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C.M.A(MD)No.1607 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.12.2022

Pronounced on : 02.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.1607 of 2013

1.Vijaya

2.Minor.Hasini

... Appellants/Claimants

Vs.

1.Letchumanan

2.The Branch Manager,
National Insurance Company Ltd.,
Contonment,
Tiruchirappalli.

... Respondents/Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree passed in M.C.O.P.No.392 of 2012 on the file of the Motor Accident Claims Tribunal, Pudukottai (Additional District Court, Pudukottai), dated 20.06.2013.

For Appellants : Mr.P.Ganapathi Subramanian

For R1 : No Appearance

For R2 : Mrs.P.Malini



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JUDGMENT

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This appeal is filed against the judgment and decree passed in M.C.O.P.No.392 of 2012 on the file of the Motor Accident Claims Tribunal, Pudukottai (Additional District Court, Pudukottai), dated 20.06.2013. The appellants are the claimants. Respondents are the respondents in the claim petition.

2.Brief substance of the petition is as follows:

The deceased Ramar aged about 30 years was working as a Tailor and was earning Rs.6,000/- per month. On 27.12.2009 at about 9 p.m., when the deceased was walking along the Trichy to Keeranur main road, near PLA Garden, a motorcycle bearing registration number TN 55 T 6615 was driven by its rider in a rash and negligent manner, dashed against the deceased from behind. The deceased sustained injuries and he succumbed to the injuries. The petitioners are his dependants and they claim a sum of Rs.10,00,000/- as compensation.

3.Brief substance of the counter filed by the first respondent is as follows:



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The age, income and profession are all denied. Only on the guidance of the pillion rider, the rider of the vehicle, drove the vehicle in a careful and cautious manner and it was the deceased who suddenly crossed the road and fell against the vehicle. The FIR was based on a false complaint. Since the deceased was the tort-feasor, there is no necessity for the respondent to pay compensation. Due to this accident, the respondent sustained injuries. He was admitted in Trichy Government Hospital. The pillion rider also sustained some injuries. The vehicle was insured with the second respondent. The driving licence was valid. The deceased died only due to asthma and not due to the injury sustained in the accident.

4. Brief substance of the counter filed by the second respondent is as follows:

It is false to state that the motorcyclist rode the motorcycle in a rash and negligent manner. The manner of accident is wrongly stated in the petition. It was the deceased who suddenly crossed the road without noticing the traffic. A false complaint was given to the police. The first respondent was not having valid driving licence. The age, income are all denied. The manner of accident is denied. The claim is excessive.



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5. Two witnesses were examined, six documents were marked on the side of the petitioners. Three witnesses were examined and four documents were marked on the side of the respondents. The Tribunal awarded a sum of Rs.7,55,000/- as compensation to be paid by the second respondent.

6. Against the award, the appellant filed this appeal for enhancement of compensation on the following grounds:

The Tribunal is wrong in fixing the income as Rs.5,000/- per month. The Tribunal ought to have fixed the monthly income as Rs.6,000/-. The Tribunal ought to have added 50% towards future prospectus and after deducting 1/3 for the personal expenses of the deceased, the loss of income ought to have been calculated. The first appellant is entitled to Rs. 1,00,000/- towards loss of consortium. The other appellants are entitled to Rs. 1,00,000/- towards loss of love and affection. The Tribunal ought to have awarded Rs.25,000/- towards funeral expenses, Rs.10,000/- towards transportation.



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7. On the side of the first respondent it is stated that the first respondent was having LLR license and the pillion rider was having licence. Only with the guidance of RW.2 - the pillion rider, the first respondent / R.W1 was riding the two wheeler at the time of accident. The LLR certificate was marked as Ex.P6, Ex.R1 and Ex.R3. The driving licence of the pillion rider was marked as Ex.R2. R.W.3 is an official from the RTO office. He has deposed that already the first respondent was having valid driving licence. Copy of the same was marked as Ex.R4.

