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CMA.No.1795 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1795 of 2017

1. Peddakkayamma
2. Manjula
3. Minor Kiran
4. Minor Dekshitha

Appellants

Vs

1. B.Bharathy
2. The Branch Manager, New India Assurance
Company Limited, Hosur 635109

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 18.02.2013, made in MCOP.No.109 of 2012, by the Subordinate Judge (MACT) Hosur.

For Appellants : Mr.Mukund R.Pandiyan

For Respondents : Mr.P.V.Padmanabhan-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimants, against the judgement and decree, dated, 18.02.2013, made in MCOP.No.109 of 2012, by the Subordinate Judge (MACT) Hosur.
2. The claimants, who are the mother, wife, son and daughter of the deceased, namely, Ramamoorthy, has filed the claim petition before the Tribunal, seeking a compensation of Rs.16,00,000/- on various heads, for the death of the deceased, who died in a motor road accident, which took place on 03.05.2012. The claim petition was resisted, on various grounds, by the 2nd



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Respondent Insurance Company, by filing a counter. The 1st Respondent, owner of the offending vehicle remained exparte. On the side of the claimants, PW.1 and PW.2 were examined and Ex.P1 to Ex.P8 were marked. On the side of the 2nd Respondent Insurance Company, RW.1 was examined and Ex.R1 to R3 were marked.

3. Finding that the deceased died in the alleged motor road accident due to the rash and negligent driving of the driver of the offending vehicle, belonging to the 1st Respondent, the Tribunal has awarded a total compensation of Rs.7,38,500/- with interest at 6% 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 Dependency	688500.00
2	Loss of Love and Affection	20000.00
3	Funeral Expenses	10000.00
4	Loss of Consortium	20000.00
Total Compensation		738500.00

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 narrate the entire facts in detail in respect of the accident.
6. According to the learned counsel for the Appellants, the monthly income of



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the deceased arrived at Rs.4,500/- by the Tribunal is very meagre and while arriving at the loss of dependency, the Tribunal erred in not adding 40% towards future prospects and the compensation awarded under the other heads are not just and proper. According to the learned counsel for the 2nd Respondent/ Insurance Company, the compensation awarded by the Tribunal is just and proper.

7. The deceased was aged 33 years old at the time of the accident. Though it is claimed by the claimants that the deceased was earning a sum of Rs.10,000/- p.m., by doing agricultural operations, in the absence of evidence to prove the same, the Tribunal fixed the notional monthly income of the deceased at Rs.4,500/-, which is in the opinion of this Court on the lower side and hence, it would be appropriate to fix the monthly income of the deceased at Rs.8,000/-. Further, the Tribunal, while arriving at the loss of dependency, erred in not adding 40% of the monthly income towards future prospects. Hence, the loss of dependency needs to be calculated, by adding 40% towards future prospects. Since the deceased was aged 33 years old at the time of the accident, the multiplier of 16 would be proper. After adding 40% of the monthly income towards future prospects and then, deducting 1/4th towards his personal expense, the loss of monthly dependency would come to Rs.8,400/-. Thus, the total loss of dependency would come to Rs.16,12,800/- (Rs.8,400x12x16).

8. The compensation of Rs.20,000/- towards loss of consortium for the 2nd claimant, Rs.10,000/- towards funeral expenses, Rs.20,000/- (Rs.5,000x4)



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towards loss of love and affection for the claimants 1 to 4 awarded by the Tribunal are enhanced to Rs.40,000/-, Rs.15,000/- and Rs.1,20,000/- (Rs.30,000x4) respectively. In all, the claimants are entitled to a total compensation of Rs.17,87,800/- with interest at 7.5% p.a. from the date of the petition till the date of realisation.

9. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimants are entitled to a total compensation of Rs.17,87,800/- (Rupees seventeen lakhs eighty seven 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:-

S.No	Category	Award Amount (Rs.)
1	Loss of Dependency	1612800.00
2	Loss of Love and Affection	120000.00
3	Funeral Expenses	15000.00
4	Loss of Consortium	40000.00
Total Compensation		1787800.00

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 to 4 are entitled to Rs.2,50,000/-, Rs.5,50,000/-, Rs.4,93,900/- and Rs.4,93,900/- respectively. The claimants 1 and 2 are entitled to withdraw their respective shares with proportionate interest, by filing proper application and by paying proper court fee for the enhanced amount. The share of the minor claimants shall be



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deposited in any one of the Nationalised Banks till they attain majority. The

2nd claimant is entitled to withdraw interest from the deposit of the shares of

the minor claimants once in six months directly from the Bank. No costs.

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To

1. The Subordinate Judge (MACT) Hosur
2. The Record Keeper, VR Section, High Court, Madras



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A.A.NAKKIRAN, J.

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