



C.M.A.(MD).No.32 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.32 of 2015

1. C.Pushpavathi
2. S.Vinu
3. S.Anusha

..... Appellants/ Petitioners

-VS-

1. T.Kaliraj
2. M.Selvakumar
APM Group of company
Nagercoil, Tirunelveli National Highways Road,
Muppandal, Aralvaimozhi Post,
Thovalai Taluk,
Kanyakumari District.

3. M/s.New India Assurance Company Ltd.,
Represented by its Branch Manager,
Office at DO 710800 Ratna Building,
1st Floor, 372, TTK Road,
Alwarpet, Chennai – 18.

... Respondents / Respondents

(1st Respondent set ex-parte before
the Trial Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 10.04.2014, passed in M.C.O.P.No.63 of 2011, on the file of the Motor Accidents Claims Tribunal, (Special Court for Forest Offence Cases) Nagercoil.



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For Appellants : Mr.Xavier Rajini

For Respondents : Ex-parte – For R1

: No appearance – For R2

: Mr.D.Sivaraman – For R3

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the claimants challenging the quantum of the award passed by the Tribunal in M.C.O.P.No. 63 of 2011, on the file of the Motor Accidents Claims Tribunal, (Special Court for Forest Offence Cases) Nagercoil.

2. According to the claimants the deceased was a scrap merchant with his partner G.Stanly at Nagercoil. They further contended that he was earning a monthly income of a sum of Rs.15,000/- (Rupees Fifteen Thousand only). The claimants have chosen to produce income certificate under Ex.P7 from the said partner to the effect that he was receiving monthly income of Rs. 15,000/- (Rupees Fifteen Thousand only). The said partner was also examined as PW-2 in order to support the said document. However, the Tribunal had disbelieved the said evidence and arrived at a finding that he was earning a



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sum of Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) and thereafter, proceeded to award a sum of Rs.6,60,000/- (Rupees Six Lakhs and Sixty Thousand only) towards loss of income. This portion of the award is under challenge in the present appeal.

3. According to the learned counsel appearing for the claimants, the Tribunal has not properly appreciated the fact that the deceased was earning Rs.15,000/- (Rupees Fifteen Thousand only) per month. The said pleading was supported by Ex.P.7 – Income Certificate and the author of Ex.P.7 was also examined as PW-2. Therefore, the Tribunal was not right in reducing the monthly income by 50% viz., 7,500/- and proceeding to grant an award of a sum of Rs.6,60,000/- (Rupees Six Lakhs and Sixty Thousand only) towards loss of income. Hence, he prayed for enhancement of the compensation by fixing a sum of Rs.15,000/- as monthly income.

4. Per contra, the learned counsel appearing for the third respondent had contended that under conventional heads, the Tribunal has awarded excess amount. He pointed out that under the head for loss of love and affection a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) has



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been awarded. Apart from that loss of Consortium of Rs.1,00,000/- (Rupees One Lakh only). Therefore, according to the learned counsel appearing for the third respondent if the amount under these two heads are adjusted as per the judgment of the Hon'ble Supreme Court, the total award amount of the Tribunal can be sustained and there is no possibility of any enhancement of the award amount.

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

6. It is a specific case of the claimants that the deceased was a partner in a scrap merchant business and he was earning a sum of Rs.15,000/- (Rupees Fifteen Thousand only). The said contention has been disputed by the Insurance Company in their counter. The claimants have produced Ex.P.7 – Income Certificate, issued by the partner and the partner was also examined as P.W.2. However, the Tribunal has rejected the said Certificate and the oral evidence and has proceeded to hold that the deceased was only earning a sum of Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) towards monthly income.



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7. Considering the facts that the accident has taken place in the year 2010 and the deceased was partner as a scrap merchant, Ex.P-7 Certificate and oral evidence of P.W.2 cannot be rejected without assigning any proper reasons. Therefore, this Court is of the opinion that if not Rs.15,000/- (Rupees Fifteen Thousand only) at least Rs.10,000/- (Rupees Ten Thousand only) has to be taken into consideration by the Tribunal as monthly income of the deceased person.

8. However, under the conventional heads the Tribunal has awarded excess amount under the head of loss of love and affection and loss of consortium.

9. Taking into consideration the monthly income at the rate of Rs.10,000/- (Rupees Ten Thousand) per month and after deduction 1/3 and applying multiplier of '11' total loss of income would be Rs.8,80,000/- (Rupees Eight Lakhs Eighty Thousand only). The Tribunal was not correct in awarding a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) towards loss of love and affection and another one of Rs.1,00,000/- (Rupees One Lakh only) towards loss of consortium. Since there are three claimants the loss of love and affection only the Rs.1,20,000/- (Rupees One Lakh and



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Twenty Thousand only) can be awarded at the rate of Rs.40,000/- for each claimant. Therefore, under the head of loss of consortium a sum of Rs. 1,20,000/- (Rupees One Lakh and Twenty Thousand only) can be awarded, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) awarded for a funeral expenses, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) for loss of estate, Rs.10,000/- (Rupees Ten Thousand only) towards transport expenses and Rs.1,03,779/- (Rupees One Lakh Three Thousand Seven Hundred and Seventy Nine only) for Medical expenses, based on the medical bills submitted by the claimants. Therefore, the total award amount can be a sum of Rs.11,43,779/-(Rupees Eleven Lakh Forty Three Thousand Seven hundred and Seventy Nine only).

10. The Tribunal has granted an award of a sum of Rs.10,50,000/- and the same is enhanced as a sum of Rs.11,43,779/- (Rupees Eleven Lakhs Forty Three Thousand Seven Hundred and Seventy Nine only). The enhanced amount shall carry with interest at the rate of 7.5% from 12.09.2011 till the date of realization. The Insurance Company is directed to deposit the said amount within a period of eight weeks from the date of receipt of a copy of this order.



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11. The Civil Miscellaneous Appeal stands allowed to the extent as stated above. There shall be no order as to costs.

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

1. The Motor Accidents Claims Tribunal,
(Special Court for Forest Offence Cases),
Nagercoil.
2. M/s.New India Assurance Company Ltd.,
Represented by its Branch Manager,
Office at DO 710800 Ratna Building,
1st Floor, 372, TTK Road,
Alwarpet, Chennai – 18.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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