



C.M.A.(MD).No.1098 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1098 of 2017

1. G.Muthuselvi
2. Minor G.Muthesh Kanna
3. Minor G.Chella Kannika
(Minor Appellants No.2 and 3 through
their Mother and next friend 1st petitioner
G.Muthuselvi)

4. M.Chellammal

... Appellants/Petitioners

-VS-

1. V.Manicka Vasakam
2. The Branch Manager,
United India Insurance Company Ltd.,
66-67, Aranmanai Vasal,
Sivagangai District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 20.12.2010 made in M.C.O.P.No.18 of 2010, on the file of the Motor Accidents Claims Tribunal/ Principal District Court, Tuticorin.



C.M.A.(MD).No.1098 of 2017

For Appellants : Mr.S.Siva Thilakar

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

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation of the award passed by the Motor Accidents Claims Tribunal/Principal District Court, Tuticorin made in M.C.O.P.No.18 of 2010.

2. According to the claimants, the deceased was working as Lower Division Clerk in Medical Section of Port Trust, Tuticorin. He met with an accident on 26.09.2009 and he passed away.

3. The Tribunal has found 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 which is insured with the second respondent. The claimants have prayed for a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) towards compensation.



C.M.A.(MD).No.1098 of 2017

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4. The Insurance Company had filed a counter disputing the negligence, manner of accident, liability and the quantum of compensation.

5. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the offending vehicle owned by the first respondent and insured with the second respondent. The Tribunal has taken into consideration only the basic pay and the Dearness Allowance and proceeded to fix the monthly income at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) and applying the multiplier of “17”, the Tribunal fixed the compensation at Rs.8,84,000/- (Rupees Eight Lakhs and Eighty Four Thousand only) under the head of loss of income. A sum of Rs.30,000/- (Rupees Thirty Thousand only) was awarded towards loss of love and affection, a sum of Rs.5,000/- (Rupees Five Thousand only) was awarded towards funeral expenses and a sum of Rs.20,000/- (Rupees Twenty Thousand only) was awarded towards loss of consortium. Totally, a sum of Rs.9,39,000/- (Rupees Nine Lakhs Thirty Nine Thousand only) was awarded. This award is under challenge in the present appeal, seeking enhancement.



C.M.A.(MD).No.1098 of 2017

WEB COPY

6. According to the learned counsel appearing for the appellants, the pay slip issued by the Port Trust, Tuticorin under Ex.P6 will clearly indicate that the gross salary is Rs.17,163/-(Rupees Seventeen Thousand One Hundred and Sixty Three only). The learned counsel appearing for the appellants relied upon the judgments of the Hon'ble Supreme Court and our High Court and contended that only statutory deductions could be deducted at the time of arriving at the monthly income and other deductions which are savings of the deceased cannot be deducted. Therefore, the Tribunal was not right in considering the basic pay and the dearness allowance alone for consideration of the monthly income of the deceased person. Hence, he contended that the entire amount of Rs.17,163/-(Rupees Seventeen Thousand One Hundred and Sixty Three only) ought to have been considered as the monthly income. He further contended that the deceased was in a permanent employment in a Public Sector Undertaking. Therefore, 50% of the amount shall be added to the future prospects. He further contended that a sum of Rs.40,000/- (Rupees Forty Thousand only) to each one of the claimants should have been awarded towards loss of love and affection; a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) should have been awarded towards funeral expenses and a



C.M.A.(MD).No.1098 of 2017

sum of Rs.15,000/- (Rupees Fifteen Thousand only) shall be awarded towards loss of estate. He further contended that the claimants are four in number and therefore, only 1/4th should be deducted towards personal expenses and the Tribunal was not right in deducting 1/3rd towards personal expenses. Hence, he prayed for allowing the appeal under these heads.

7. Per contra, the learned counsel appearing for the second respondent had contended that the net salary amount has to be taken into consideration at the time of fixing the monthly income of the deceased person. It has not been established that the deceased was a permanent employee and hence, 50% cannot be added towards future prospects. He further contended that no amount has been deducted towards income tax from the compensation amount. Therefore, he prayed for confirming the award passed by the Tribunal.

8. I have carefully considered the submissions made by the learned counsel for the appellants and the learned counsel for the second respondent.

9. I have perused Ex.P.6- Salary Certificate issued by the Tuticorin Port



C.M.A.(MD).No.1098 of 2017

Trust. It reveals that all the deductions are not statutory deductions.

Therefore, this Court is inclined to accept the gross pay of Rs.17,163/- (Rupees Seventeen Thousand One Hundred and Sixty Three only) as monthly income of the deceased person. Hence, multiplier “16” can be applied in this case. Considering the fact that the deceased was a permanent employee in Tuticorin Port Trust, as L.D.C in Medical Section and aged about 34 years on the date of death, the Tribunal should have added 50% towards future prospects. The Tribunal ought to have awarded a sum of Rs.40,000/- (Rupees Forty Thousand only) to each one of the claimants for loss of love and affection. As per the judgment of the Hon'ble Supreme Court, a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) towards funeral expenses and a sum of Rs.15,000/- (Rupees Fifteen Thousand only) towards loss of estate should have been awarded. Considering the fact that the claimants have received a lump sum amount, 10% should have been deducted towards income tax.

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

Loss of Income (Rs.17,163 + 8,581 = 25,744/- after 1/ 4th deduction, a



C.M.A.(MD).No.1098 of 2017

sum of Rs.19,308/- x 12 x 16 = 37,07,136/-) 10% deducted for income tax

Rs.3,70,713/- (Rs.37,07,136 – 3,70,713) = Rs.33,36,423/-

Loss of Income after income tax deduction	: Rs.33,36,423
Loss of Love and Affection (Rs.40,000 x 4)	: Rs. 1,60,000/-
Funeral Expenses	:Rs. 25,000/-
Loss of Estate	: <u>Rs. 15,000/-</u>
Total	: Rs.35,36,423/-

11. Therefore, the amount of Rs.9,39,000/- awarded by the Tribunal is hereby enhanced to Rs.35,36,423/- (Rupees Thirty Five Lakhs Thirty Six Thousand Four Hundred and Twenty Three only) and the enhanced amount will carry interest at the rate of 7.5% per annum, from the date of claim petition till the date of realization. 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. On such deposit being made, the claimants 1 and 4 are entitled to withdraw their share as per the apportionment made by the tribunal by filing necessary petition before the tribunal. In respect of the minor claimants 2 and 3, the amount shall be deposited in a Nationalized



C.M.A.(MD).No.1098 of 2017

Bank till they attain majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months. The claimants are hereby directed to pay the deficit Court fee, if any, before drafting of the decree.

12. Accordingly, this Civil Miscellaneous Appeal stands allowed to the extent as stated 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/
Principal District Court, Tuticorin.

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



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C.M.A.(MD)No.1098 of 2017

R.VIJAYAKUMAR,J.

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C.M.A.(MD)No.1098 of 2017



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C.M.A.(MD).No.1098 of 2017

26.06.2023