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CMA.No.2636 C



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30.06.2023

Judgment Pronounced on : **17.07.2023**

CORAM :

THE HON'BLE MRS.JUSTICE J.NISHA BANU

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.2636 of 2022

1) Petchiammal

2) Minor Suresh Kannan

3) Minor Monisha

4) Guruvammal

.. Appellants

Versus

1) M.Sathiyamoorthy

2) The New India Assurance Limited,

Motor Third Party Claims,

No.232, Bombay Mutual Building,

6th Floor, N.S.C. Bose Road,



Chennai – 600 001.

.. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award against the judgment and decree dated 29.03.2022 and made in M.A.C.T.O.P.No.4809/2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants: Mrs. M. Malar

For Respondents : Mr. S. R. Sundar, for R2

Ex parte – for R1

JUDGMENT

D. BHARATHA CHAKRAVARHY, J.

This Civil Miscellaneous Appeal is filed by the claimants aggrieved by the quantum of the award passed by the Motor Accidents Claims Tribunal, Chennai in MCOP.No.4809 of 2019.

2. The above original petition was filed claiming total compensation of Rs.60,00,000/- for the death of one Veerakumar in a motor accident. The brief facts of this case is that the deceased Veerakumar was aged about 40 years and it is claimed that he was working as a Collection Manager in M/s. Raja Transport, Madhavaram, Chennai for a monthly salary of Rs.25,000/- per month. While so, on 01.07.2019, at about 12.35 a.m., when the deceased was riding a motor cycle bearing Registration No. TN 05-AL-7845 from east to west towards Poonamallee near Velappanchavadi, Chennai, in front of KVN Kalayana Mandapam, a tipper



lorry bearing Registration No.TN 12-D-2673 was driven in a rash and negligent manner and hit him from behind and due to the impact, the deceased fell down and the lorry ran over him and he died on the spot.

3. The claim was resisted by the respondents by filing counter affidavit. In support of their claim, the 1st claimant Petchiammal was examined as **P.W.1** and one Rajesh, eye witness to the accident was examined as **P.W.2. Ex.P1 to P14** were marked on behalf of the claimants. The Tribunal after considering the case of the parties held that the accident happened only on account the rash and negligent driving of the driver of the tipper lorry and thereafter, proceeded to calculate the compensation and awarded a total sum of Rs.14,46,000/-. Aggrieved by the quantum, the claimants are on appeal before this court.

4. Heard, Mrs.M.Malar, learned counsel for the appellants and Mr.S.R.Sundar, learned counsel for the 2nd respondent/insurance company.

5. Learned counsel for the appellants submitted that, when the claimants have marked the pass book of the deceased to prove the income of the deceased, the Tribunal ought to have taken the income as Rs.25,000/- per month. However, without doing so, only a sum of Rs.9,000/- is taken and even there upon, the calculation is not correctly made. He also submitted that the trial Court erred in



dismissing the petition in respect of the 4th petitioner Guruvammal the step-mother of the deceased.

6. Per contra, Mr. S.R.Sundar, learned counsel appearing on behalf of the insurance company would submit that, except the marked pass book which showed only a few transactions, no proof whatsoever was produced before the Tribunal for the employment of the deceased and therefore, they have not proved the monthly income of Rs.25,000/- and therefore, the Tribunal has taken notional income. He would further submit that there was no proof for any adoption to show that the 4th petitioner is the mother of the deceased and therefore, the trial Court has rightly dismissed the petition, in respect of the 4th petitioner. Therefore, he would pray that the award does not require any interference.

7. We have considered the rival submissions made on the either side and perused the records of the case.

8. Firstly, regarding the dismissal of the original petition in respect of the 4th claimant is concerned, since there was a confusion in the names 'Kuppan' and 'Suppan', as per petition and in the evidence, we had directed the 4th petitioner to appear before us. Accordingly, the 4th petitioner was present. She submitted that only Mr.Suppan is her husband. Mr.Suppan was married to her elder sister and through her deceased Veerakumar was born. Thereafter, she was also married to



the said Suppan and her elder sister also passed away and she is the step-mother of all the children born through her elder sister also.

9. In that view of the matter, once the 4th petitioner being the step-mother, there need not be any adoption to show that she is the mother of the deceased. The term mother for the purpose of dependency and for the purpose of compensation would also include a step-mother. It can be seen that the 4th claimant Guruvammal had been taking care of the deceased Veerakumar as her own son and therefore, in that view of the matter, she is very well a dependent and we are unable to agree with the view of the Tribunal in dismissing the claim in respect the 4th claimant.

10. We are fully in agreement with the learned counsel for the 2nd respondent that the claimants have not provided any documentary or oral evidence in respect of the employment and earnings of the deceased to the tune of Rs.25,000/- per month. Therefore, the Tribunal is right in calculating the compensation on the basis of the notional income. But, however, this Court had been consistently following the earlier order in CMA.No.576 of 2022 (***Reliance General Ins. Co. Ltd. Vs. Manju and Ors.***) wherein it is held that even in respect of the accidents which took place in the year 2014-2015, a sum of Rs.15,000/- is taken as notional income. This accident had taken place in the year 2019.



Therefore, giving at least 10% increase for 3 years, the notional income can be taken as Rs.17,000/- in the present case. Accordingly, the following calculation of the compensation is made:-

Monthly Income	= Rs.17,000/-
Add:40% Future prospects paragraph 59.4 of <i>National Insurance Company Limited Vs. Pranay Sethi and Ors</i> ((2017) 16 SCC 680)	= Rs.6,800/-
Total	=Rs.23,800/-
Loss of dependency	=Rs.23,800 x 12 x 16 = Rs.45,69,600/-

Four dependants, therefore reduce 1/4 towards his personal expenses.

Therefore, now the final calculation shall be,

(A) Towards loss of Income/Dependency	=Rs. 34,27,200/-
(B) Towards loss of Estate	= Rs.15,000/-
(C) Towards Loss of Consortium	= Rs.40,000 x 4 = Rs.1,60,000/-
(D) Funeral Expenses	= Rs.15,000/-
Total	= Rs.36,17,200/-

The above compensation shall be apportioned as follows:-

(1) Petchiammal	= Rs.11,00,000/-
(2) Minor Suresh Kannan	= Rs.11,00,000/-



(3) Minor Monisha = Rs.11,00,000/-

(4) Guruvammal = Rs. 3,17,200/-

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11. In the result, CMA No.2336 of 2023 stands allowed,

(i) the respondents are directed to pay a total compensation of Rs.36,17,200/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs;

(ii) The 2nd respondent shall deposit the entire compensation, after deducting the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of the order.

(iii) Upon deposit of the compensation, the 1st claimant and the 4th claimant will be entitled to withdraw the entire sum apportioned to them.

(iv) the share of the 2nd and 3rd claimants/minors shall be deposited in any interest bearing deposit in a nationalized bank till their attainment of the majority.

(J.N.B., J.)

(D.B.C., J.)

17.07.2023

Index : yes/no

Speaking/Non-speaking order

Neutral Citation : yes/no

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To

The Motor Accident Claims Tribunal,



Chief Judge,
Court of Small Causes, Chennai.

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**J.NISHA BANU, J.
AND
D.BHARATHA CHAKRAVARTHY, J.**

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Pre-Delivery Judgment in

C.M.A.No.2636 of 2022

17.07.2023