BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.148 of 2017

1.L.B.Catherin Christobel
2.Minor R.Caron Johiel
3.Minor R.Camryn Amirtta
(Minors 2 & 3 are represented by their natural Guardian mother, first appellant)
4.R.Thangaretnam
5.Y.Paulthasamony ...Appellants/Petitioners

Vs.

1.N.Lingathurai
2.V.Subramanian
3.The New India Assurance Company Ltd,
Represented by its Branch Manager,
Branch Office at 41 B, 1st Floor,
Victoria Street,
Thoothukudi,
Thoothukudi District.

4.The New India Assurance Company Ltd.,
Represented by its Branch Manager,
1st Floor, Pillars Gate,
Opp to Anna Stadium
Balamore Road, Agasteeswaram Taluk,
Nagercoil - 629 001. ...Respondents /Respondents

(1st Respondent set ex-parte before the Tribunal. Hence, the first respondent may be dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 30.08.2016 in MCOP No.69 of 2015, on the file of Motor Accident Claims Tribunal/Special sub Court, Nagercoil and seeking enhancement of compensation.

For Appellants	:Mr.N.Sudhagar Nagaraj
For R1	:Dispensed with
For R2	:No appearance
For R3 & R4	:Mr.A.Ilango

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 30.08.2016 in MCOP No.69 of 2015, on the file of Motor Accident Claims Tribunal/Special Sub Court, Nagercoil.

2.It is a case of fatal accident, in which, the first petitioner's husband died. The case of the claimants before the Tribunal is as follows:

On 05.11.2015, at about 5.00 p.m, when the deceased, namely, P.Robert Kumar, was riding his motor bike bearing Registration No.TN 74 AC 6790 from his office towards his house, at the extreme left side of Radhapuram Nakkaneri Main Road, near Mahendrapuram and a school going boy was a pillion rider, a tipper lorry bearing Registration No.TN 72 AZ 4169, driven by the first respondent in a rash and negligent manner came behind the two wheeler and dashed the bike, due to which, the deceased and the pillion rider were thrown out of the vehicle and died in the spot itself. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the tipper lorry, the claim petition in M.C.O.P.No.69 of 2015 has been filed by the wife, the minor children, the mother and father of the deceased, claiming a compensation of Rs.75,00,000/-.

3.Before the Tribunal, respondents 2 to 4 have contested the claim petition on the ground that the accident had occurred only due to the rash and negligent riding of the deceased alone and no negligence could be fixed on the part of the driver of the Tipper Lorry. It was also stated that at the time of accident, the first respondent who is the driver of the tipper lorry did not have a valid and effective driving license and hence the Insurance Company will not be held liable for payment of compensation. It was also stated that the compensation claimed by the petitioners are highly excessive.

4.To prove the case, on the side of the claimants, three witnesses were examined as P.Ws.1 to 3 and as many as 19 documents were marked. On the side of the respondents, one witness was examined as D.W.1 and 3 documents were marked.

5.The Tribunal after considering the evidence and materials available on record, has held that the accident had taken place due to the rash and negligent driving of the driver of the Tipper lorry and therefore, directed the third respondent/Insurance company, who is the insurer of the offending vehicle to pay the compensation to the claimants.

6.Insofar as the quantum of compensation is concerned, considering the materials available on record, the Tribunal had fixed the monthly income of the deceased Rs.27,686/-, on the basis of Ex.A5, salary certificate and 50% of the monthly income has been added towards future prospects and arrived at the monthly income of the deceased as Rs.41,429/-, considering the age of the deceased ie., 35 years at the time of accident, applied multiplier '16', Rs.41,529/- X 12 X 16 = Rs.79,73,568/- , considering the volume of dependency, deducted ¼ and awarded a sum of Rs.59,80,176/- towards loss of income. Apart from that, the Tribunal has awarded Rs.50,000/- towards loss of consortium to the first petitioner, Rs.50,000/- towards loss of love and affection for the minor children, Rs.25,000/- towards love and affection for the mother and father of the deceased, Rs.25,000/- towards funeral expenses,Rs.5,000/- towards transport expenses and Rs.3,000/- towards loss of articles and in total, a sum of Rs.61,38,176/- has been awarded as compensation, along with interest at the rate of 7.5% per annum.

