



C.M.A.(MD)No.634 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 27.02.2023

Delivered On : 16.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

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1.Malathy
2.Minor R.Nanthabala
3.Minor R.Rameshkannan
4.M.Indra
5.R.Muthusamy .. Appellants
(Minor Petitioner 2 and 3 through their
Mother and natural guardian 1st petitioner Malathy)

Vs.

1.Shanmugavel
2.The Branch Manager,
Oriental Insurance Company Limited,
No.1548, Tenkasi Road,
Rajapalayam 626 125,
Virudhunagar District. .. Respondents
(Amended as per order in
I.A.No.161/2018 dated 09.03.2018)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 12.11.2019 and made in M.C.O.P.No.178 of 2017 on the file of the Motor Accident Claims Tribunal (Principal District Court), Virudhunagar District at Srivilliputhur.



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For Appellants
For 2nd Respondent
For 1st Respondent

: Mr.S.Srinivasa Raghavan
: Mr.C.Jawahar Ravindran
: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.178 of 2017 dated 12.11.2019, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Virudhunagar District at Srivilliputhur.

2.The appellants herein are the petitioners and the respondents herein are the respondents in the claim petition. The appellants herein have filed a claim petition in M.C.O.P.No.178 of 2017, claiming compensation for the death of one Ramachandran, in an accident that took place on 16.11.2016. The Tribunal has awarded a sum of Rs.13,47,000/- (Rupees Thirteen Lakhs and Forty Seven 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.178 of 2017 is as follows:

On 16.11.2016, at about 07.30 p.m., when the deceased was travelling in a motorcycle bearing registration No.TN-36-AU-3259 along the Srivilliputhur Rajapalayam main road, near the RTO office, an auto bearing registration No.TN-67-



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AZ-8147 came from the opposite direction in a rash and negligent manner and dashed against the motorcycle. The deceased sustained injuries and he died on the spot. The deceased was aged about 35 years and he was doing coolie work and he was earning Rs.700/- (Rupees Seven Hundred only) per day. The petitioners are his dependants and they claim a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) as compensation.

4.Brief substance of the counter filed by the first respondent therein is as follows:

It was the deceased who drove the motorcycle in a rash and negligent manner and dashed against the auto. The front portion of the auto was completely damaged. The first respondent has also sustained injuries. He was taken to hospital by Ambulance. Hence, it was not possible for him to lodge a complaint. The first respondent is contesting the criminal case. The petitioners have to prove the occupation and income. There was no insurance policy for the motorcycle of the deceased. The deceased has no driving licence. The first respondent was having valid driving licence and the auto was insured with the second respondent. Hence, the first respondent is not liable to pay compensation.



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

The manner of the accident as alleged in the petition is wrong. The petitioners suppressed the real facts of the accident. It is not admitted that this accident has occurred due to the rash and negligent act of the first respondent. It is not admitted that at the time of accident, the first respondent auto was insured with the second respondent. The age, income and occupation of the deceased are denied. The deceased was not having valid driving licence. The insurance company of the motorcycle is necessary party to the petition. The petitioners have to prove the age, income and occupation of the deceased.

6. On the side of the petitioners, two witnesses were examined and 12 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.13,47,000/- (Rupees Thirteen Lakhs and Forty Seven Thousand only) as compensation to be paid by the second respondent. Against which, the appellants have preferred this Civil Miscellaneous Appeal for enhancement of compensation on the following grounds:-

The Tribunal is wrong in fixing the monthly income as Rs.9,000/- (Rupees Nine Thousand only). The Tribunal failed to consider that the deceased was



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employer in a mill at the time of accident and that the Tribunal failed to add future prospects in calculating the loss of income. There are five claimants and that the Tribunal ought to have deducted $\frac{1}{4}$ of the income towards own expenses. The Tribunal has awarded Rs.50,000/- (Rupees Fifty Thousand only) towards loss of consortium without granting any amount towards loss of love and affection. The Tribunal ought to have followed the judgment of Hon'ble Supreme Court in ***Magma General Insurance CO., and Satvindar Kaur's*** case. The Tribunal ought to have granted more amount for loss of love and affection for each of the claimants and that the amount granted for loss of estate is to be enhanced. The award is very low and the same is to be enhanced.

7.On the side of the appellants, it is stated that the deceased was a mill worker and fixing the notional income as Rs.9,000/- (Rupees Nine Thousand only) is very low. P.W.2 was examined as an eye witness. Copy of FIR was marked as Ex.P1, the copy of rough sketch was marked Ex.P2, observation mahazer was marked as Ex.P3. MV report was marked as Ex.P4. Chargesheet was marked as Ex.P5. It is seen that there is no cross objection on the side of the insurance company. Hence, it is decided that there is no dispute regarding the liability fixed by the Tribunal.



