



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.01.2022**

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

WEB COPY

C.M.A.(MD)No.1127 of 2021
and C.M.P(MD)No.10866 of 2021

M/s.National Insurance Co. Ltd.,
50/6, First Floor,
Karaikudi Town,
Sivagangai District,
Represented by its Manager

... Appellant/Respondent No.2

Vs.

1.Albonse Mary
2.Justin Albert Vijay
3.Jaquelin Jenifer Rosi

... Respondents 1 to 3/Petitioners

4. Selvam

... Respondent No.4/Respondent No.1

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 19.03.2020 passed in M.C.O.P.No.65 of 2017 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge, Devakottai.

For Appellant : Mr.R.Rajamani
For Respondents : No appearance

J U D G M E N T

The appellant/Insurance Company has filed the present appeal against the judgment and decree dated 19.03.2020 passed in M.C.O.P.No.65 of 2017 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge, Devakottai.

2. It is a case of fatal accident, which took place on 24.04.2017 at about 07.00 p.m. According to the claimants/the respondents 1 to 3, when the deceased was walking on the road, the two wheeler bearing Registration No. TN-63-R-7135 came in rash and negligent manner and dashed the deceased, due to which, the deceased sustained head injuries and also multiple injuries and he died in the hospital on 27.04.2017.

3.The claimants/respondents 1 to 3 herein have filed claim petition seeking compensation of Rs.20,00,000/- for the death of one Arockiaraja @ Irudhaya Arockiaraja in a road accident, which occurred on 24.04.2017. The Tribunal awarded a sum of Rs.12,58,000/- as compensation with 7.5 % interest.



4. Before the Tribunal, on the side of the claimants, three witnesses were examined as P.W.1 to P.W.3 and marked eight documents as Ex.P1 to Ex.P8. On the side of the respondents therein, one witnesses were examined as R.W.1 and one document was marked.

5. The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsels for the appellant and claimants, directed the appellant/Insurance to pay a sum of Rs.3,77,400/- as compensation. Against which, the appellant/Insurance Company has preferred this appeal.

6. The main contention of the learned counsel for the appellant/Insurance Company is that the claimants/R1 to R3 herein have exaggerated the monthly income of the deceased by producing an inflated document as salary certificate. Though it is stated in the salary certificate that the deceased was employed as a driver from the year 2015, the alleged employer does not know the name and address of the deceased employee and therefore, the Tribunal ought to have applied the notional income to the deceased and calculated the loss of income.

7. Heard the learned counsel appearing for the appellant/Insurance Company. Even though notice has been served, none appears for the respondents.

8. As per the evidence of the employer P.W.3, the deceased was working as driver and salary certificate was marked as Ex.P.8. But no driving license of the deceased was produced by the claimants to prove that he was working as driver. So without any evidence, the Tribunal fixed Rs.15,000/- as salary on the basis of the salary certificate. So this Court is inclined to reduce the monthly salary of the deceased to Rs.10,000/- to be added with future prospectus. So salary is fixed at Rs.11,000. After deducting 1/3rd, the monthly income would come to Rs.7333/-. The loss of income is arrived at **Rs. 7,91,964/-** (7333 X 12 X 9). In all other heads, the award amount granted by the Tribunal shall stand unaltered. Hence, total compensation would come to **Rs. 8,61,964/-** rounded off to **Rs. 8,62,000/-**

9. Accordingly, the judgment and decree dated 19.03.2020 passed in M.C.O.P.No.65 of 2017 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge, Devakottai, is modified as above. The appellant Insurance Company is directed to deposit the compensation amount **Rs. 8,62,000/-** (less the amount already deposited), if any, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.65 of 2017 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge, Devakottai, within a period of six weeks from the date of receipt of a copy of this order. After deposit, the claimants are entitled to withdraw the award amount by following due process of law.



10. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS.II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Motor Accident Claims Tribunal / The Subordinate Judge,
Devakottai.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

Judgment made in
C.M.A. (MD)No.1127 of 2021
and C.M.P (MD)No.10866 of 2021
21.01.2022

SA(21.03.2022) 3P 4C