthly income of 23 years old of the claimant as fixed at Rs.10,000/-.

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14. As per the Judgment of the Hon'ble Supreme Court cited above, the monthly income is fixed as Rs.10,000/-. After deducting 1/3rd towards own expenses, the monthly income is calculated as Rs.6,667/- and the same is rounded off to Rs.6670/-. After including 25% towards future prospects ($\text{Rs.6,670/-} \times 25/100 = \text{Rs.1668/-}$), the income is calculated as Rs.8,338/-. The age of the deceased was '43', multiplier '14', is applicable. Hence, the claimants are entitled to Rs.14,00,784/- ($\text{Rs.8,338/-} \times 12 \times 14 = \text{Rs.14,00,784/-}$) towards loss of income. Considering the dictum of the Hon'ble Supreme Court in Pranay Sethi's Case, the claimants are entitled to Rs.70,000/- towards conventional charges.

15. The total compensation is calculated as follows:-

Loss of income	:	Rs.14,00,784/-
Conventional Charges	:	Rs. 70,000/-
		
Total compensation	:	Rs.14,70,784/-
		



16. This Appeal is partly allowed. No costs. The compensation is enhanced from Rs.9,70,056/- to **Rs.14,70,784/-**.

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(i) The claimants are entitled to **Rs.14,70,784/-** as compensation.

The first appellant herein / first claimant is entitled to Rs.6,70,784/- with proportionate interest and costs and the appellants 2 & 3 herein /claimants 2 and 3 are entitled to Rs.4,00,000/- each, with proportionate interest.

(ii) The second respondent herein /Insurance Company is directed to deposit the entire compensation of **Rs.14,70,784/-**. (less the amount, if any 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 appellants / claimants are permitted to withdraw their share amount as apportioned by this Court, on filing of proper 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.

11.10.2022

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R.THARANI.,J.

Ls

To

- 1.The Additional District Judge,
Motor Accident Claims Tribunal,
Dindigul.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in

C.M.A(MD)No.407 of 2022

11.10.2022