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C.M.A.No.697



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.03.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No. 697 of 2023

and

C.M.P.No. 6166 of 2023

The Divisional Manager,
National Insurance Co. Ltd.,
Puducherry.

...Appellant

Vs.

1.Anjalam
2.Tamilselvi
3.Saroja
4.Sathiyapriya
5.Aravalli
6.R.Rama Agarwal

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 08.10.2018 made in M.C.O.P.No.85 of 2014 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Puducherry.

For Appellant	: Mr.S.Arun Kumar
For RR1 to 5	: Mr.K.Sasindran
For R6	: No Appearance

Page No.1/8



JUDGMENT

The appeal is filed by the appellant/Insurance Company questioning quantum of compensation awarded by the Claims Tribunal.

2. The brief facts leading to the appeal are that, on 01.07.2012 at about 4.30 hours, when the deceased Kannan was walking on the road side of Cuddalore main road from south towards north, a Maruthi Omni LMV car bearing Reg. No. TN-01-S-7834, driven by its driver in a rash and negligent manner came from the opposite direction and hit against the deceased, as a result of which, the deceased Kannan was thrown away and sustained injuries all over his body. The deceased was taken to Arupadaiveedu Medical College and Hospital, where he underwent treatment and inspite of continuous treatment, he succumbed to injuries on 04.07.2012. The widow and the daughters of the deceased filed claim petition seeking compensation of Rs.20,00,000/- (Rupees Twenty Lakhs only).

3. The first respondent, the owner of the offending vehicle remained ex-parte and the claim petition was contested by the second respondent/Insurance Company. The second respondent/Insurance Company filed a counter denying all the averments raised in the claim petition including the age, income and dependency of the claimants on the deceased.



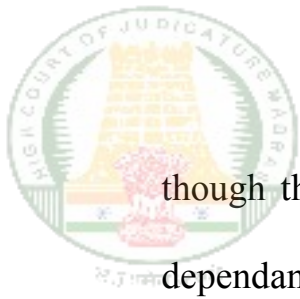
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4. Before the claims Tribunal, the first claimant examined herself as P.W.1., the eye-witness was examined as P.W.2. and Exs.P.1 to P.13 were filed on behalf of the claimant. The respondents neither examined any witness nor marked any documents.

5. The claims Tribunal on an assessment of the entire evidence on record awarded a sum of Rs.10,32,300/- as compensation along with 7.5% interest. Aggrieved by the quantum of compensation awarded by the claims Tribunal, the second respondent/Insurance Company herein has filed the above appeal.

6. The learned counsel for the appellant submitted that the assessment of compensation towards loss of income was erroneous as the Tribunal deducted only 1/4 th amount towards personal expenses of the deceased, over looking that the only dependent was the widow of the deceased, as all other claimants were married at the time of the accident. The learned counsel for the appellant further submitted that the Tribunal erred in awarding Rs.50,000/- each to the claimants 2 to 5 towards loss of love and affection.

7. The learned counsel for the respondents on the other hand submitted, that



though the daughters of the deceased, claimants 2 to 4 were married, they were dependant on the deceased and therefore the deduction of 1/4 th amount towards personal expenses is reasonable and justified. As far as the amount awarded towards love and affection is concerned, the counsel for the respondents submitted that the same is reasonable and fair.

8. I have heard both the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

9. As far as submission of the learned counsel for the appellant that the widow of the deceased alone can be considered to be a dependant of the deceased is concerned, the same is accepted, as the daughters who were aged between 22 and 33 years were married at the time of accident and no evidence was let in to show that they were dependent on the deceased. Therefore in my view, they cannot be considered to be the dependants of the deceased.

10. As the widow of the deceased is the only dependent, a deduction of 1/4th amount towards personal expenses cannot be sustained and therefore deduction towards personal expenses is fixed at 50%. The claimants 2 to 5 as



married daughters of the deceased would be entitled to Rs.40,000/- each towards loss of love and affection.

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11. I am therefore of the view that the award of the Tribunal needs to be modified. Accordingly, the award of the Tribunal is modified as follows:

<i>S.No</i>	<i>Various Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>
1.	Loss of Income	Rs.7,62,300	Rs.5,08,200
2.	Loss of Consortium to 1st claimant	Rs.40,000	Rs.40,000
3.	Loss of love and affection to claimants 2 to 5 each Rs.50,000/-	Rs.2,00,000	Rs.1,60,000 each Rs.40,000
4.	Funeral expenses	Rs.15,000	Rs.15,000
5.	Loss of estate	Rs.15,000	Rs.15,000
	Total	Rs.10,32,300	Rs.7,38,200

12. The amount awarded by the Tribunal is modified to Rs.7,38,200/- along with 7.5% interest. As it is found that the claimants 2 to 5 were not dependants of the deceased, it is held that the respondents 2 to 5 shall be entitled to Rs.40,000/- each under the head of love and affection along with 7.5% of interest.

13. The first respondent being the widow of the deceased shall be entitled to Rs.5,78,200 along with 7.5% interest. The appellant/Insurance Company is directed to deposit the entire modified award amount of Rs.7,38,200/- with 7.5%



C.M.A.No.69/

interest, less amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the order. The respondents/claimants shall thereafter be permitted to withdraw their share of the deposited amount by filing appropriate application before the Claims Tribunal.

In view of the above discussions, the appeal is partly allowed. There shall be no order as to costs in the present appeal. Consequently connected C.M.P. is closed.

27.03.2023

dsn

Speaking Order: Yes/No

Index: Yes/No

Neutral Citation: Yes/No



C.M.A.No.69/

To

1.The III Additional District Judge, (Motor Accident Claims Tribunal)
Puducherry.

2.The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



C.M.A.No.697

N.MALA, J

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C.M.A.No. 697 of 2023

27.03.2023

Page No.8/8