



C.M.A.(MD).No.365 of 2018

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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.365 of 2018

The National Insurance Company Ltd.,
Registered Office:3,
Middleton Street,
Post Box No.9229,
Kolkatta – 700 071.

... Appellant/2nd Respondent

-VS-

1. Jothi ... 1st Respondent/1st Petitioner

2. Minor Depa ... 2nd Respondent/2nd Petitioner
(Minor R2 is represented by her Mother and
Guardian first respondent herein)

3. K.Kalaivani ... 3rd Respondent/1st Respondent

4. Balakrishnan ... 4th Respondent/3rd Respondent

5. Annalakshmi ... 5th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the decree and judgment dated 11.08.2017 made in M.C.O.P.No.1082 of 2014, on the file of the Motor Accidents Claims Tribunal/Special Sub Judge, Tirunelveli.

For Appellant : Mr.A.Ilango

For Respondents : Mr.A.Selvaraj – for R1 and R2
No appearance – for R3 to R5



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J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal/Special Sub Judge, Tirunelveli, made in M.C.O.P.No.1082 of 2014, primarily on the ground of quantum.

2. According to the claimants, the deceased was running a mobile shop business and he was earning a sum of Rs.20,000/- (Rupees Twenty Thousand only) per month while he died at the age of 33 years on 04.04.2014. The Tribunal has fixed the liability to pay the compensation on the owner and the insurer of the offending vehicle viz., the Lorry. The Tribunal had fixed the notional monthly income at Rs.8,000/-(Rupees Eight Thousand only) and added 50% towards future prospects and after deducting 1/3rd towards personal expenses, a sum of Rs.15,36,000/-(Rupees Fifteen Lakhs and Thirty Six Thousand only) was awarded under the head of loss of income. A sum of Rs.1,00,000/- (Rupees One Lakh only) was awarded towards love and affection to the first claimant and another sum of Rs.1,00,000/- (Rupees One Lakhs only) was awarded towards loss of consortium to the first claimant. The Tribunal has further awarded a sum of Rs.1,00,000/- (Rupees One Lakhs



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only) towards loss of love and affection to the second claimant. The Tribunal has further awarded a sum of Rs.1,00,000/- (Rupees One Lakh only) towards loss of love and affection to the claimants 3 and 4. A sum of Rs.10,000/- (Rupees Ten Thousand only) was awarded towards transportation charges and a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) was awarded towards funeral expenses. Totally, a sum of Rs.19,71,000/- (Rupees Nineteen Thousand and Seventy One Thousand only) was awarded by the Tribunal. This award is under challenge in the present appeal.

3. According to the learned counsel appearing for the appellant/ Insurance Company, the deceased claimant was in an un organised Sector and therefore, the future prospects should have been added only at the rate of 40% and not at 50%. He further contended that the Tribunal was not right in awarding a sum of Rs.1,00,000/- to each one of the claimants towards loss of love and affection. Apart from the award, another sum of Rs.1,00,000/- (Rupees One Lakh only) was awarded towards loss of consortium to the wife. He further contended that the Tribunal ought to have awarded interest at 7.5% per annum, but, has awarded interest at the rate of 9% per annum. Hence, the learned counsel for the appellant/Insurance Company had prayed to modify



the a

6. 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)**, the future prospects of the deceased person, who is in an unorganised Sector, is only 40% and not 50%. Therefore, this Court is inclined to add only a sum of Rs.3,200/- with Rs.8,000/- as future prospects. Considering the facts that there are four claimants, the 1/4th amount would be deducted towards personal expenses. Therefore, the total award amount under



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the head of loss of income would be at $(Rs.8,400 \times 16 \times 12) = Rs.16,12,800/-$ (Rupees Sixteen Lakhs Twelve Thousand and Eight Hundred only). The Tribunal ought not to have awarded Rs.1,00,000/- to each one of the claimants and it would be at a sum of Rs.40,000/- towards loss of love and affection. Therefore, this Court is inclined to award a sum of Rs.1,60,000/- towards loss of love and affection, instead of Rs.4,00,000/- awarded by the Tribunal. In other respects, the quantum of award stands confirmed.

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

Loss of income	: Rs.16,12,800/-
Loss of love and affection	: Rs. 1,60,000/-
Transport Expenses	: Rs. 10,000/-
Funeral Expenses	: <u>Rs. 25,000/-</u>
Total	: Rs.18,07,800/-

8. Therefore, the award of the Tribunal is hereby modified and reduced from Rs.19,71,000/- to Rs.18,07,800/- (Rupees Eighteen Lakhs Seven Thousand and Eight Hundred only) and the said amount will carry interest at



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the rate of 7.5% per annum from the date of the claim petition instead of 9% per annum. Excess amount, if any, deposited by the Insurance Company may be refunded to them along with accrued interest. The first claimant shall be entitled to Rs.8,71,000/- the second claimant shall be entitled to a sum of Rs.8,00,000/-. Balance amount shall be shared by the respondents 3 and 4 in the claim petition. Since the third claimant has already passed away, the balance amount shall be paid to the 4th claimant viz., the mother of the deceased. The share of the minor claimant/2nd respondent, shall be deposited in a Nationalised Bank till she attains majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months.

9. 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 Accidents Claims Tribunal/
Special Sub Judge, Tirunelveli.



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

R.VIJAYAKUMAR,J.

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