



C.M.A.(MD).No.725 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.725 of 2016

1. Valli
2. Vijayakumar
3. Shanthi
4. Vijayakanth
5. Dhanalakshmi
6. Periyamayagi (died)

... Appellants/Petitioners

-vs-

1. Guhan
2. The Manager,
National Insurance Company Ltd.,
Sekkalai Road,
Karaikudi Taluk,
Sivagangai District.

... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree made in M.C.O.P.No.77 of 2010 on the file of the Motor Accident Claims Tribunal, (Sub-Court), Devakottai, dated 30.09.2013.

For Appellants : Mr.R.Jenifer Bibin

For Respondents : Mr.J.S.Murali – for R2
No appearance – for R1



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J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of the compensation challenging the award passed in M.C.O.P.No.77 of 2010 on the file of the Motor Accident Claims Tribunal, (Sub-Court), Devakottai.

2. According to the claimants, the deceased was a Carpenter and he was earning a sum of Rs.9,000/- (Rupees Nine Thousand only) per month. They have claimed a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) as award amount.

3. The second respondent has filed a counter challenging the manner of accident, negligence and quantum.

4. The Tribunal, after considering the oral and documentary evidence let in by the either parties, arrived at a conclusion that the accident has taken place only due to the rash and negligent driving on the part of the driver of the first respondent vehicle and insured with the second respondent.



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5. Though the claimants have contended that the deceased was a Carpenter and a Contractor, earning a sum of Rs.9,000/- (Rupees Nine Thousand only), the Tribunal has fixed the notional income at Rs.4,000/- (Rupees Four Thousand only) and deducted 1/3rd towards personal expenses and ultimately, arrived at a sum of Rs.4,16,000/- (Rupees Four Lakhs Sixteen Thousand only) towards loss of income; a sum of Rs.10,000/- (Rupees Ten Thousand only) towards loss of estate; a sum of Rs.10,000/- (Rupees Ten Thousand only) towards loss of love and affection; a sum of Rs.20,000/- (Rupees Twenty Thousand only) towards transportation charges and funeral expenses and a sum of Rs.10,000/- (Rupees Ten Thousand only) towards loss of consortium. Totally, a sum of Rs.4,66,000/- (Rupees Four Lakhs and Sixty Six Thousand only) was awarded by the Tribunal. This award is under challenge in the present appeal.

6. The learned counsel appearing for the appellants relied upon the judgment of the Hon'ble Supreme Court reported in **2014 (1) TNMAC 459 (SC) (Syed Sadiq Etc Vs. Divisional Manager, United India Insurance Company Ltd.,)**, wherein the accident has taken place in the year 2008 and



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the notional income was fixed at Rs.6,500/-. Therefore, according to the learned counsel appearing for the appellants, at least the notional monthly income should have been fixed at Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) for the accident that has taken place in the year 2010. He further contended that for loss of consortium, only a sum of Rs.10,000/- (Rupees Ten Thousand only) has been awarded without considering that there are six claimants. He further contended that there are six claimants, the Tribunal was not right in deducting 1/3rd towards personal expenses. On the other hand, only 1/4th amount should have been deducted towards personal expenses. He further contended that the amount awarded by the Tribunal towards funeral expenses and transportation expenses is on the lesser side and that may be enhanced.

7. Per contra, the learned counsel appearing for the second respondent had contended that when the claimants have not established the avocation and the monthly income, the Tribunal was right in drawing presumption of Rs.4,000/- per month. He further contended that the amount awarded under the other heads are reasonable and therefore, that may be confirmed.



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8. I have carefully considered the submissions made by the learned counsel on either side.

9. In the judgment reported in **2014 (1) TNMAC 459 (SC) (Syed Saduq etc., Vs. Divisional Manager, United India Insurance Company Ltd.,)** the Hon'ble Supreme Court had taken the notional monthly income as Rs.6,500/- for an accident that has taken place in the year 2008. Therefore, this Court is inclined to fix the notional monthly income at Rs.7,000/- for the accident that has taken place in the year 2010. Considering the fact that there are six claimants, 1/4th of the amount would be deducted towards personal expenses. Thereafter, the monthly income would be at Rs.5,250/- In view of the judgment of the Hon'ble Supreme Court reported in **2017 (16) SCC 680 (Insurance Company Limited Vs. Pranay Sethi and others)** this Court is inclined to add 25% towards future prospects and if the future prospects is added, the monthly income would arrive at Rs.6,562/- and the age of the deceased was 46 and the correct multiplier is “13”. Therefore, this Court is inclined to award a sum of Rs.10,23,360/- (Rupees Ten Lakhs Twenty Three



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Thousand Three Hundred and Sixty only) (6,560x13x12) towards loss of income.

10. A perusal of the claim petition indicates that the first claimant is the wife. The claimants 2 to 5 are children. 6th claimant is the mother had passed away. When the claimants have exceeded six in number, each one of them can claim a sum of Rs.40,000/- towards loss of love and affection. The award of a sum of Rs.10,000/- towards loss of estate is hereby confirmed. This Court is inclined to award a sum of Rs.5,000/- towards transportation expenses and a sum of Rs.15,000/- towards funeral expenses.

11. In view of the above said deliberations, the award of the Tribunal is modified as follows:

Loss of income	: Rs.10,23,360/-
Loss of love and affection (Rs.40,000x5)	: Rs.2,00,000/-
Loss of estate	: Rs. 10,000/-
Transportation expenses	: Rs. 5,000/-
Funeral expenses	: <u>Rs. 15,000/-</u>
total	: Rs.12,53,360/-



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12. Therefore, the award of the Tribunal is enhanced from Rs.4,66,000/- to Rs.12,53,360/- (Rupees Twelve Lakhs Fifty Three Thousand Three Hundred and Sixty only) and the award amount will carry interest at the rate of 7.5% per annum, from the date of claim petition. The balance amount shall be deposited by the Insurance Company within a period of eight weeks from the date of receipt of a copy of this order. The first claimant namely the wife of the deceased would be entitled to a sum of Rs.4,53,360/-. The claimants 2 to 5 would be entitled to each Rs.2,00,000/-. The claimants are hereby directed to pay the deficit Court fee, if any, before drafting of the decree.

13. This Civil Miscellaneous Appeal is partly allowed to the extent as sated above. There shall be no order as to costs.

26.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accident Claims Tribunal, (Sub-Court),
Devakottai



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2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

R.VIJAYAKUMAR,J.

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