8. On the side of the second respondent it is stated that it was the deceased who was the tort-feasor, he crossed the road all of a sudden and he invited the accident.

9. P.W.2 was examined as an eye witness. Copy of the FIR was marked as Ex.P1. On the basis of the evidence of P.W.2 and Ex.P1, the Tribunal has fixed the responsibility on the first respondent, which is reasonable. From Ex.P6, Ex.R1 and Ex.R3, it is clear that the first respondent was having learners licence at the time of accident. From the evidence of R.W.3 and Ex.R4, it is clear that the first respondent was having valid driving licence. It is stated that R.W.2 was the pillion rider. The driving licence of R.W.2 was



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marked as Ex.R2. In the evidence of R.W.1 and from the evidence of R.W.2, it is stated that the first respondent was riding the motorcycle with the assistance of the pillion rider who was having valid driving licence, Ex.R2. The insurance policy was marked as Ex.P5. The policy was effective. There is no appeal against the liability. Hence it is decided that there is no violation of policy conditions and the second respondent is liable to pay compensation.

10.On the side of the appellant, it is stated that the income fixed by the Tribunal is low and the Tribunal ought to have fixed the income as Rs.6000/- per month.

11.The accident has happened in the year 2009. Hence it is decided that the notional income of the deceased is to be fixed as Rs.6,000/- per month from Ex.P2 and Ex.P4, the Tribunal fixed the age of the deceased as 30 years. The deceased was working in a private institution. Hence Considering the age of the deceased, it is decided that 40% future prospects is to be added.

12. After deducting 1/3 for his own expenses, the deceased might have contributed Rs.4000/- to his family members. Adding 40% towards future prospects, the income is calculated as Rs.5,600/- $[4000 + 1600(40/100 \times$



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4000)]. Considering the age of the deceased, multiplier 17 is applicable.

After applying multiplier 17, the income is fixed as Rs.11,42,400/- (5600 x 17 x 12).

13.The Tribunal has awarded Rs.1,00,000/- towards loss of consortium, Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, Rs. 10,000/- towards loss of consortium, Rs.50,000/- towards loss of love and affection. Considering the dictum of the Hon'ble Supreme Court in Pranay Sethi case, it is decided that the claimants are entitled to Rs.70,000/- towards conventional charges. Hence, the compensation is modified as follows:

Loss of income	-	Rs.11,42,400/-
Conventional charges	-	Rs. 70,000/-

Total	-	Rs.12,12,400/-

14. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.7,55,000/- to Rs.12,12,400/- which shall carry an interest of 7.5% per annum.

(ii) The appellants / claimants are directed to pay the court fee for the



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enhanced compensation amount, if any, within a period of three weeks from the date of this order.

(iii) The second respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.12,12,400/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost to the credit of M.C.O.P.No.392 of 2012 on the file of the Motor Accident Claims Tribunal, Pudukottai (Additional District Court), Pudukottai, within a period of eight weeks from the date of receipt of a copy of this order. The appellants are not entitled to interest for the default period if there is any.

(iv) On such deposit being made, the 1st appellant / 1st claimant is at liberty to withdraw her share of Rs.7,27,440/- (60% of the share) (Rupees Seven Lakhs Twenty Seven Thousand Four Hundred and Forty only) after following the due process of law, less any amount already received by them.

(v) The second appellant/claimant (minor) herein is entitled for an share of Rs.4,84,960/- (Rupees Four Lakhs Eighty Four Thousand Nine Hundred and Sixty only) with proportionate interest, which is ordered to be deposited in any one of the nationalized bank until he attain majority and the first



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appellant /claimant is permitted to withdraw the interest directly from the bank, once in three months only in order to maintain the minors.

02.01.2023

Index: Yes / No
Internet : Yes / No
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To

- 1.The Motor Accident Claims Tribunal/Additional District Court,
Pudukottai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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R.THARANI, J.

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Pre - Delivery Judgment made in
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