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C.M.A(MD)No.610 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.12.2022

Pronounced on : 03.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.610 of 2020

and

Cros.Obj(MD)No.35 of 2022

M/s. National Insurance Co.Ltd.,
Through its Branch Manager,
Trichy.

... Appellant / Respondent No.2

Vs.

1.Rukumani

2.Minor Sivanraj

3.Minor Varatharaj

... Respondent Nos.1 to 3/

Petitioners

4.Gopalakrishnan

...Respondent No.4/Respondent No.1

*(Respondent Nos.2 & 3 represented by their mother and guardian/
respondent No.1)*

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree, dated 29.11.2019 made in M.C.O.P.No.502 of 2019 on the file of the Motor Accidents Claims Tribunal/Mahila Court, Pudukkottai.

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C.M.A(MD)No.610 of 2020

For Appellant : Ms.P.Malini

For R1 - R3 : Mr.B.Sekar

PRAYER in Cros.Obj(MD)No.35 of 2022

1.Rukumani

2.Minor Sivanraj

3.Minor Varatharaj

... Cross Appellants /
Respondent Nos.1 to 3

(Minor Cross Appellant Nos.2 &3 are represented through their natural Guardian/Mother 1st Cross Appellant)

Vs.

1.M/s.National Insurance Company Limited,
Through its Branch Manager,
Trichy.

...1st respondent / Appellant

2.Gopalakrishnan

... 2nd Respondent /Respondent No.4

PRAYER:

This Cross Objection is filed under Order 41 Rule 22 of IPC to enhance the award amount to Rs.14,18,064/- (Rupees Fourteen Lakhs Eighteen Thousand and Sixty Four only) by allowing this Cross Appeal.

For Appellants : Mr.B.Sekar

For R1 : Ms.P.Malini

For R2 : No appearance



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C.M.A(MD)No.610 of 2020

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in M.C.O.P.No.502 of 2019, dated 29.11.2019 on the file of the Motor Accident Claims Tribunal/Mahila Court, Pudukkottai. The appellant is the second respondent, respondents 1 to 3 herein are the claimants and the fourth respondent herein is the first respondent in the original claim petition.

2.Brief substance of the claim petition is as follows:

On 15.10.2018 when the deceased was travelling in a two wheeler bearing registration No.TN-55-AE-0156, a EECO Maruthi car bearing registration No.81-X-8226 driven by the first respondent came in a rash and negligent manner and dashed against the TVS Star City vehicle and thereafter dashed against the two wheeler driven by the deceased and then dashed against the center median. The deceased died on the spot. The deceased was aged about 36 years and was working as a JCB operator and was earning Rs.20,000/- per month. The Petitioners are his dependants and they claimed a sum of Rs.50,00,000/- as compensation.



C.M.A(MD)No.610 of 2020

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

The manner of accident is not admitted. The first respondent was not rash and negligent in driving the vehicle. The driver of the first respondent drove the vehicle in a moderate speed in a careful manner observing the road rules. It was the rider of the two wheeler bearing registration No.TN-55-AE-0156, who had no driving license and he did not follow the road rules. There is contributory negligence on the part of the rider of the two wheeler who was rash and negligent. The age, avocation, income all are denied. The amount claimed by the petitioners is excessive.

4. Two witnesses (2) were examined and ten (10) documents were marked on the side of the petitioners. No witness was examined and no document was marked on the side of the respondents. The Tribunal has awarded Rs.23,16,000/- as compensation, to be paid by the respondents.

5. Against the order, the appellant has preferred this appeal on the following grounds:

The Tribunal is wrong in fixing the notional income of the deceased at



C.M.A(MD)No.610 of 2020

Rs.12,000/- per month. The multiplier applied by the Tribunal is without any basis. The Tribunal awarded compensation under the heads of consortium and love & affection, which amounts to duplication of award. The award of Rs.1,50,000/- towards love and affection is against the judgement of the Apex Court.

6.On the side of the claimants a Cross Objection was filed. Brief substance of the cross objection is as follows:

The deceased was a JCB operator and was earning Rs.20,000/- per month. The claimants have marked documents and adduced oral evidence to establish the income and the Tribunal is wrong in fixing the notional income as Rs.12,000/- per month. The monthly income ought to have been fixed as Rs.20,000/-. PW1 and PW2 have deposed regarding the income. The avocation was not seriously disputed by the respondent. The Tribunal failed to appreciate the documents filed on the side of the claimants regarding the profession. A sum of Rs.50,00,000/- was claimed and prayed for enhancement of the award amount.



