



C.M.A.(MD)No.195 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.03.2023

Delivered On : 03.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.195 of 2020

1.Ammapalam
2.Murugeswari
3.Sivabharath

.. Appellants

Vs.

1.Rajendra Prasad
2.United India Insurance Company,
Represented by its Divisional Manager,
Office at 2nd Floor, Xavier Building,
ASSISI Campus,
PWD Office Road,
Post Box No.50,
Nagercoil,
Kanyakumari District.

.. Respondents

(1st Respondent was set exparte
before the Motor Accidents Claims
Tribunal and hence, he is given up)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to call for the records relating to the judgment and decree dated 03.03.2018 made in M.C.O.P.No.652 of 2016 on the file of the Motor Accidents Claims Tribunal/Special Sub Court, Tirunelveli and to set aside the same,



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consequently enhance the compensation.

For Appellants	: Mr.V.Sasi Kumar
For 2 nd Respondent	: Mr.A.Elango
For 1 st Respondent	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.652 of 2016 dated 03.03.2018, on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tirunelveli.

2.The appellants herein are the petitioners and the respondents herein are the respondents in the claim petition. The appellants herein have filed a claim petition in M.C.O.P.No.652 of 2016, claiming compensation for the death of one Rajesh, in an accident that took place on 19.02.2016. The Tribunal has awarded a sum of Rs.11,64,000/- (Rupees Eleven Lakhs and Sixty Four Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.652 of 2016 is as follows:

On 19.02.2016 at about 02.00 p.m., when the deceased Rajesh was travelling in two wheeler bearing registration No.TN-75-B-2751 keeping the left side of the road, a mini bus bearing registration No.TN-21-AX-2788 came in a rash and



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negligent manner and dashed against the motorcycle. The deceased was admitted in Kanyakumari Government Hospital and he died on 23.02.2016. The deceased was 22 years old and he was working as a mason and was earning Rs.15,000/- (Rupees Fifteen Thousand only). The petitioners are his dependants and they claim a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as compensation.

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

The manner of the accident as narrated in the petition is wrong. The age, profession and income of the deceased are to be proved. The driver of the mini bus drove the vehicle in a slow and steady manner. It was the deceased, who was negligent and that the owner of the two wheeler and the insurance company of the two wheeler are necessary parties. The deceased is not having licence to drove the two wheeler. The driver of the mini bus was not having valid driving licence. The two wheeler was not having fitness certificate and insurance policy. The claim is excessive.

5.On the side of the petitioners, two witnesses were examined and five documents were marked. On the side of the respondents therein, one witness was examined and one document was marked. After trial, the Tribunal has awarded a sum



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of Rs.11,64,000/- (Rupees Eleven Lakhs and Sixty Four Thousand only) as compensation to be paid by the second respondent therein. Against which, the appellants have preferred this Civil Miscellaneous Appeal for enhancement of compensation on the following grounds:-

The Tribunal ought to have fixed the monthly income as Rs.11,000/- (Rupees Eleven Thousand only) instead of Rs.7,500/- (Rupees Seven Thousand and Five Hundred only). The Tribunal is wrong in rejecting the evidence of P.W.1 on the ground that no documentary evidence was produced to that effect. There is no possibilities for producing a salary certificate for a mason or any other construction worker and that the Tribunal has failed to consider this aspect. The Tribunal ought to have awarded compensation for loss of love and affection.

6.P.W.2 was examined as an eye witness and he has deposed that the driver of the mini bus was responsible for the accident. FIR was marked as Ex.P1 and FIR was registered against the driver of the mini bus.

7.On the side of the second respondent, it is stated that the deceased was under the influence of alcohol at the time of accident. R.W.1 has deposed that it is doubtful whether the deceased was under the influence of alcohol and no test was conducted to prove that the deceased was under the influence of alcohol. The



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evidence of R.W.1 is not helpful to the insurance company. Hence, it is decided that the driver of the mini bus was responsible for the accident.

8.On the side of the appellants, it is stated that the Tribunal ought to have fixed the monthly income as Rs.11,000/- (Rupees Eleven Thousand only) instead of Rs.7,500/- (Rupees Seven Thousand and Five Hundred only). It is stated that the deceased was a mason and that he was earning Rs.15,000/- (Rupees Fifteen Thousand only) per month. There is no possibilities of any documentary evidence and for the income of a mason, there is no possibility of getting regular job opportunities. Considering the date of accident, the notional income of the deceased is fixed as Rs.9,000/- (Rupees Nine Thousand only).

9.The age of the deceased is 22 years. Since the deceased is a bachelor, 50% of the income is to be deducted for his own expenses. After deducting 50%, the deceased might have contributed Rs.4,500/- (Rupees Four Thousand and Five Hundred only) to his family members. After adding 40% towards future prospects, the monthly income is calculated as Rs.6,300/- (Rupees Six Thousand and Three Hundred only). For the age of petitioner, the multiplier '18' is applicable. After applying multiplier, the loss of income is calculated as Rs.13,60,800/- (Rupees Thirteen Lakhs Sixty Thousand and Eight Hundred only).



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10. On the side of the appellants, it is stated that the Tribunal has awarded Rs.15,000/- (Rupees Fifteen Thousand only) towards personal expenses and Rs. 15,000/- (Rupees Fifteen Thousand only) towards loss of estate.

11. As per the dictum of Hon'ble Supreme Court in *Praney Sethi* case, the claimants are entitled to Rs.70,000/- (Rupees Seventy Thousand only) towards conventional charges. In total, a sum of Rs.14,30,800/- (Rupees Fourteen Lakhs Thirty Thousand and Eight Hundred only) is awarded as compensation.

12. In the result, this Civil Miscellenaous Appeal is **partly allowed**. The compensation is enhanced from Rs.11,64,000/- to Rs.14,30,800/-.

(i) The appellants are entitled to a sum of Rs.14,30,800/- (Rupees Fourteen Lakhs Thirty Thousand and Eight Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of deposit and costs. The second respondent herein is directed to deposit Rs.14,30,800/- (Rupees Fourteen Lakhs Thirty Thousand and Eight Hundred only) with 7.5% interest from date of the claim petition till the date of deposit and costs and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order.



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(ii)The first appellant/ mother of the deceased is entitled to a share of Rs.

6,30,800/- (Rupees Six Lakhs Thirty Thousand and Eight Hundred only) with proportionate interest and costs. The appellants 2 and 3/ sisters of the deceased are entitled to a share of Rs.4,00,000/- (Rupees Four Lakhs only) each with proportionate interest. On such deposit, the appellants are permitted to withdraw their respective shares, after deducting any amount already received by them. The appellants are not entitled for interest for the default period, if there was any. The appellants are directed to pay additional Court fee for the enhanced amount. No Costs.

03.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
MRN

To

1.The Special Sub Judge,
Motor Accidents Claims Tribunal,
Tirunelveli.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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