BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 08.11.2022

Delivered On : 07.12.2022

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.733 of 2020

National Insurance Company Limited,
Rep. by its Branch Manager,
College Road, Karaikudi Nagar,
Sivagangai District. .. Appellant /2nd Respondent

Vs.

1.Anandha Jothi
2.Minor.Guruvignesh
3.Minor.Vaishnavi
4.Vannakkili
5.Sevugapandian ... Respondents 1 to 5 / Petitioners
(minors R2&R3 are represented by
their mother and natural guardian,
the first respondent-Anandha Jothi
6.Ponni ... 6th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.106 of 2018, dated 28.11.2019, on the file of the Motor Accidents Claims Tribunal – Subordinate Court, Devakottai.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.C.Jeya Indira Patel
Legal aid counsel for R2 & R3
: No appearance for R1, R4 & R5

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.106 of 2018, dated 28.11.2019, on the file of the Motor Accidents Claims Tribunal – Subordinate Court, Devakottai.. The appellant herein is the second respondent, the respondents 1 to 5 herein are the claimants and the sixth respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.106 of 2018, is as follows:

On 27.03.2018, when the deceased -Gurusamy was driving a car bearing Registration No.TN-63-AZ-6789 along the Singampunari-Tiruppathur main road, near ARC hotel, a lorry bearing Registration No.TN-57-M-5577 came in a rash and negligent manner and dashed against the Car. The deceased-Gurusamy and his friend - Kannan @ Ganesan sustained injuries, they were taken to Tiruppathur Government Hospital. On his way to the hospital, the deceased succumbed to the injuries. The deceased was aged about 47 years and he was doing timber business and was earning Rs.25,000/- per month. The petitioners are his dependants and they claimed a sum of Rs.40,00,000/- as compensation.

3. A Brief substance of the counter filed by the second respondent adopted by the first respondent, in M.C.O.P.No.106 of 2018, is as follows:

The deceased was responsible for the accident. The lorry driver drove the vehicle in a slow and cautious manner. It was the car that was driven in a rash and negligent manner and dashed against the lorry. The age, profession and income of the deceased are to be proved. The claim is excessive.

4. 2 witnesses were examined and 10 documents were marked, on the side of the claimants. No witness was examined and no document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.37,20,400/- as compensation.

5. Against the order, the second respondent / appellant has filed this appeal, on the following grounds:-

The Tribunal is wrong in relying on Ex.P7 to Ex.P9 in fixing the monthly income. The Tribunal failed to consider that though P.W.1 has admitted that the deceased was an income tax assessee, no income tax return was filed, to prove the income. The Tribunal is wrong in fixing Rs.24,000/- as monthly income. The Tribunal is wrong in adding 30% towards future prospects, instead of 25%. The award is excessive.

6. On the side of the appellant, it is stated that in Ex.P7, yearly income was mentioned as Rs.3,60,000/- and that Ex.P7 was issued by the Tahsildhar, after the date of accident and the same is not reliable. No document was filed to prove that the deceased was running a timber business.

7. On the side of the respondents, it is stated that the appellant has admitted the liability to the tune of Rs.15,32,500/-. The deceased was running a timber business. Ex.P8 and Ex.P9 were the rental agreement for running a business. He has rented 3 shops for carrying the business.

8. Ex.P7-revenue certificate was not proved through the examination of the Tahsildhar. Income tax returns were not filed on the side of the claimants. In the above circumstances, the income is fixed as Rs.20,000/- per month. The age of the deceased at the time of accident was 48 years. On the side of the claimants, it is stated that for permanent business, 30% future prospects has to be taken into

consideration. A judgment of the Hon'ble Supreme Court reported in ***2017-ACJ-2700 (National Insurance Company V. Pranay Sethi)*** is cited.

9. Considering the number of dependants, 1/4th income is to be deducted for the own expenses of the deceased. After deducting 1/4th, the monthly income is calculated as Rs.15,000/-. Considering the fact that the business is a private one, it is decided that only 25% future prospects has to be added. After adding 25% future prospects (Rs.3,750/-), the monthly income of the deceased is calculated as Rs.18,750/-. The age of the deceased at the time of accident is 48 years, hence multiplier '13' is applicable. In total, the claimants are entitled to Rs.29,25,000/- towards loss of income.

10. The Tribunal awarded Rs.15,000/- towards transport expenses, Rs.15,000/- towards funeral expenses, which are all reasonable. As per the dictum of the Hon'ble Supreme Court reported in ***2018-2-TNMAC-452 (SC) (Magma General Insurance Co.Ltd., V. Nanu Ram alias Chuhru Ram and others***), the claimants are entitled to Rs.40,000/- each towards loss of consortium (Totally Rs.2,00,000/-).

11. The total compensation is calculated as follows:-

Loss of income	:	Rs. 29,25,000/-
Loss of consortium	:	Rs. 2,00,000/-
Transport expenses	:	Rs. 15,000/-
Funeral expenses	:	Rs. 15,000/-
		....
Total compensation:	:	Rs. 31,55,000/-
		....

12. The first claimant, who is the wife of the deceased, is entitled to Rs.10,00,000/- with proportionate interest and costs, the second claimant, who is the son of the deceased, is entitled to Rs.6,00,000/- with proportionate interest, the third claimant, who is the daughter of the deceased, is entitled to Rs.6,00,000/- with proportionate interest, the fourth claimant, who is the mother of the deceased, is entitled to Rs.5,00,000/- with proportionate interest, the fifth claimant, who is the father of the deceased, is entitled to Rs.4,55,000/- with proportionate interest, as compensation.

13. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.37,20,400/- to Rs. 31,55,000/-.

(ii) The appellant - Insurance company, is directed to deposit the entire compensation of Rs.31,55,000/- (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 with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Excess amount, if any, shall be refunded to the appellant / Insurance Company.**

(iii) On such deposit being made by the appellant / Insurance Company, the respondents 1 to 5 herein / claimants are permitted to withdraw their share amount as apportioned by this Court with interest and costs, 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.

07.12.2022

Index : Yes/No
Internet : Yes/No
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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Devakottai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.733 of 2020

07.12.2022