



C.M.A. (MD) No. 337 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.08.2023

Pronounced on : 14.08.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.337 of 2017

1. Gandhimathi
2. Muthulakshmi
3. Padma
4. Tamilarasi
5. Pushparani
6. Sumathi
7. Sudalaimuthu

... Appellants/
Petitioners

Vs.

1. Mariappan
2. United India Insurance Company Ltd.,
through its Branch Manager,
No.5/1, Alagu Bagavathy Complex,
Kailasapuram Middle Street,
Tirunelveli.

... Respondents/
Respondents

(R1 dispensed with vide order dated 09.06.2017)



C.M.A. (MD) No. 337 of 2017

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow this appeal and enhance the award amount in M.C.O.P.No.662 of 2014 on the file of the Motor Accident Claims Tribunal, (Special Sub Court) Tirunelveli, dated 29.04.2015.

For Appellants : Mr.T.Selvakumaran
For R2 : Mr.A.Shajahan

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.662 of 2014 dated 29.04.2015 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Tirunelveli.

2. The appellants/claimants, who were awarded with compensation of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) with interest at 9% per annum payable by the second respondent/insurer for the death of one Murugan, consequent to an accident occurred on 12.04.2014, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.



C.M.A. (MD) No. 337 of 2017

WEB COPY

3. Admittedly, the first appellant/first claimant is the wife, the appellants 2 to 6/claimants 2 to 6 are the daughters and the seventh appellant/seventh claimant is the son of the deceased Murugan.

4. The case of the appellants/claimants is that the deceased was aged about 70 years at the time of accident and that the deceased was doing whole sale business in plantain leaves and was earning Rs.10,000/- (Rupees Ten Thousand only) per month.

5. The learned counsel appearing for the appellants/claimants would submit that the Tribunal ought to have fixed the monthly income at Rs.10,000/- (Rupees Ten Thousand only), that the Tribunal ought to have granted Rs.50,000/- (Rupees Fifty Thousand only) each for the appellants/claimants for loss of love and affection and consortium at Rs.1,00,000/- (Rupees One Lakh only) and that the compensation awarded at by the Tribunal is very low.

6. The Tribunal, considering the evidence available on record, has fixed the monthly income at Rs.3,000/- (Rupees Three Thousand only).



C.M.A. (MD) No. 337 of 2017

WEB COPY

7. The learned counsel appearing for the appellants/claimants would submit that the monthly income fixed by the Tribunal is very low and taking note of the work of the deceased, the trial Court ought to have fixed the monthly income at Rs.10,000/- (Rupees Ten Thousand only).

8. As already pointed out, the accident was occurred on 12.04.2014. As rightly contended by the learned counsel appearing for the appellants/claimants, the monthly income fixed at Rs.3,000/- (Rupees Three Thousand only) by the Tribunal is definitely on lower side. Hence, considering the age of the deceased and the nature of business done by the deceased, this Court fixes the monthly income at Rs.7,000/- (Rupees Seven Thousand only). Considering the number of the claimants, the trial Court has rightly deducted 1/5 of the income towards personal and living expenses of the deceased (Rs.7,000/- - Rs.1,400/- = Rs.5,600/-). The Tribunal, taking note of the decision of the Hon'ble Supreme Court in *Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another* reported in *AIR 2009 SC 3104*, has rightly applied multiplier 5 and as such, the loss of dependency would be Rs.5,600/- x 12 x 5 = Rs.3,36,000/- (Rupees Three Lakhs and Thirty Six Thousand only).



C.M.A.(MD)No.337 of 2017

WEB COPY

9. The Tribunal has awarded Rs.25,000/- (Rupees Twenty Five Thousand only) for loss of consortium to the first appellant/first claimant, Rs.50,000/- (Rupees Fifty Thousand only) for loss of love and affection to the appellants 2 to 7/claimants 2 to 7 and Rs.25,000/- (Rupees Twenty Five Thousand only) for funeral expenses. Regarding the spousal consortium, the first appellant/first claimant is entitled to get Rs.40,000/- (Rupees Forty Thousand only). But the impugned order was passed in 2015 for the accident occurred in the year 2014, this Court is not inclined to interfere with the amount awarded under the other two heads referred above. Considering the above, the appellants/claimants are entitled to get total compensation of Rs.4,51,000/- (Four Lakhs and Fifty One Thousand only).

10. The appellants/claimants have restricted their claim from Rs.5,50,000/- (Rupees Five Lakhs and Fifty Thousand only) to Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only). The learned counsel appearing for the second respondent/insurer would submit that since the appellants/claimants themselves have restricted their claim to Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only), they are not entitled to canvass for more amount. But the learned counsel appearing for



C.M.A.(MD)No.337 of 2017

the appellants/claimants would submit that the appellants/claimants are entitled to get just compensation and that the Court can award more compensation than the amount claimed in the petition or appeal.

11. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Surekha and others vs. Santosh and others*** (C.A.No.476 of 2020 dated 21.01.2020) wherein, the Hon'ble Apex Court has held as follows:-

“2. This appeal takes exception to the judgment and order dated 04.01.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.2564 of 2016, whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs.49,85,376/- (Forty-Nine Lakh Eighty-Five Thousand Three Hundred Seventy-Six Only), however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.

3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants.”



C.M.A. (MD) No. 337 of 2017

WEB COPY

12. As rightly contended by the learned counsel appearing for the second respondent/insurer, the appellants/claimants are entitled to get interest at 7.5% per annum. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

13. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) is hereby enhanced to **Rs.4,51,000/- (Rupees Four Lakhs and Fifty One Thousand only)** together with interest at 7.5% per annum and out of the said compensation amount, the first appellant/first claimant is entitled to get **Rs.3,31,000/- (Rupees Three Lakhs and Thirty One Thousand only)** and the appellants 2 to 7/claimants 2 to 7 are entitled to get **Rs.20,000/- (Rupees Twenty Thousand only)** each. The second respondent/insurer is directed to deposit the modified award amount with accrued interests to the credit of M.C.O.P.No.662 of 2014 on the file of Motor Accident Claims Tribunal/Special Subordinate Court, Tirunelveli, after deducting the amount already deposited if any, within a period of four weeks from the



C.M.A. (MD) No. 337 of 2017

WEB COPY

date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw their shares together with interest and costs. Parties are directed to bear their own costs.

14.08.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The Motor Accident Claims Tribunal/
Special Subordinate Court, Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A. (MD) No. 337 of 2017



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C.M.A.(MD)No.337 of 2017

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.337 of 2017

Dated : 14.08.2023