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C.M.A.No.816 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.11.2023

CORAM:

MR.JUSTICE N.SESHASAYEE

C.M.A.No.816 of 2022
and C.M.P.No.5824 of 2022

The Divisional Manager
New India Assurance Company Ltd.
Divisional Office III, Sharon Building
No.161-A, East Veli Street, Madurai 625 001

... Appellant

Vs.

1.Vasanthi

2.K.Asaithambi

... Respondents

PRAYER:This Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 29.10.2021 passed in M.C.O.P.No.794 of 2020, on the file of the Motor Accidents Claims Tribunal, Krishnagiri, Special District Court for Motor Accident Claims cases, Krishnagiri.

For appellant : Mr.R.Sivakumar

For respondents : Mr.S.P.Yuvaraj - R1
Mr.P.M.Jayachandran - R2

JUDGMENT



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A certain Dinesh Kumar, aged around 23, died when the lorry in which he was travelling at the relevant time met with an accident. His widow mother approached the Motor Accidents Claims Tribunal (Special District Court for Motor Accident Claims cases), Krishnagiri with M.C.O.P.No.794 of 2020. The said Dinesh Kumar had passed Diploma in Mechanical Engineering and was 23 years when he died. The Tribunal fixed his income notionally at Rs.9,000/- per month, to which it added another 40% towards future prospects and applied 18 as a multiplier and deducted 1/3rd towards his personal expenditure and loss of dependency was arrived at Rs.18,14,400/-. After adding other conventional heads of compensation arrived at an aggregate sum of Rs.18,84,400/-. This is now under challenge at the instance of the Insurance Company.

2.The core contentions of the Insurance Company of the lorry is two fold:

- a) that at the relevant time the victim of the accident was an unauthorised passenger in a goods carrier, whereas the claimant would term that he was a cleaner of the lorry;
- b) whereas the Tribunal ought to have deducted one half towards personal



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expenditure of the victim since he was a bachelor at the time he died and the Tribunal had deducted only 1/3rd towards his personal expenditure.

3.Learned counsel for the appellant essentially relied on Ex.P1, the F.I.R filed in Crime No.502 of 2019 on a complaint preferred by the claimant herself.

4.The quintessence of the complaint would indicate that that Dinesh Kumar had just resigned a job and that he travelled with a lorry on an invitation from the lorry driver who belonged to the same locality on the latter's invitation. The lorry driver was not examined to establish that the victim joined him only as a cleaner.

5.Learned counsel for the respondent / claimant on the other hand submitted that the lorry was halted in Krishnagiri on its way from West Bengal to Trichur. Even as per the F.I.R., the driver of the vehicle had merely said that his co-driver had left and he asked the victim assist him. This implies that there was none to assist the lorry driver at the relevant time. This justifies the case of the claimant that the victim joined the trip only as a



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cleaner to assist the driver.

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6.Apparently, to be a cleaner in a lorry or a heavy vehicle one need not have any great qualification. But how to construe the victim?.

7.Learned counsel for the appellant brought to the notice of the Court the statement of P.W.2, another person who travelled with the driver in the same vehicle. He merely makes a statement in the cross examination that the victim of the accident travelled along with him. This statement by itself does not establish that the victim did not travel as a cleaner. Therefore, this Court leans in favour of the claimant and holds that Dinesh Kumar travelled only as a cleaner of the vehicle.

8.Learned counsel for the appellant submitted that the victim was jobless at the relevant time and the Tribunal had fixed the notional income overly. For fair consideration, this Court considers that Rs.8,500/- would be appropriate to which it adds another 40% and applies 18 as a multiplier and deducts 50% towards personal expenditure of the victim and arrive at a net value of dependency at Rs.12,85,200/-. To which it adds another



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Rs.70,000/- which represents the award paid by the Tribunal under the conventional heads and arrived at a total sum of Rs.13,55,200/-.

9.In the result, this Civil Miscellaneous Appeal stands allowed as follows:-

(i) The award of the Tribunal is reduced from Rs.18,84,400/- to Rs.13,55,200/-.

(ii)The interest granted by the Tribunal at 7.5% per annum stands confirmed.

(iii) This Court is informed that the appellant / New India Assurance Company Ltd., had deposited 50% of the compensation as was originally awarded by the Tribunal. It is now required to deposit the balance with interest at 7.5% to the credit of M.C.O.P.No.794 of 2020, on the file of Motor Accident Claims Tribunal (Special District Court for Motor Accident Claims Cases), Krishnagiri, within a period of six (6) weeks from the date of receipt of a copy of this order.

N.SESHASAYEE

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(iv) On such deposit, the respondent / claimant is entitled to withdraw the entire compensation as per existing rules on filing necessary application before the Tribunal.

(v) Excess court fee paid, if any, shall be refunded to the appellant / New India Assurance Company Ltd.,

(vi) Consequently, the connected miscellaneous petition is closed.

(vii) There is no order as to costs.

06.11.2023

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Index : Yes / No
Neutral Citation

To.

The Motor Accidents Claims Tribunal
Special District Court for Motor Accident Claims Cases
Krishnagiri

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and C.M.P.No.5824 of 2022