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CMA.No.3497 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.3497 of 2019

1. Siththi
2. Chinnathai
3. Kembasiththan

Appellants

Vs

1. Periyasamy
2. United Indian Insurance Company Limited
by its Manager, Erode
3. United India Insurance Company Limited
By its Manager, Erode 638011.

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 16.04.2019, made in MCOP.No.516 of 2018, by the IV Additional District Judge (Special District Judge-MACT) Erode District at Bhavani.

For Appellant : Mr.C.Kulanthaivel

For Respondents : Mr.M.J.Vijayaraghavan-R2&3

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimants, against the judgement and decree, dated, 16.04.2019, made in MCOP.No.516 of 2018, by the IV Additional District Judge (Special District Judge-MACT) Erode District at Bhavani.
2. The claimants, who are the daughters and son of the deceased, namely,



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Thottamathi @ Mathiammal, have filed the claim petition before the Tribunal, seeking a compensation of Rs.20,00,000/- on various heads, for the death of the deceased, who died in a motor road accident, which took place on 01.11.2017. The 1st Respondent herein/owner of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the 2nd Respondent/ Insurance Company, by filing a counter. On the side of the claimant, PW.1 and PW.2 were examined and Ex.P1 to Ex.P9 were marked. On the side of the Insurance Company, RW.1 was examined.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle, the Tribunal has awarded a total compensation of Rs.3,40,000/-, with interest at 7.5% p.a. from the date of the claim petition till the date of realization, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Income	180000.00
2	Loss of Love and Affection	120000.00
3	Funeral Expenses	15000.00
4	Transportation Expenses	10000.00
5	Loss of Estate	15000.00
Total Compensation		340000.00

Aggrieved by the quantum of compensation, this appeal has been filed by the claimants.

4. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
5. Since there is no quarrel over the negligence aspect and the dispute is only with regard to the quantum of compensation, the finding of the Tribunal with respect to the negligence aspect is confirmed and also, it is not necessary to



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narrate the entire facts in detail in respect of the accident.

6. According to the learned counsel for the Appellants, the Tribunal erred in taking the age of the deceased as 69 years, contrary to the post mortem certificate and consequently, the multiplier adopted by the Tribunal is also not correct. Further, while arriving at the compensation under the head of loss of income, the Tribunal ought to have deducted 1/3rd towards personal expenses and further added 10% towards future prospects. According to the learned counsel for the 2nd Respondent/ Insurance Company, the compensation awarded by the Tribunal is just and proper.
7. In the absence of proof to show the monthly income of the deceased, the Tribunal has rightly fixed the monthly notional income of the deceased at Rs.6,000/-. In the absence of any other proof for age, as per Ex.P6, post mortem certificate, the age of the deceased could be taken as 55 years and accordingly, the proper multiplier is 11. However, no amount is added towards future prospects, which is not proper and the deduction of 1/2nd towards personal expenses is also not proper. Hence, after adding 10% towards future prospects and deducting 1/3rd towards personal expenses, the total loss of income would come to Rs.5,80,800/- (Rs.4400x11x12). The compensation awarded under other heads are confirmed.
8. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.7,40,800/-, (Rupees seven lakhs forty thousand eight hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as detailed below:-



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A.A.NAKKIRAN, J.

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S.No	Category	Award Amount (Rs.)
1	Loss of Income	580800.00
2	Loss of Love and Affection	120000.00
3	Funeral Expenses	15000.00
4	Transportation Expenses	10000.00
5	Loss of Estate	15000.00
Total Compensation		740800.00

The 2nd Respondent / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants 1, 2 and 3 are entitled to withdraw Rs.2,40,000/-, Rs.2,40,000/- and Rs.2,60,800/- with proportionate interest, by filing proper application and by paying proper court fee for the enhanced compensation. No costs.

12.06.2023

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To

1. The IV Additional Judge (Special District Judge-MACT) Erode District at Bhavani.
2. The Record Keeper, VR Section, High Court, Madras

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