



C.M.A.No.1442 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:02.03.2023

Delivered on: 09.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.No.1442 of 2017

1.Prema

2.Lawanya

3.Suganya

4.Logeswaran

5.Kamatchi

... Appellants

Vs.

1.Dinesh

2.The Oriental Insurance Company Limited

Divisional Office,Divya Towers

fort Main Road, Salem

TB HUB Parimalam Complex,Erode

... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 19.08.2015 made in M.C.O.P.No.460 of 2014 on the file of the Motor Accident Claims Tribunal,



C.M.A.No.1442 of 2017

Special District Judge, Salem.

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For Appellants : Mr.K.Kuppusamy

For Respondents : Mr.M.Krishnamoorthy for R2

R1- Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimants in M.C.O.P.No.460 of 2014 on the file of Motor Accidents Claims Tribunal, Special District Judge, Salem, challenging the judgment and decree dated 19.08.2015.

2. The appellants as claimants/wife,children and mother of the deceased one Mr.Kanagaraj S/o Ramsamy Naidu, came forward with a claim for compensation to the tune of Rs.50,00,000/- for the death of said Kanagaraj in a road accident. The claimants alleged that the 1st respondent's motorcycle was driven in a rash and negligent manner and consequently it hit the deceased's moped causing fatal injuries resulting in the said Kanagaraj dying on the spot. It is the case of the claimants that Kanagaraj was 49 years

2/10



C.M.A.No.1442 of 2017

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of age at the time of his demise, earning Rs.25,000/- per month and that the claimants being dependants are entitled to just and fair compensation.

3. The insurance company/2nd respondent filed a counter denying the age of the deceased, his employment, factum of his earning Rs.25,000/- per month and also factum of dependancy of the claimants on the deceased Kanagaraj. It is also stated by the insurance company that the deceased was driving the moped without proper knowledge of traffic rules and regulations and the allegation in the claim petition that the accident occurred due to the negligence of the 1st respondent's motorcycle rider is also denied.

4. Before the Tribunal, on the side of the claimant four witnesses were examined as P.Ws.1 to 4 and Exs.P.1 to P.7 were marked besides also Exs.X1 to X6 being marked as Court documents. On the side of the respondent/insurance company, no oral or documentary evidence was let in.



C.M.A.No.1442 of 2017

WEB COPY

5. The Tribunal, after appreciation of the oral and documentary evidence adduced before it, awarded a sum of Rs.28,35,150/- (Rupees Twenty eight lakhs thirty five thousand one hundred and fifty only) together with interest at 7.5% per annum with apportionment of the same amongst the claimants.

6. Aggrieved by the said award, the claimants as appellants have filed the above Civil Miscellaneous Appeal, mainly challenging the deduction of $1/3^{\text{rd}}$ towards personal expenses of the deceased; contribution of the deceased at Rs.19,360/-; applying multiplier of 13; awarding lesser sum towards loss of consortium.

7. Heard the learned counsel for the appellants/claimants as well as the learned counsel for the 2nd respondent/insurance company.

8. The main thrust of the argument placed by the learned counsel for the appellants is that deduction of $1/3^{\text{rd}}$ towards personal expenses of the



C.M.A.No.1442 of 2017

deceased was unjust and improper considering the number of dependants viz., the claimants. The counsel also specifically pointed out that the Tribunal has erroneously come to a conclusion that third claimant was already married, which is without any basis or evidence available on record.

9. Learned counsel for the 2nd respondent/insurance company supported the judgment of the Tribunal and also pointed out that the Tribunal had erroneously recorded the age of the deceased as 40 and no interference is warranted from this Court and sought for confirmation of the award passed by the Tribunal.

10. The only moot point for determination in this appeal considering the arguments advanced on either side is as to whether the deduction of 1/3rd towards personal expenses is proper or not.

11. Admittedly, the claimants are wife, two daughters, son and mother of the deceased Kanagaraj. On a perusal of the claim petition itself it is seen



C.M.A.No.1442 of 2017

WEB COPY

that the second claimant is stated to have been married and has been described as wife of one Mayakannan aged 24 years. However, third claimant Suganya is described only as daughter of late Kanagaraj, aged 23 years. Thus, especially in the light of any contra evidence, it can be safely presumed that the third claimant was unmarried at the time of death of the deceased in the accident. Even assuming that the second claimant was married and cannot be termed as a dependant, yet there are four dependants. Therefore, it would be proper to deduct only 1/4th towards personal expenses of the deceased.

12. In so far as the loss of consortium only a sum of Rs.30,000/- has been awarded. The Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others*, reported in (2017) 16 SCC 680 has held that towards loss of consortium a sum of Rs.40,000/- is to be awarded.

13. In all other aspects, this Court does not find any error committed by the Tribunal, while computing the amounts payable to the claimants under



C.M.A.No.1442 of 2017

WEB COPY

various heads, except for the deduction towards personal expenses and an additional sum of Rs.10,000/- towards loss of consortium. The award is not liable to be interfered in other aspects.

14. In fine, the Civil Miscellaneous Appeal is partly allowed, setting aside the amount awarded under the head “ loss of consortium” and enhancing the same to Rs.40,000/- instead of Rs.30,000/-. Similarly, in respect of deduction towards personal expenses of the deceased, considering the number of dependants and findings arrived herein above, this Court deems it fit to deduct only 1/4th towards personal expenses instead of 1/3rd. Revised calculation is as hereunder:

Accordingly, taking the salary fixed by the Tribunal as Rs.29,040/-and deducting 1/4th i.e., $\text{Rs.}21,780 \times 12 = 2,61,360/-$ and 10% being deducted towards income tax, the amount is Rs.2,35,224/-. Applying a multiplier 13 $\text{Rs.}2,35,224 \times 13 = \text{Rs.}30,57,912/-$ is arrived as income instead of Rs.27,18,144/- arrived by the Tribunal. A sum of Rs.25,000/- is awarded towards funeral expenses and loss of consortium is enhanced from



C.M.A.No.1442 of 2017

WEB COPY

Rs.30,000/- to Rs.40,000/-, Love and affection for the claimants 2,3 and 5 Rs.10,000/- each and the son at Rs.32,000/-, totalling in all Rs.31,84,912/- (rounded off to Rs.31,85,000/-.) The apportionment amongst the appellants would be as follows:

Mother of the deceased/5th appellant is entitled to Rs.1,20,000/-

Claimants/Appellants 2 and 3 are entitled to Rs.2,25,000/- each

Son of the deceased/4th appellant is entitled to Rs.5,50,000/- and the

Wife of the deceased/1st appellant is entitled Rs.20,65,000/-.

The award amount shall carry an interest of 7.5% from the date of claim petition, in support of the enhanced award.

15. Accordingly, with the above modifications, the Civil Miscellaneous Appeal is partly allowed. No costs.

09.03.2023.

Internet:Yes

Index:Yes/No

Speaking order

Neutral Citation:Yes/No

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C.M.A.No.1442 of 2017

To

1. The Special District Judge
Motor Accident Claims Tribunal, Salem.

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



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C.M.A.No.1442 of 2017

P.B.BALAJI, J.,
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Pre-delivery judgment in
C.M.A.No.1442 of 2017

09.03.2023