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C.M.A(MD)No.256 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.02.2023

Pronounced on : 19.04.2023

CORAM

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

C.M.A(MD)No.256 of 2020

1.C.Booma

2.Minor C.Akash

3.Minor Gokulasri

4.Minor Thrishlasri

5.V.Velu

...Appellants /Petitioners

*(Minors 2 to 4 appellants rep. by Natural Guardian/Mother
1st Appellant C.Booma)*

Vs.

1.Vidyashankar

2.The Branch Manager,
IFFCO-TOKKIO General Insurance Co.Ltd.,
1st Floor, Chandra Ghandhi Nagar,
Ponmeni, Madurai-625 016.

3.V.Gauvery

...Respondents/Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the fair and decreetal order dated 27.09.2019 passed in M.C.O.P.No.8 of 2018, on the file of the Motor Accident Claims Tribunal/Special District Judge, Madurai.



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C.M.A(MD)No.256 of 2020

For Appellant :Mr.K.Kumaravel
For Respondents :Mr.T.Kanagaraj for R1
:Mr.V.Sakthivel for R2
:Mr.S.Prabhu for R3

JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.08 of 2018 on the file of the Special District Court to deal with Motor Accidents Cases, Madurai. The appellants herein are the claimants and the respondents herein are the respondents in the claim petition.

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

On 10.07.2017, when the deceased was riding a motorcycle, bearing Registration No.TN-59-D-8756 along with a pillion rider keeping the extreme left side of the road in a slow and careful manner, a Maruthi Swift Car, bearing Registration No.TN-22-BY-9396 came from behind in a rash and negligent manner and dashed against the motorcycle and both the rider and the pillion rider sustained severe injuries and the rider died on the spot. The deceased was aged about 42 years. He was working under a Centering Building Contractor and was earning Rs.30,000/- per month. The petitioners are his dependants and they claim a sum of Rs.35,00,000/- as compensation.

2/10



C.M.A(MD)No.256 of 2020

WEB COPY

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

The first respondent is the registered owner of the vehicle / Maruthi Swift car, which was insured with the second respondent's Company. The driver of the car was having valid driving license. The accident did not happened due to the negligence of the driver of the car.

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

The manner of accident was not admitted. The first respondent's vehicle was driven in a moderate speed by observing the road rules. The deceased was riding a two wheeler in a rash and negligent manner suddenly came to the wrong side of the road without noticing the approaching vehicle and he invited the accident. The rider of the two wheeler was not having valid driving license to drive the two wheeler. The age, income and occupation all are denied. The claim is excessive.



C.M.A(MD)No.256 of 2020

5.Two (2) witnesses were examined and eight (8) documents were marked as Ex.P1 to Ex.P8 on the side of the petitioners. No oral evidence and documentary evidence was let in on the side of the respondent. The Tribunal awarded a sum of Rs.11,33,792/- as compensation to be paid by the respondents 1 and 2.

6.Against the order, the appellants/claimants have preferred this appeal on the following grounds:

The Tribunal ought to have accepted the evidence of PW1 and PW2 and the documents Ex.P1 to Ex.P8. PW1 has deposed that her husband was earning Rs.30,000/- as a building contractor doing centering work. The Tribunal failed to consider the same. The Tribunal ought to have fixed the nominal income as Rs.12,000/- per month. Considering the age of the deceased, the Tribunal ought to have added 25% towards future prospects. After deducting 1/4th for his expenses of the deceased and by applying multiplier '14', the Tribunal ought to have calculated the loss of income as Rs.18,90,000/-. The Tribunal ought to have awarded loss of consortium for the claimants. The Tribunal ought to have awarded the loss of estate and the total award is to be enhanced.



C.M.A(MD)No.256 of 2020

WEB COPY

7.PW2 was examined as an eye witness. Ex.P1 is the copy of F.I.R.

There is no appeal on the side of the respondents. There is no dispute regarding the policy particulars. The connected case in M.C.O.P.No.1982 of 2017 was settled in the Lok Adalat on 08.12.2018. There was no oral or documentary evidence on the side of the respondents. Considering the above said points, it is decided that the liability fixed by the Tribunal is reasonable.

8.On the side of the appellant, it is stated that the income of the deceased ought to have been enhanced. It is stated that the deceased was working as a building contractor doing centering work and that he was earning Rs.30,000/- per month.

