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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.1149 of 2022
and
C.M.P(MD)No.11828 of 2022

The New India Assurance Company Limited,
Salai Street,
Ramanathapuram. :Appellant/Second respondent

.VS.

1.Charlas

2.Sugumar

3.Amaldoss

4.Resinapilominal :Respondents 1 to 4/Petitioners

5.Kannan :5th Respondent/Ist Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award passed in M.C.O.P.No.3 of 2022, dated 29.7.2022, on the file of the Motor Accidents Claims Tribunal/Additional District Court, Ramanathapuram.

For Appellant :Mr.J.S.Murali

For Respondents :Mr.G.Thalaimutharasu
1 to 4

For Respondent-5 :No appearance



JUDGMENT

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Challenge in this Civil Miscellaneous Appeal is to the quantum of award, as ordered by the Tribunal.

2.The Petitioners are the sons and daughters of the deceased Maria Sengol, who was riding his motor-cycle from Uppur to Kadaladi and on 27.09.2016, at about 10.45 p.m., the offending vehicle bearing Registration NO. TN 65 R 4669 driven by its driver in a rash and negligent manner and dashed against the deceased and as a result, the deceased succumbed to injuries and he was aged 76 years at the time of death. The Petitioners have claimed a sum of Rs.10 lakhs as compensation.

3.The first respondent in the claim petition took a stand that there was no rash and negligent driving by the driver of the offending vehicle and the deceased had suddenly crossed the road without seeing the vehicle coming from both side and thus caused the accident.

4.The second respondent in the claim petition also took a similar defense



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5. On the side of the Petitioners, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P6 were marked. On the side of the respondents, RW1 was examined and Ex.R1 was marked.

6. The Tribunal, after considering the evidence both oral and documentary, held that the driver of the offending vehicle was rash and negligent in driving his vehicle, which resulted in the accident and awarded compensation to the claimants as follows:

1. For Transportation	-Rs.5,000/-
2. For funeral expenses	-Rs.15,000/-
3. For loss of love and affection to the Petitioners 1 to 4 at each Rs.40,000/-	-Rs.1,60,000/-
4. for Loss of Dependency	-Rs.4.05,000/-
5. for Loss of Estate	-Rs.15,000/-

total	-Rs.6,00,000/-

7. The learned counsel for the appellant-Insurance Company submits that the Petitioners are not the dependents of the deceased, who is aged 76 years at the time of death and the Tribunal ought not to have awarded compensation under the head of loss of dependency. Hence challenged the same. It is also his



contention that the Tribunal has fixed the notional income of the deceased at Rs.9,000/- and made a deduction of 1/4th towards personal expenses instead of 50% and hence opposed the claim .

8.The learned counsel for the respondents 1 to 4 would submit that the Tribunal has rightly fixed the notional income and the deduction has also been rightly made at 1/4th.

9.Considering the nature and relationship of the legal heirs with the deceased and upon considering both the oral and documentary evidence adduced on either side, the Tribunal has rightly awarded compensation under the head loss of dependency. It is relevant to note that as the negligence aspect has not been questioned and only the quantum of compensation is questioned, the appellant's contention that since the Petitioners are not dependents, they are not entitled to claim compensation, cannot be countenanced. Under the Motor Vehicles Act, the claim petition can be filed under Section 166 claiming compensation by the person who sustained injury or in respect of where the death has resulted from the accident by all or any of the legal representatives of the deceased can make such application claiming compensation and where all the legal representatives of the deceased have not



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joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. The very scheme of the act itself is to provide compensation for the legal representatives. The appellant's contention that the Petitioners are not the dependents of the deceased cannot be countenanced and it is only against the statute. In such view of the matter, the contention of the learned counsel for the appellant has no leg to stand.

10. With regard to the fact that the Tribunal has taken Rs. 9,000/- as notional income, this Court is of the view that the deceased was aged 76 years at the time of death and the very factum of driving the vehicle at this stage will clearly indicate that he is hale and healthy at that point of time and therefore, even as per the Minimum Wages Act, he would have earned Rs.9,000/- per month and fixing the said amount as notional income cannot be held to be excessive and the deduction made is only by taking note of the members of the family, who are the legal representatives of the deceased and the same also cannot be found fault with. For all these reasons, this Court finds no merit in the appeal and the same



deserves to be dismissed.

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11. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the award of the Tribunal. No costs. Consequently, connected Miscellaneous Petition is dismissed.

30.03.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Motor Accidents Claims Tribunal,
(Additional District Judge),
Ramanathapuram.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.1149 of 2022
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