7.Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants are before this Court with the present Civil Miscellaneous Appeal.

8.Mr.N.Sudhagar Nagaraj, learned counsel appearing for the appellants/claimants submits that the Tribunal can make only statutory deductions such as Income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation. In order to substantiate his contention, the learned counsel has relied upon the judgment of the Honourable Supreme Court, in ***National Insurance Company Ltd Vs.Indira Srivastava & others***, reported in **2008 (1) TNMAC 166 (SC)**. But in the present case, the Tribunal without considering the same, mechanically fixed the monthly income of the deceased as Rs.27,686/-. Hence, he prayed for enhancement of compensation more particularly under the head of loss of income.

9.Per contra, learned counsel appearing for the respondents 3 & 4 /Insurance Company, would contend that, the Tribunal has rightly awarded the compensation under various heads and there is no need to interfere with the same.

10.I have considered the rival submissions and perused the records carefully.

11.Perusal of the records shows that the monthly income of the petitioner has been shown as Rs.30,823/- before deduction. As rightly pointed out by the learned counsel appearing for the appellants, the Tribunal ought to have considered the monthly income before deduction as per the judgment cited supra. Hence, this Court is inclined to fix the monthly income of the deceased at Rs.30,820/- and by adding 50% of the monthly income towards future prospects, the monthly income of the deceased is fixed at Rs.30,820 + Rs.15,400 = Rs.46,220/-, considering the number of persons as dependants, deduction of 1/4th amount towards his personal expenses, by considering the age of the deceased 35 at the time of accident, applying the multiplier '16', this Court modifies the award amount under the head of loss of income and other heads as under:-

Loss of income:-

Monthly Income	=Rs.30,820/-
Add: 50% towards future prospects (Rs.15410/- Rounded off to	=Rs.15,400/-
Total	=Rs.46,220/-
	= Rs.46,220X 12 X 16 X 3/4
	= Rs.66,55,680/-
Less: 10% towards Income Tax	= Rs.6,65,568/-
Towards Loss of Income	**Rs.59,90,112/-**

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Remarks
1.	Loss of income	59,80,176.00	59,90,112.00	Enhanced
2.	Loss of consortium to the wife of the deceased/ first claimant	50,000.00	40,000.00	Modified
3.	Loss of love and affection to the minor children/Claimants 2 & 3	50,000.00	40,0000 x 2 = Rs.80,000/-	Modified
4.	Loss of love and affection towards the parents / Claimants 4 & 5	25,000.00	40,0000 x 2 = Rs.80,000/-	Modified

5.	Towards funeral expenses	25,000.00	15,000.00	Modified
6.	Towards Transport expenses	5000.00	15,000.00	Modified
7.	Towards Loss of clothes	3000.00	-	Vacated
8.	Loss of Estate	-	15,000.00	Awarded
Total		61,38,176.00	62,35,112.00	Enhanced

12. In the result, this Civil Miscellaneous Appeal is allowed and the award amount is enhanced to Rs.62,35,112/-(Rupees Sixty Two Lakhs Thirty Five Thousand One Hundred and Twelve only). The third respondent/Insurance Company is directed to deposit the entire enhanced award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.69 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Nagercoil, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants, except the minor claimants are permitted to withdraw their share with accrued interests and costs, as per the apportioment made by the Tribunal, less the amount already withdrawn if any, without filing any formal permission petition before the Tribunal. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalized Banks, in a Fixed Deposit scheme, till they attain majority. The guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. No Costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Special Sub Judge,
Motor Accident Claims Tribunal, Nagercoil

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.ILANGO, Advocate (SR-6990[F] dated 18/02/2022)

C.M.A(MD)No.148 of 2017
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MGJ(18.04.2022) 6P 5C