9.On the side of the respondent, it is stated that except the oral evidence of PW1, no other evidence or document was produced on the side of the appellants, to prove the income.

10.On the side of the appellant, it is stated that this Court has to fix the notional monthly income as Rs.12,000/- A judgment of this Court in the case



of **Mythili and others Vs. A.Lakshmi**, reported in **2019 (1) TN MAC 563** is cited, wherein, it is held as follows:-

"17. Though the Appellants have not produced any material to show that at the time of accident, the deceased was drawing Rs.600/- per day, as per the decision of the Hon'ble Supreme Court in Neeta v. Divisional Manager, MSRTC, Kolhapur, supra, in the absence of Salary Slip/Certificate, it would be appropriate to take the Monthly Salary of the deceased at Rs.12,000/-, keeping in view that more or less the Carpenter and Maistry are drawing similar wages. Thus, in the case on hand, it would be appropriate to fix the Monthly Salary of the deceased at Rs.12,000/-. It is apposite to mention that now a days, carpenter and Building Maistry who were involved in building Construction work are drawing Rs. 800/- per day. Since accident is of the year 2015, at least, a Building Maistry would have earned Rs.400/- per day. Therefore, following the decision of the Hon'ble Supreme Court in the case of Neeta v. Divisional Manager, MSRTC, Kolhapur, supra, this Court fixed the Monthly Salary of the deceased at Rs.12,000/-."

11.It is seen that the accident had happened during the year 2017.

Considering the date of accident, the notional income of the deceased is fixed as Rs.9,000/- per month. The age of the deceased at the time of accident is 42



C.M.A(MD)No.256 of 2020

years. After adding 25% future prospects, the income is calculated as Rs.12,000/-. After deducting 1/4th (Rs.3,000/-) for the own expenses and after applying multiplier '14', the loss of income is calculated at Rs.15,12,000/- (Rs.9,000/- x 12 x 14).

12. Considering the dictum of the Supreme Court in *Sarala Varma* case, it is decided that the claimants are entitled to Rs.70,000/- towards conventional charges. Hence, it is decided that the appellants are entitled to Rs.15,82,000/- as compensation.

13.The award is modified as follows:

Loss of Income	-	Rs. 15,12,,000/-
Conventional Charges	-	Rs. 70,000/-

Total compensation	-	Rs. 15,82,000/-

The award is fixed as Rs.15,82,000/-.

14. In the result, this Civil Miscellaneous Appeal is **partly allowed**.



C.M.A(MD)No.256 of 2020

WEB COPY

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.11,33,792/- to Rs.15,82,000/- (Rupees Fifteen Lakhs Eighty Two Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The second respondent/Insurance Company is directed to deposit the entire compensation of Rs.15,82,000/- (if not 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 costs to the credit of M.C.O.P.No.08 of 2018 on the file of the Motor Accident Claims Tribunal/Special District Court to deal with Motor Accidents Cases, Madurai, within a period of eight weeks from the date of receipt of a copy of this order, less any amount already deposited.

(iii) On such deposit being made by the second respondent herein /Insurance Company, the first appellant is permitted to withdraw a sum of Rs.4,82,000/- (Rupees Four lakhs Eighty Two Thousand only) (less any amount already withdrawn) with proportionate interest and costs and the and the appellants 2 to 4 herein/ claimants are entitled to Rs.3,00,000/- (Rupees Three Lakhs only) each with proportionate interest and the fifth appellant is permitted to withdraw a share of Rs.1,00,000/- (Rupees One lakh only) with proportionate interest and the third respondent, who is the sister of the



C.M.A(MD)No.256 of 2020

deceased is permitted to withdraw a share of Rs.1,00,000/- (Rupees One lakh only) with proportionate interest.

(iv) The Tribunal is directed to deposit the shares amount of the minor claimants / appellants 2 to 4 herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The minor claimants mother-first appellant herein Sivakumar, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. The appellants are directed to pay additional Court fee for the enhanced amount. The appellants claimants are not entitled for interest for the default period, if there is any. No costs.

19.04.2023

NCC : Yes/No
Index: Yes / No
Internet : Yes / No
vsd

To

- 1.The Motor Accident Claims Tribunal,
Special District Court to deal with Motor Accidents Cases,
Madurai.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

9/10



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C.M.A(MD)No.256 of 2020

R.THARANI, J.

vsd

Pre - Delivery Judgment made in
C.M.A(MD)No.256 of 2020

.2023