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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.494 of 2023

1.Pitchammal,

2.Murugan

3.Gomathi :Appellants/Petitioners 2 to 4

/vs/

1.Bakkialakshmi

2.The United India Insurance Company Limited,
through its Branch Manager,
Office at No.2, Bhuvaneshwari Complex,
Dr.Sankaran Road,
Namakkal – 637 001. :Respondents 1 and 2/Respondents
1 and 2

3.Esakkiammal :Respondent No.3/Petitioner No.1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award made in M.C.O.P.No.664 of 2016, dated 19.11.2020, on the file of the Motor Accidents Claims Tribunal(Special Sub-Judge), Tirunelveli.

For Appellants :Mr.T.Selvakumaran

For Respondent-2 :Mr.J.S.Murali



JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation.

2.The parties are referred to herein as per their ranking before the Tribunal.

3.The deceased Manikandan, aged 28 years at the time of accident, was a cleaner-cum-driver of the lorry bearing Registration No. TN 88 9014 belonging to the first respondent and insured with the second respondent. While the lorry reached near Theivaseyalpuram, the driver of the lorry drove the vehicle in a rash and negligent manner and due to heavy jerk, the deceased who was sitting on the cleaner seat inside the cabin was thrown out of the lorry and fell down on the road and the rear wheel of the lorry run over the deceased and sustained injuries and immediately he was taken to the Government Hospital Palayamkottai for treatment and admitted as inpatient and thereafter succumbed to injuries.Hence the claim petition is filed by the legal heirs of the deceased Manikandan.

4.It is the case of the second respondent that the claim



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petition is not maintainable either in law or on facts. The deceased was working as driver in the Palani Murugan Lorry Service, Tuticorin and not working as Cleaner cum driver in the first respondent's lorry. The deceased fell down from the stopped lorry and fell down on the road, sustained injuries and died. The first respondent has violated the policy condition by allowing the deceased to travel in the lorry as an unauthorized passenger in a non-transport vehicle and the first respondent has paid premium only for the driver of the lorry and not for any other person. Hence prays for dismissal of the claim petition.

5.Before the Tribunal, on the side of the Petitioners, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P6 were marked. On the side of the respondent, no witness was examined and Ex.R1 to Ex.R3 were marked.

6.On the basis of the evidence of P.W.1 and P.W.2 and Ex.R1, it is seen that the first respondent vehicle has been insured with the second respondent and a sum of Rs.150/- has been collected as additional premium. Further the second respondent Insurance Company has not produced any evidence to prove that the deceased was an unauthorized passenger and hence the Tribunal



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has come to the conclusion that it is only the driver of the first respondent vehicle who was rash and negligent in driving the vehicle and awarded the compensation as follows:

1.for loss of dependency	- Rs.17,13,600/-
2.Loss of consortium to to the first Petitioner	- Rs.40,000/-
3.Loss of Estate	-Rs.15,000/-
4.for funeral expenses	-Rs.15,000/-

total	-Rs.17,83,000/-

A crime was also registered against the driver of the first respondent vehicle. The evidence of record would show that the driver of the first respondent vehicle was rash and negligent in driving the vehicle. The Tribunal has rightly come to the conclusion that only the driver of the first respondent's vehicle was rash and negligent in driving the lorry. The Tribunal, however, has fixed the notional income of the deceased at Rs.8,000/-p.m..The evidence on record clearly indicate that the deceased is a driver-cum-cleaner by profession.

7.Therefore, when a person is acting as a driver-cum-cleaner of the transport vehicle, his income would be more and even now a days, acting driver will earn more than Rs.10,000/-per month. Admittedly, the evidence on record clearly indicate that the



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deceased is a driver-cum-cleaner by profession. Hence, this Court is of the view that fixing the notional income at Rs.8000/-p.m by the Tribunal is very low and accordingly, in order to award a reasonable compensation, taking note of the age of the deceased and his profession as a driver, fixed the notional income at Rs. 12,000/-p.m and if 40% is added towards future prospects of the deceased as per the dictum laid down in the ***Pranay Sethi's case***, the monthly income comes to Rs.16,800/-- and if one fourth of the monthly income is deducted towards the personal expenditure of the deceased, then the monthly income comes to Rs.12,600/- and if multiplier of '17' is applied to the age group of the deceased, the total loss of dependency comes to Rs.12,600/- x 12 x17 = Rs. 25,70,000/-. Further, the award of loss of consortium to the first petitioner at Rs.40,000/-, loss of estate at Rs.15,000/- and funeral expenses at Rs.15,000/- stands confirmed. The Tribunal has failed to award any amount to the Petitioners 2 and 3 and respondent No.3 towards loss of love and affection and hence this Court awards a sum of Rs.40,000/- each to the Petitioners 2 and 3 and respondent No.3 and the same comes to Rs.1.20,000/- and thus the total compensation is arrived as follows:



S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of dependency	Rs. 17,13,600/-	Rs. 25,70,400/-	enhanced
2	Spousal consortium to the first Petitioner/wife	Rs.40,000/-	Rs.40,000/-	same
3	For loss of estate	Rs.15,000/-	Rs.15,000/-	same
4	For funeral expenses	Rs.15,000/-	Rs.15,000/-	same
5.	For loss of love and affection to the Petitioners 2 and 3 and respondent No.3	----	Rs. 1,20,000/- (Rs.40,000/- each)	Newly awarded
6	Total	Rs. 17,83,600/-	Rs. 27,60,400/-	enhanced

Thus the total compensation payable to the Petitioners is Rs. 27,60,400/-. Since the Petitioners have restricted their claim to Rs. 25 lakhs before the Tribunal, this court restricts the claim to Rs.25 lakhs with interest at the rate of 7.5%p.a from the date of claim petition till the date of realization.

8.In the result,the Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.17,83,600/- to Rs.25,00,000/- with interest at the rate of 7.5%p.a., from the date of claim petition till the date of realization. The second respondent Insurance



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Company is directed to deposit the above said modified enhanced award amount with accrued interest and costs, less the award amount already deposited, if any, to the credit of claim petition before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first petitioner/wife is entitled to a sum of Rs.19 lakhs and the Petitioners 2 and 3 and respondent No.3 are each entitled to Rs.2 lakhs each, with proportionate accrued interest and costs, less the award amount, if any already withdrawn, by filing necessary application before the Tribunal. The Petitioners/claimants and respondent No.3 are directed to pay the excess Court fee, if any, towards the enhanced award amount to the credit of Registry. Only on such payment being made, Registry is directed to draft the decree in the appeal. No costs.

06.06.2023

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

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



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

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N.SATHISH KUMAR.,J.

vsn

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