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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.563 of 2022

The Manager,
ICICI Lombard General Insurance Company Limited,
G.V.Complex,
Third Floor, 11/1B Bye-Pass Road,
Darshini Garden,
Madurai – 625 010. :Appellant/Third respondent

.VS.

1.K.Revathi,

2.Minor K.Nisha

3.Minor K.Asha

(respondents 2 and 3 minors are represented by their next friend,mother and guardian, the first respondent herein K.Revathi)

4.P.Silampan :Respondents 1 to 4/Petitioners

5.B.Siva

6.B.Chithiraiselvan :Respondents 5 and 6/
Respondents 1 and 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgement and decree made in M.C.O.P.No.13 of 2017, dated 18.3.2019, on the file of the Motor



Accidents Claims Tribunal/Subordinate Judge, Devakkottai.

WEB COPY

For Appellant : Mr. V. Muthukamatchi

For Respondents : Mr. N. Tamilmani
1 to 4

JUDGMENT

Challenging the quantum of compensation and the notional income fixed by the Tribunal, the present Civil Miscellaneous Appeal came to be filed.

2. The brief facts leading to the filing of the appeal is as follows:

The deceased Kalanjiam was aged 44 years at the time of accident and he was running a hotel in Chennai and earning a sum of Rs.30,000/- per month as monthly income. On 5.9.2016 at about 3.00 p.m., while the deceased was returning from a marriage function in a two wheeler bearing Registration No. TN 65 T 6545, the two wheeler owned by the second respondent in M.C.O.P/the sixth respondent herein bearing Registration No. TN 55 AV 0100, driven by the first respondent in M.C.O.P/fifth respondent herein in a rash and negligent manner and dashed against the deceased and as a result, he succumbed to injuries. The first Petitioner in the claim petition is the wife and Petitioners 2 and 3 are minor children



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and fourth Petitioner is the father of the deceased. Hence they claim a sum of Rs.52,08,000/- as compensation.

3.It is the contention of the third respondent/appellant herein that the deceased was not wearing helmet at the time of accident and the accident has occurred only due to the rash the negligent driving of the motor cycle driven by the deceased. The Tribunal, after considering the evidence adduced in this regard, found that the first respondent/the fifth respondent herein drew the vehicle in a rash and negligent manner and awarded a compensation as follows:

1.For loss of dependency	- Rs.23,62,500/-
2.For loss of estate	- Rs.40,000/-
3.For transportation	- Rs.15,000/-
4.For funeral rights	- Rs.15,000/-

Total	-Rs.24,32,500/-

and also directed to "pay and recovery", since the first respondent's vehicle is not having proper driving licence at the time of accident. Challenging the quantum of compensation awarded by the Tribunal, the present appeal came to be filed.

4.It is the contention of the learned counsel for the appellant that without any evidence to show that the deceased was earning



WEB COPY

a sum of Rs.30,000/- the Tribunal has fixed a sum of Rs.15,000/- as notional income. Therefore, it is contended that fixing Rs.15,000/- as notional income is without any basis. Hence opposed the quantum of compensation as awarded by the Tribunal.

5.The learned counsel for the respondents 1 to 4 would submit that the deceased was running a hotel and to show the same, documents also filed that the property was taken on lease to run the hotel. Hence, he would contend that the Tribunal has rightly fixed the notional income and awarded a just and fair compensation.

6.In the light of the above facts, the point that arose for consideration in the present appeal is that:

1.Whether the Tribunal is right in fixing the notional income at Rs.15,000/- without any evidence?

7.On a perusal of the entire evidence, except an unregistered deed for tenancy said to have been entered into between the deceased and owner, to run the hotel, there are no other documents filed to show that the deceased was earning a decent



WEB COPY

sum by running the hotel. Therefore, merely on the basis of Ex.P7 and without any evidence to show that there was licence to run the hotel, the Tribunal ought not to have fixed a sum of Rs.15,000/- as notional income.

8.In such view of the matter, considering the age of the deceased at the time of accident, this Court fixed the notional income at Rs.12,000/-p.m., and to add 25% towards future prospects and by deducting 1/4th of the monthly income towards his personal expenses and by adopting the multiplier of "14", the loss of dependency comes to Rs.**18,90,000/-** and for loss of love and affection, this Court awards a sum of **Rs.80,000/-** and another sum of **Rs.30,000/-** towards funeral expenses and in total, this Court awards a sum of **Rs.20,00,000/-** as compensation to the claimants with interest at the rate of 7.5% from the date of claim petition till the date of realization.

9.In the result, the Civil Miscellaneous Appeal is partly allowed by reducing the compensation from Rs.24,32,000/- to Rs. 20,00,000/- with interest at the rate of 7.5%p.a., from the date of claim petition till the date of realization. The appellant/Insurance company is directed to pay the modified compensation of Rs.20



WEB COPY

lakhs as awarded by this Court at the first instance to the claimants and then to recover the same from the owner of vehicle, by following due process of law. The appellant Insurance Company is directed to deposit the modified compensation of Rs.20,00,000/- with accrued interest and costs to the credit of claim petition before the Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the major claimants 1 and 4 and minor claimants 2 and 3, who, as of now, attained majority, are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, by filing necessary application before the Tribunal. If the appellant/Insurance Company has already deposited the award amount as ordered by the Tribunal, the appellant is permitted to withdraw the excess award amount from the Tribunal. No costs.

28.03.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn



To

- 1.The Motor Accidents Claims Tribunal,
(Subordinate Judge),
Devakottai..
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.563 of 2022

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