



C.M.A.(MD)No.918 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.02.2023

Delivered On : 16.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.918 of 2019

1.Govindarajan
2.Vijayalakshmi
3.Murugan
4.Muthulakshmi
5.Gowtham Sarathy

.. Appellants

Vs.

1.Uma Devi Vijayaram
2.The Divisional Manager,
Oriental Insurance Company Limited,
Opposite to Claim Branch,
No.108, T.P.K. Road,
Madurai 625 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 07.08.2019 and made in M.C.O.P.No.179 of 2017 on the file of the Motor Accident Claims Tribunal Additional District Judge, Srivilliputhur.

For Appellants	: Mr.S.Srinivasa Raghavan
For 2 nd Respondent	: Mr.C.Jawahar Ravindran
For 1 st Respondent	: No Appearance



C.M.A.(MD)No.918 of 2019

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.179 of 2017 dated 07.08.2019, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Srivilliputhur.

2.The appellants herein are the petitioners and the respondents herein are the respondents in the claim petition. The appellants herein have filed a claim petition in M.C.O.P.No.179 of 2017, claiming compensation for the death of one Parthasarathy, in an accident that took place on 07.03.2008. The Tribunal has awarded a sum of Rs.90,000/- (Rupees Ninety Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.179 of 2017 is as follows:

On 07.03.2008 at about 6.45 p.m., when the deceased Parthasarathy was riding his bicycle along extreme left side of Madurai-Othapathi road, a bus bearing registration No.TN-67-F-4172 which was driven by its driver in a rash and negligent manner dashed against the deceased from behind and the deceased died on the spot. The deceased was having agriculture land and he used to cultivate onion, tomato and



C.M.A.(MD)No.918 of 2019

chilli and he was earning Rs.10,000/- (Rupees Ten Thousand only) per month. The petitioners are the dependants of the deceased and they claim a sum of Rs. 14,10,000/- (Rupees Fourteen Lakhs Ten Thousand only) as compensation.

4.Brief substance of the counter filed by the second respondent therein is as follows:

The petitioners have to prove that the bus was insured with the second respondent. The driver of the bus was not having valid driving licence. The bus was not having proper RC, FC and permit. The claim is excessive.

5.On the side of the petitioners, two witnesses were examined and eight documents were marked. On the side of the respondents therein, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.90,000/- (Rupees Ninety Thousand only) as compensation to be paid by the second respondent. Against which, the appellants have preferred this Civil Miscellaneous Appeal for enhancement of compensation on the following grounds:-

The Tribunal is wrong in not awarding any amount towards future prospects. The Tribunal failed to consider that the financial dependency is not a criteria to claim compensation under the MV Act. The Tribunal is wrong in considering that the claimants are adult members and the age of the deceased is 74



C.M.A.(MD)No.918 of 2019

years and that the claimants are not entitled for future prospects. The Tribunal is not justified in rejecting the grant of compensation under the head of loss of future income. The Tribunal is wrong in granting Rs.75,000/- (Rupees Seventy Five Thousand only) towards loss of love and affection, Rs.15,000/- (Rupees Fifteen Thousand only) towards funeral expenses and the amount is to be enhanced.

6.On the side of the appellants, it is stated that the negligence is on the part of the bus driver and that the respondents failed to file any appeal and that the negligence fixed by the Tribunal is to be confirmed. A copy of the FIR was marked as Ex.P1, copy of rough sketch was marked as Ex.P2, copy of observation mahazer was marked as Ex.P3, copy of MV report was marked as Ex.P4, copy of chargesheet was marked as Ex.P5. P.W.2 was examined as an eye witness. In Ex.P1 and Ex.P5, the bus driver was mentioned as the accused. P.W.2 has deposed that the bus driver was rash and negligent. There is no rebuttal evidence on the side of the respondents. Hence, it is decided that the accident has happened due to the rash and negligent driving of the bus driver.

7.On the side of the appellants, it is stated that the deceased was having agricultural land and that he was earning Rs.10,000/- (Rupees Ten Thousand only) per month and that the Tribunal is wrong in deciding that the income was not proved.



C.M.A.(MD)No.918 of 2019

WEB COPY

8.P.W.1 has deposed that he has no documents to prove the income of his father. P.W.1 has deposed that he has not produced any document to show that his father was having property and that he was cultivating in the property. Considering the date of accident, the monthly income of the deceased is fixed as Rs.6,000/- (Rupees Six Thousand only). After deducting $\frac{1}{4}^{\text{th}}$ towards his own expenses, the deceased might have contributed Rs.4,500/- (Rupees Four Thousand and Five Hundred only) to his family.

9.On the side of the appellant, it is stated that the multiplier is to be adopted. To substantiate the claim, a judgment of the Hon'ble Supreme Court in the case of ***Sarala Verma and others v. Delhi Transport Corporation and another***, reported in **2009 ACJ 1298** is cited, which reads as follows:

“We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years



C.M.A.(MD)No.918 of 2019

and M-5 for 66 to 70 years.”

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10. Considering the above judgment, it is decided that multiplier '3' is applicable. The loss of income for the deceased is calculated as Rs.1,62,000/- (Rupees One Lakh and Sixty Two Thousand only).

11. The Tribunal has awarded Rs.15,000/- (Rupees Fifteen Thousand only) for each of the claimants towards loss of love and affection and Rs.15,000/- (Rupees Fifteen Thousand only) towards funeral expenses, which are reasonable. A sum of Rs.5,000/- (Rupees Five Thousand only) is awarded towards transportation expenses. Considering the age of the deceased, it is decided that the claimants are not entitled for any compensation towards loss of estate. In total, a sum of Rs.2,57,000/- (Rupees Two Lakhs and Fifty Seven Thousand only) is awarded as compensation.

12. In the result, these Civil Miscellenaous Appeals are **partly allowed**. The compensation is enhanced from Rs.90,000/- to Rs.2,57,000/-.

(i) The appellants are entitled to a sum of Rs.2,57,000/- (Rupees Two Lakhs and Fifty Seven Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The second respondent is directed to deposit Rs.2,57,000/- (Rupees Two Lakhs and Fifty Seven



C.M.A.(MD)No.918 of 2019

Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order.

(ii)The first appellant/elder son of the deceased is entitled to a share of Rs. 25,000/- (Rupees Twenty Five Thousand only) with propotionate interest. The second appellant/wife of the deceased is entitled to a share of Rs.1,57,000/- (Rupees One Lakh and Fifty Seven Thousand only) with propotionate interest and costs. The appellants 3 and 4/ daughters of the deceased is entitled to a share of Rs.25,000/- (Rupees Twenty Five Thousand only) each with propotionate interest. The fifty appellant/younger son of the deceased is entitled to a share of Rs.25,000/- (Rupees Twenty Five Thousand only) with propotionate interest. On such deposit, the appellants are permitted to withdraw their respective shares, after deducting any amount received by them earlier. The claimants are not entitled for interest for the default period, if there is any. The appellants are directed to pay additional Court fee for the enhanced amount. No Costs.

16.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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C.M.A.(MD)No.918 of 2019

R. THARANI, J.

MRN

To

- 1.The Motor Accidents Claims Tribunal, Additional District Judge,
Virudhunagar District at Srivilliputhur.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A.(MD)No.918 of 2019

16.03.2023