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8. On the side of the respondents, it is stated that the Tribunal fixed the monthly income without any proof and the deceased was unemployed and was in search of a job. In the FIR, it is clearly stated that the deceased was unemployed. The monthly income fixed by the Tribunal is to be reduced. In the petition, it was stated that the deceased was earning Rs.700/- (Rupees Seven Hundred only) per day. But no document was filed to prove the same. The appellants are claiming that the deceased was a mill worker. But no document was filed to prove the income. The accident had happened in the year 2016 and hence, the Tribunal has fixed the monthly income as Rs.9,000/- (Rupees Nine Thousand only), which is reasonable. From the FIR, it is seen that the deceased was unemployed and was in search of a job at the time of accident.

9. On the side of the appellants, it is stated that future prospects is to be added in calculating the loss of income. A perusal of the records reveals that the Tribunal failed to add any amount towards future prospects. The age of the deceased is 35 years. Hence, it is decided that 40% is to be added towards future prospects.

10. On the side of the appellants, it is stated that the Tribunal is wrong in deducting $\frac{1}{3}^{\text{rd}}$ towards the own expenses of the deceased. The number of the claimants are five and hence, $\frac{1}{4}^{\text{th}}$ of the income is to be deducted towards the



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personal expenses of the deceased.

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11.Considering the date of accident, the Tribunal fixed the notional income as Rs.9,000/- (Rupees Nine Thousand only), which is reasonable. After deducting $\frac{1}{4}$ towards his personal expenses, the deceased might have contributed Rs.6,750/- (Rupees Six Thousand Seven Hundred and Fifty only) to his family members. After adding future prospects, the monthly income is calculated as Rs.9,450/- (Rupees Nine Thousand Four Hundred and Fifty only). After applying multiplier '16', the loss of income is calculated as Rs.18,14,400/- (Rupees Eighteen Lakhs Fourteen Thousand and Four Hundred only).

12.On the side of the appellants, it is stated that the Tribunal has awarded Rs.25,000/- (Rupees Twenty Five Thousand only) for each of the claimants towards loss of love and affection and that a sum of Rs.50,000/- (Rupees Fifty Thousand only) was awarded towards loss of consortium for each of the claimants, Rs.20,000/- (Rupees Twenty Thousand only) was awarded towards funeral expenses. It is further stated that a sum of Rs.40,000/- (Rupees Forty Thousand only) for each of the claimants towards loss of love and affection is to be awarded and that the compensation under other heads is to be enhanced.



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13.Considering the dictum of the Hon'ble Supreme Court in *Praney Sethi* case, it is decided that the claimants are entitled to Rs.70,000/- (Rupees Seventy Thousand only) towards conventional charges. In total, a sum of Rs.18,84,400/- (Rupees Eighteen Lakhs Eighty Four Thousand and Four Hundred only) is awarded as compensation.

14.In the result, these Civil Miscellenaous Appeals are **partly allowed**. The compensation is enhanced from Rs.13,47,000/- to Rs.18,84,400/-.

(i)The appellants are entitled to a sum of Rs.18,84,400/- (Rupees Eighteen Lakhs Eighty Four Thousand and Four Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of deposit. The second respondent is directed to deposit Rs.18,84,400/- (Rupees Eighteen Lakhs Eighty Four Thousand and Four 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 appellant/ wife of the deceased is entitled to a share of Rs. 5,84,400/- (Rupees Five Lakhs Eighty Four Thousand and Four Hundred only) with propotionate interest and costs. The appellants 4 and 5/ mother and father of the deceased is entitled to a share of Rs.1,50,000/- (Rupees One Lakh and Fifty Thosuand only) each with propotionate interest. On deposit, the appellants 1, 4 and



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5/major claimants are permitted to withdraw their respective shares, after deducting any amount received by them earlier.

(iii)The appellants 2 and 3/minor claimants are entitled to a share of Rs. 5,00,000/- (Rupees Five Lakhs only) each with proportionate interest. The Tribunal is directed to deposit the share of the appellants 2 and 3/minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first appellant, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. The claimants are not entitled for interest for the default period, if there is any. The appellants are directed to pay the additional Court fee for the enhanced amount. No Costs.

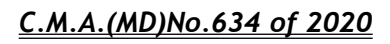
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NCC : Yes/No
Index : Yes/No
Internet : Yes/No
MRN

To

1.The Motor Accidents Claims Tribunal, Principal District Judge,
Virudhunagar District at Srivilliputhur.

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



R. THARANI, J.

MRN

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16.03.2023