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C.M.A.No.2916 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.2916 of 2019

1. Shanthi
2. Minor Nithin
Rep. by his next friend
Guardian Mother Shanthi.
3. Palaniammal
4. Muthusamy

...Appellants

Vs.

1. Shanthakumari
2. United India Insurance Co.Ltd.,
146N, Kumar Complex,
Tiruchengode.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree in M.C.O.P.No.635 of 2009 dated 11.06.2018 on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Sankari.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.S.Arun Kumar for R2



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JUDGEMENT

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Challenging the decree and judgment dated M.C.O.P.No.635 of 2009 dated 11.06.2018 on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Sankari the appellants have filed this appeal.

2. The case of the claimants is that on 14.02.2006 at about 9:10 p.m. when the deceased Subramanian was proceeding as pillion rider in vehicle bearing registration No.TN 34 A 1885, the two wheeler in which the deceased was driving was driven in a rash and negligent manner and the driver of the vehicle lost control resulting in the vehicle falling down in which the deceased sustained grievous injuries all over the body and inspite of the treatment given to him succumbed to injuries on 15.02.2006. Therefore the claimants filed the claim petition claiming compensation to a sum of Rs.20,00,000/-.

3. Before the Tribunal, the claimants examined three witnesses viz., P.W.1 to P.W.3 and marked 10 documents viz., Ex.P.1 to Ex.P.10. The respondents examined two witnesses viz., R.W.1 and R.W.2 and marked 2 documents viz.,Ex.R1 and R2. The Tribunal, on considering the oral and



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documentary evidence, awarded a sum of Rs.32,15,000/- as compensation under various heads. Not satisfied with the same, the present appeal has been filed by the claimants seeking enhancement.

4. Learned counsel appearing for the claimants / appellants submits that the amount of compensation awarded is very meagre and is not in consonance with the ration laid down in various decisions. It is further submitted that the deceased was earning a sum of Rs.30,000/- per month and was aged about 37 years and to substantiate the same Exs.P6 to P8 were marked. However, the Tribunal erroneously fixed the income at Rs.15,000/- which is very meagre. Therefore, the present appeal has been filed seeking enhancement which deserves to be allowed.

5. The learned counsel appearing for the respondent insurance company submits that though the claimants had claimed the compensation only in a sum of Rs.20,00,000/-, the Tribunal has awarded a sum of Rs.32,15,000/- which by no means can be said to be meagre. Further, the accident had happened on account of the negligence of the driver of the vehicle against which the



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insurance company has also filed an appeal. Therefore, this Court may leave open the issue relating to the negligence so as to enable the insurer to defend its appeal.

6. Heard the learned counsel for the appellants and the learned counsel appearing for the second respondent and perused the materials placed on record.

7. The factum of the accident is not in dispute. The vehicle driven by its driver in a rash and negligent manner had capsized resulting in the death of the deceased. The rash and negligent act of the driver of has been held to be proved by the Tribunal and in the absence of the driver agitating his rights, this Court is not inclined to enter into the same moreso, when the insurance company has questioned the negligence and consequential liability on its part to compensate the claimants. The only issue which requires consideration of this Court is quantum of compensation awarded, which according to the claimants is meagre.



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8. This Court is really astonished by the fact that the claimants had claimed only a sum of Rs.20,00,000/- as compensation when the claim petition was filed in which the Tribunal had awarded a sum of Rs.32,15,000/- after claiming only a sum of Rs.20,00,000/- and receiving almost 50% in excess of what has been sought for, the claimants have come before this Court claiming that the compensation awarded by the Tribunal is meagre.

9. There is no justifiable cause or reason for the claimants to claim such an amount. As per Exs.P6 to P.8 the bank accounts on which the claimants placed reliance to show that the deceased was earning in excess of Rs.15,000/- per month, therefore, the fixation of Rs.15,000/- as monthly income is erroneous. On a perusal of the bank account of the deceased which shows various transactions with regard to the debit and credit entries. However, there is no monthly income of the deceased which can be quantified on the basis of the said credit and debit entries in the account. The high amount of credit entries in a particular month cannot form the basis of computing the monthly income of the deceased and the monthly income is derived on the average of the annual income.



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10. In the absence of any documentary evidence to show that the deceased was earning particular sum of rupees every month, an income merely based on credit and debit entries in the Bank accounts, monthly income cannot be fixed. The Tribunal rightly appreciating the aforesaid facts placing reliance on the decision of the Hon'ble Apex Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TANMAC 459**, has fixed the monthly income of the deceased at Rs.15,000/- per month and taking the age of the deceased at 37 years had adopted right multiplier and has arrived at the income. The amount awarded under the heads of funeral and transport expenses are based on the ratio laid down in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**, insofar as compensation awarded under the heads loss of love and affection with respect to four claimants, an amount of Rs.3,00,000/- has been awarded, which is on the higher side and not in consonance with the decision in Pranay Sethi's case. This Court, however, considering the compensation awarded under the other heads, is inclined to confirm the compensation awarded under the heads of loss of love and



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affection.

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11. Finding that the award of compensation fixed by the Tribunal under all the heads are just and reasonable, the Civil Miscellaneous Appeal stands dismissed. Accordingly, the compensation awarded by the Tribunal stands confirmed. The second respondent is directed to deposit the said amount to the credit of M.C.O.P.No.635 of 2009 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any, already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. The said award amount shall be apportioned amongst the appellants/claimants as per the Award of the Tribunal. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimants through RTGS within a period of two (2) weeks thereafter. However, liberty is granted to the insurance company to challenge the quantum in the appeal filed by them. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

1. Motor Accident Claims Tribunal / Subordinate Judge Court, Sankari.
2. The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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