C.M.A(MD)No.610 of 2020

7.On the side of the appellant, it is stated that the claimants have not proved that the deceased was an operator of the JCB machine. Without any documents or oral evidence, the Tribunal has wrongly fixed the monthly income at Rs.12,000/-.

8.On the side of the respondents, it is stated that the deceased undergone various training for operating the JCB machine and documents were marked as Ex.P8 to Ex.P10. Unless a person is technically qualified, there is no chance of engaging him as an JCB operator. The income for a JCB operator is based on hour basis and the income is to be enhanced to Rs.20,000/- per month.

9.There is no dispute regarding the liability. Hence, it is decided that the liability fixed by the Tribunal is reasonable. Ex.P8 to Ex.P10 reveals that the deceased was qualified to operate JCB. PW1 has deposed that the deceased was working as a JCB operator. It is stated that the income of a JCB operator is fixed on hour basis.



C.M.A(MD)No.610 of 2020

10.Considering the date of accident and considering the technical qualification of the deceased, the income of the deceased is fixed as Rs.13,000/- per month. The age of the deceased at the time of accident is 37 years. Hence, 40% future prospectus is to be added. After adding 40% towards future prospectus, the monthly income is calculated as Rs.18,200/-. Considering the number of dependants, 1/3rd of the income is to be deducted towards the own expenses of the deceased. After deducting 1/3rd of the income the contribution to the family is fixed as Rs.12,134/-. Considering the age of the deceased multiplier '15' is applicable. Hence, the loss of income calculated as Rs.21,84,120/- (12,134 x 15 x 12).

11.The Tribunal has awarded a sum of Rs.1,20,000/- towards loss of consortium, Rs.1,50,000/- towards loss of love and affection, which are excessive. As per the decision of the Hon'ble Supreme Court reported in **2018(4) RCR Civil 837**, in a case of **Magma General Insurance Co. Ltd., Vs Nanu Ram Alias Chuhru Ram**, the claimants are entitled to Rs.40,000/- each towards loss of love and affection and consortium. The Tribunal has awarded Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, which are reasonable. Hence, the award amount is calculated as



C.M.A(MD)No.610 of 2020

follows:

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Loss of income	-	Rs. 21,84,120/-
Loss of love and affection	-	Rs. 1,20,000/-
Funeral expenses	-	Rs. 15,000/-
Loss of estate	-	Rs. 15,000/-

Total	-	Rs. 23,34,120/-

The compensation is fixed as Rs.23,34,120/-

12. With the above modification this Civil Miscellaneous Appeal is dismissed and the Cross Objection is partly allowed.

(i) The award of compensation is enhanced from Rs.23,16,000/- to Rs.23,34,120/- (Rupees Twenty Three lakhs Thirty Four Thousand One Hundred and Twenty Only) with interest at the rate of 7.5% per annum.

(ii) The first claimant is directed to deposit the Court fee for the enhanced amount, if not already paid within a period of three weeks from the date of this order.

(iii) The appellant / Insurance company, is directed to deposit the entire compensation of Rs.23,34,120/- (Rupees Twenty Three lakhs Thirty Four Thousand One Hundred and Twenty Only) (if not already deposited) together with interest at the rate of 7.5% per annum, from the date of claim petition till



C.M.A(MD)No.610 of 2020

the date of deposit with cost to the credit of M.C.O.P.No.502 of 2019 on the file of the Motor Accidents Claims Tribunal/Mahila Court, Pudukkottai, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the appellant / insurance company, the first respondent / claimant is permitted to a share of Rs.13,34,120/- (Rupees Thirteen Lakhs Thirty Four Thousand One Hundred and Twenty only) with proportionate interest and cost. The first respondent is permitted to withdraw her share with proportionate interest and cost less any amount already withdrawn by her on filing proper petition before the Tribunal.

(v) The second and third respondents / claimants (minors) are entitled for a share of Rs.5,00,000/- (Rupees Five Lakhs only) each with proportionate interest, which is ordered to be deposited in any one of the nationalized bank until they attain majority and the first respondent/claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors. The claimants are not entitled to interest for the default period, if there is any.

03.02.2023

Index: Yes / No
Internet : Yes / No
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C.M.A(MD)No.610 of 2020

R.THARANI, J.

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To

- 1.The Motor Accidents Claims Tribunal/Mahila Court,
Pudukkottai.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

Pre - Delivery Judgment made in
C.M.A(MD)No.610 of 2020
and
Cros.Obj(MD)No.35 of 2022

03.02.2023