



C.M.A.(MD)No.94 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.03.2023

Delivered On : 31.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.94 of 2020

The Branch Manager,
Cholamandalam General Insurance Co. Ltd.,
II Floor, Dare House,
No.2, NSC Bose Road,
Chennai – 1.

.. Appellant

Vs.

1.Arumugam
2.Indirani
3.Muniyammal
4.Muneeswari
5.Pandi Selvi
6.M.Paramasivam

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 12.09.2017 made in M.C.O.P.No.61 of 2017 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Sivagangai.

For Appellant	: Mr.S.Srinivasa Raghavan
For Respondents 1 to 5	: Mr.S.Manoharan
For 6 th Respondent	: No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.61 of 2017 dated 12.09.2017, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Sivagangai.

2.The appellant herein is the second respondent, the respondents 1 to 5 herein are the petitioners and the sixth respondent herein is the first respondent in the claim petition. The appellant herein has filed a claim petition in M.C.O.P.No.61 of 2017, claiming compensation for the death of one Velu, in an accident that took place on 07.02.2016. The Tribunal has awarded a sum of Rs.10,55,000/- (Rupees Ten Lakhs and Fifty 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.61 of 2017 is as follows:

On 07.02.2016 at about 12.15 hours, when the deceased Velu was travelling in an auto bearing registration No.TN-63-AH-8424 from Thiruppuvanam to Ladanenthall, the driver of the auto drove the vehicle in a rash and negligent manner and capsized the auto. The deceased sustained injuries and he died on the



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spot. The deceased was working as a watchman in a construction company and by doing handicraft articles and agricultural work, he was earning Rs.30,000/- (Rupees Thirty Thousand only) per month. The petitioners are the dependants of the deceased 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 second respondent denied the manner of the accident, the nature of accident, the extent of the dependency of the petitioners and the details of the occupation of the deceased. The nature and mode of the accident and the involvement of the vehicle are all denied. There was no negligence on the part of the driver of the auto. It was false to state that the deceased was earning Rs.30,000/- (Rupees Thirty Thousand only) per month. The deceased was not employed at the time of accident. The claim under various heads are excessive. There was no policy in force. The fitness certificate and other documents are not in order. The terms and conditions of the policy were violated. The second respondent is not liable to indemnify the first respondent. The first respondent was not having valid driving licence. The claim is excessive.



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5. On the side of the petitioners, three witnesses were examined and 11 documents were marked. On the side of the respondents therein, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.10,55,000/- (Rupees Ten Lakhs and Fifty Five Thousand only) as compensation to be paid by the second respondent therein. Against which, the appellants have preferred this Civil Miscellaneous Appeal on the following grounds:-

The Tribunal was not justified in fixing the notional income as Rs.10,000/- (Rupees Ten Thousand only) per month. The Tribunal failed to consider the age of the deceased in fixing the monthly income. There was no proof of regular income. The Tribunal granted Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) towards loss of love and affection, Rs.50,000/- (Rupees Fifty Thousand only) for loss of consortium, which are excessive.

6. There is no dispute regarding the liability and hence, it is decided that the appellant is liable to pay compensation. On the side of the appellant, it is stated that the deceased was aged about 60 years. It is stated that the deceased was doing watchman work and handicraft work and agricultural work and that there was no proof of income and that the Tribunal has fixed the monthly income as Rs.10,000/- (Rupees Ten Thousand only), which is excessive.



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7. On the side of the respondents 1 to 5, it is stated that the salary receipts were marked as Ex.P7 to Ex.P10. P.W.2 has deposed that the deceased was working in “Agro Farms Company” and that the salary fixed by the Tribunal is to be enhanced.

8. It is seen that P.W.1 has deposed that the deceased was earning Rs. 30,000/- (Rupees Thirty Thousand only) per month. P.W.2 has deposed that the petitioner was working in “Agro Farms Company” and the salary receipts were marked as Ex.P7 to Ex.P10. The registers for payment of salary was not marked. There was no evidence as to the handicraft business done by the deceased. The age of the deceased at the time of the accident was 60 years. Considering the age of the deceased and date of accident, the notional income is fixed as Rs.9,000/- (Rupees Nine Thousand only) per month.

9. Considering the number of dependency, $1/4^{\text{th}}$ of the income is to be deducted for the own expenses of the deceased. After deducting $1/4^{\text{th}}$ towards personal expenses, the deceased might have contributed Rs.6,750/- (Rupees Six Thousand Seven Hundred and Fifty Only) to his family. For the age of the deceased, 10% is to be added as future prospects and that a sum of Rs.7,425/- (Rupees Seven



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Thousand Four Hundred and Twenty Five only) is fixed as monthly income. For the age of 60 years, multiplier '8' is applicable. After applying multiplier, the loss of income is calculated as Rs.7,12,800/- (Rupees Seven Lakhs Twelve Thousand and Eight Hundred only).

10. On the side of the appellant, it is stated that the Tribunal has awarded Rs.25,000/- (Rupees Twenty Five Thousand only) towards funeral expenses, Rs. 50,000/- (Rupees Fifty Thousand only) towards loss of consortium, Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) towards loss of love and affection, which are all excessive.

11. As per the dictum of the Hon'ble Supreme Court in *Praney Sethi* case, the respondents 1 to 5 are entitled to Rs.70,000/- (Rupees Seventy Thousand only) towards conventional charges. In total, a sum of Rs.7,82,800/- (Rupees Seven Lakhs Eighty Two Thousand and Eight Hundred only) is awarded as compensation.

12. In the result, this Civil Miscellenaous Appeal is **partly allowed**. The compensation is reduced from Rs.10,55,000/- to Rs.7,82,800/-.

(i) The respondents 1 to 5 are entitled to a sum of Rs.7,82,800/- (Rupees Seven Lakhs Eighty Two Thousand and Eight Hundred only) as compensation with



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interest at the rate of 7.5% from the date of the claim petition till the date of deposit and costs. The appellant is directed to deposit Rs.7,82,800/- (Rupees Seven Lakhs Eighty Two Thousand and Eight Hundred only) with 7.5% interest from date of the claim petition till the date of deposit 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.

(ii)The first respondent/ wife of the deceased is entitled to Rs.5,82,800/- (Rupees Five Lakhs Eighty Two Thousand and Eight Hundred only) with propotionate interest and costs. The respondents 2 to 5/daughters of the deceased are entitled to Rs.50,000/- (Rupees Fifty Thousand only) each with propotionate interest. On deposit, the respondents are permitted to withdraw their respective shares, after deducting any amount received by them earlier. The claimants are not entitled for interest for the default period, if there is any. Excess amount if any deposited shall be refunded to the appellant. No Costs.

31.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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R. THARANI, J.

MRN

To

- 1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Sivagangai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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