



WEB COPY



CMA.No.1256 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1256 of 2019

1. Sivamma
2. Vidya Sagar

Appellants

Vs

1. M/s.Chakra Marketting, Rajagopalapuram
Pudukottai

2. The Branch Manager, National Insurance
Company Limited, Pudukottai

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 14.08.2019, made in MCOP.No.1232 of 2006, by the Principal District Court (MACT) Krishnagiri.

For Appellants : Mr.P.Dinesh Kumar

For Respondents : Mr.P.Sankaranarayanan-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimants, against the judgement and decree, dated, 14.08.2019, made in MCOP.No.1232 of 2006, by the Principal District Court (MACT) Krishnagiri.
2. The claimants, who are the wife and son of the deceased, namely, Sivakumar, has 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 11.09.2005. The claim petition was resisted, on various grounds, by the



CMA.No.1256 of 2019

WEB COPY

Respondent Transport Corporation, by filing a counter. The 1st Respondent, owner of the offending vehicle remained exparte. On the side of the claimants, PW.1 to PW.3 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 was examined.

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.4,33,000/- 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	408000.00
2	Loss of Consortium	10000.00
3	Loss of Estate	10000.00
4	Transportation Expenses and Funeral Expenses	5000.00
Total Compensation		433000.00

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, while arriving at the loss



WEB COPY

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 and hence, it needs to be enhanced. According to the learned counsel for the 2nd Respondent/ Insurance Company, the compensation awarded by the Tribunal is just and proper.

7. Though it is claimed by the claimants that the deceased was earning a sum of Rs.10,000/- p.m., in the absence of evidence to prove the same, the Tribunal rightly fixed the notional monthly income of the deceased at Rs.3,000/-. However, 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 30 years old at the time of the accident, the multiplier of 17 adopted by the Tribunal is proper. After adding 40% of the monthly income towards future prospects and then, deducting 1/3rd towards his personal expense, the loss of monthly dependency would come to Rs.2,800/-. Thus, the total loss of dependency would come to Rs.5,71,200/- (Rs.2800x12x17).
8. The compensation of Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.5,000/- towards transportation expenses and funeral expenses awarded by the Tribunal are enhanced to Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. In all, the claimants are entitled to a total compensation of Rs.6,41,200/- with interest at 7.5% p.a. from the date of the petition till the date of realisation. However, it is made clear that the



CMA.No.1256 of 2019

claimants are not entitled to claim interest for the delay period of 702 days in filing the appeal.

9. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimants are entitled to a total compensation of Rs.6,41,200/- (Rupees six lakhs forty one thousand two hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, excluding the interest for the period of delay of 702 days in filing the appeal, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Dependency (Rs.2800x12x17)	571200.00
2	Loss of Consortium	40000.00
3	Loss of Estate	15000.00
4	Transportation Expenses and Funeral Expenses	15000.00
Total Compensation		641200.00

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 and also the interest for the period of delay of 702 days in filing this appeal, 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 and 2 are entitled to withdraw Rs.3,41,200/- and Rs.3,00,000/- with proportionate interest, by filing proper application. No costs.

05.04.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm



WEB COPY

To

1. The Principal District Court (MACT) Krishnagiri
2. The Record Keeper, VR Section, High Court, Madras



CMA.No.1256 of 2019

A.A.NAKKIRAN, J.

Srcm

CMA.No.1256 of 2019

05.04.2023