



C.M.A.(MD)No.573 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.573 of 2018

and

C.M.P.(MD)No.6627 of 2018

The Branch Manager,
Chola Mandalam M.S.General Insurance
Company Ltd.,
2nd Floor, Dare House,
No.2, N.S.C.Bose Road,
Chennai.

... Appellant

Vs.

1.Boopathy (Died)

2.S.Elangovan

3.S.Siva

4.Jithendra Kumar

... Respondents

*(Memo dated 25.02.2022, filed on 25.02.2022 in
USR No.5664 is recorded, as R1 died and R2 & R3,
who are already on record, are recorded as LRS of
the deceased R1 vide Court order dated 11.10.2023
made in C.M.A.(MD)No.573 of 2018)*



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 13.10.2017 made in M.C.O.P.No.592 of 2012 on the file of Motor Accidents Claims Tribunal, (Principal District Judge), Dindigul.

For Appellant : Mrs.K.R.Siva Shankari,
for Mr.S.Srinivasa Raghavan

For R-2 & R-3 : Mr.D.Venkatesh

For R-4 : Mr.J.Selvam

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the fair and decreetal order dated 13.10.2017 made in M.C.O.P.No.592 of 2012 on the file of Motor Accidents Claims Tribunal, (Principal District Judge), Dindigul.

2. This is a fatal case. The legal heirs of the deceased person who are the wife and the sons of the deceased person have filed the M.A.C.O.P under Section 166 of the Motor Vehicles Act claiming a compensation of Rs.8,00,000/- (Rupees Eight Lakhs only) for the loss of life of Soundarajan who died in a motor accident. On 16.11.2011, at about 02.55 p.m., the



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deceased Soundarajan and his grandson Minor Barath were travelling in a motor cycle bearing Registration No.TN-57-L-9870 after school time from east to west on the left side of Trichy Madurai NH-45 road and at the place near E.B.Colony Pirivu, a Toyota Innova Car bearing Registration No.KA-05-MF-4547 which came behind the motor cycle in a rash and negligent manner without following the rules, had dashed against the two wheeler. Due to the said accident, the said Sundarajan had died on the spot itself and his grandson minor Barath had sustained grievous injuries. One Muniyandi and one Duraipandi who had witnessed the accident, informed the matter to Tmt.Boobathi, wife of the deceased. Tmt.Boopathy, the 1st respondent/1st petitioner came to the spot and reported the matter to the Thadicombu Police. The accident occurred only due to the rash and negligent driving of the Innova Car driver and a case was registered in Cr.No.755 of 2011 under Sections 279, 337 and 304 (A) IPC of Thadicombu Police Station. After post mortem was conducted on the dead body of the deceased at Government Hospital, the body was taken by the petitioners for funeral. The 4th respondent/ 1st respondent is the owner of the vehicle and the appellant/ 2nd respondent is the insurer. Hence, both the 4th respondent /1st respondent and the appellant / 2nd respondent are jointly and severally liable to pay compensation.



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3. The deceased person was a retired employee and was working as Junior Engineer in Tamil Nadu Electricity Department. After his retirement, he was doing grocery business and he was earning Rs.10,000/- (Rupees Ten Thousand only) per month. Apart from that, the deceased person was also getting a pension amount of Rs.13,810/- (Rupees Thirteen Thousand Eight Hundred and Ten only) per month. However, the Tribunal has taken into account only the pension amount which was drawn by the deceased and had rightly deducted 1/3rd for personal and living expenses and had calculated the annual contribution. On the basis of the age of the deceased as 59 years at the time of the accident, the Tribunal has awarded the compensation under the head of loss of dependency and arrived at an amount of Rs.9,94,320/- (Rupees Nine Lakhs Ninety Four Thousand Three Hundred and Twenty only). The wife of deceased and the sons of the deceased have been awarded an amount of Rs.50,000/- (Rupees Fifty Thousand only) each towards loss of love and affection, a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) towards transportation and a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards funeral expenses. Three witnesses were examined and Ex.P.1 to Ex.P.9 were



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marked on the side of the petitioners. One witness was examined and Ex.R1 to Ex.R.3 were made on the side of the respondents. On the basis of the evidence on record and the materials available on record, the Tribunal has passed an award of Rs.11,94,320/- (Rupees Eleven Lakhs Ninety Four Thousand Three Hundred and Twenty only) for the loss of life of deceased Sundarajan with interest at 7.5% p.a. from the date of petition till realisation and proportionate costs. Challenging the same, the present Civil Miscellaneous Appeal is filed.

4. The learned Counsel appearing for the appellant has submitted that the Tribunal was not justified in fixing the monthly income of the deceased at Rs.13,810/- (Rupees Thirteen Thousand Eight Hundred and Ten only). It was also contended that the grant of conventional damages is also on the higher side since they are granted against the letter and spirit of dictum of the Hon'ble Supreme Court of India in **Pranoy Sethi's** case. The learned Counsel for the appellant vehemently submitted that an amount of Rs.50,000/- (Rupees Fifty Thousand only) towards love and affection may be reduced to Rs.30,000/- (Rupees Thirty Thousand only).



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5. Heard, the learned Counsel appearing for the appellant and the learned Counsels appearing for respondents and perused the materials available on record.

6. On critical perusal of the entire award, it is clear that the Tribunal has rightly assessed the oral and documentary evidence and arrived at a just and reasonable compensation. In view of the same, this Court is of the considered view that this amount is not excessive. Hence, I am not inclined to interfere with the award passed by the Tribunal. Accordingly, this Civil Miscellaneous Appeal is dismissed.

7. The Insurance Company is directed to deposit the entire compensation amount as awarded by the Tribunal with accrued interest and costs to the credit of M.C.O.P.No.592 of 2012 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Dindigul, within a period of eight weeks (8) from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the claimants



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are permitted to withdraw the said amount, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs.

28.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

The Motor Accidents Claims Tribunal,
(Principal District Judge),
Dindigul.

Copy to

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



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L.VICTORIA GOWRI, J.,

Sml

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