



C.M.A.(MD)No.155 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 01.03.2023

Delivered On : .2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.155 of 2020

The Divisional Manager,
National Insurance Company Limited,
No.7A, West Veli Street,
Madurai – 625 001.

.. Appellant

Vs.

1.Nageshwari
2.Ilango
3.Nandhini Bagavathi
4.Nisha
5.Geethalakshmi
6.Manikandaprabhu

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree made in M.C.O.P.No.36 of 2018 dated 25.07.2019 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Ramanathapuram.

For Appellant

: Mr.J.S.Murali

For Respondents 1 to 5

: Mr.D.Bala Murugapandi

For 6th Respondent

: No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.36 of 2018 dated 25.07.2019, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Ramanathapuram.

2.The appellant herein is the second respondent, the respondents 1 to 5 herein are the petitioners and the sixth respondent herein is the first respondent in the claim petition. The appellants herein have filed a claim petition in M.C.O.P.No.36 of 2018, claiming compensation for the death of one Muniyasamy, in an accident that took place on 11.12.2015. The Tribunal has awarded a sum of Rs.45,10,000/- (Rupees Forty Five Lakhs and Ten 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.36 of 2018 is as follows:

On 11.12.2015, when the deceased Muniyasamy was travelling in a vehicle bearing registration No.TN-65-Q-5769, the driver of the vehicle drove the vehicle in a rash and negligent manner and dashed against the wall of the road side bridge. The deceased sustained injuries and died on the spot. The first petitioner also sustained



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injuries on the same accident. She was taken to a private hospital in Madurai for treatment. The age of the deceased at the time of accident is 53 years. He was working as the Sub Inspector of Police in Dhanuskodi Police Station. He was earning Rs.30,000/- (Rupees Thirty Thousand only) through agriculture. The petitioners are his dependants and they claimed a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as compensation.

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

The petitioners are duty bound to prove that the vehicle belonged to the first respondent and the vehicle was insured with the second respondent and the driver of the vehicle was having valid driving licence. The manner of the accident mentioned in the petition is denied. The age, income and profession of the deceased are to be proved. The petitioners 2 to 4 are married and they lived separately and they are not the dependants of the deceased. The claim is excessive.

5.On the side of the petitioners, two witnesses were examined and 14 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.45,10,000/- (Rupees Forty Five Lakhs and Ten Thousand only) as



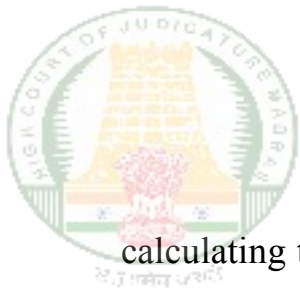
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compensation to be paid by the respondents therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:-

The compensation awarded by the Tribunal is excessive. The Tribunal ought to have followed split multiplier method. The Tribunal is wrong in awarding Rs.2,30,000/- (Rupees Two Lakhs and Thirty Thousand only) towards conventional charges.

6.The copy of the FIR was marked as Ex.P1. Observation Mahazer was marked as Ex.P2. Rough sketch was marked as Ex.P3. MV report was marked as Ex.P5. Chargesheet was marked as Ex.P6. P.W.2 has deposed that the accident has happened due to the rash and negligent driving of the car driver. There was no rebuttal evidence on the side of the respondents. On the basis of the evidence of P.W. 1 and on the basis of Ex.P1 to Ex.P3, Ex.P5, Ex.P6, it is decided that the accident has happened only due to rash and negligent driving of the car driver. There is no dispute regarding the validity of the insurance policy. No grounds of appeal was raised regarding the liability. Hence, it is decided that the insurance company is liable to pay compensation to the claimants.

7.On the side of the appellant, it is stated that the age of the deceased at the time of accident is 53 years and that split multiplier method is to be adopted in



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calculating the income. It is stated that the deceased was the Sub Inspector of Police.

P.W.2 has deposed that the deceased worked as Sub Inspector of Police. ID card was marked as Ex.P9. The pan card was marked as Ex.P11. Salary bills were marked as Ex.P12. IT return was marked as Ex.P13.

8.On the side of the appellant, it is stated that after retirement, the deceased might have received only half of the income towards pension and for the five years period, the actual income is to be taken for calculation and after that period, half of the salary is to be taken into consideration.

9.The law is now well settled that there is no necessity to follow split multiplier and the last drawn income has to be taken as the income of the deceased. A judgment of the Hon'ble Supreme Court in the case of ***R.Valli and Others v. Tamil Nadu State Transport Corporation Limited*** reported in ***2022 5 SCC 107*** is referred. From Ex.P12, it is clear that the deceased was earning Rs.43,289/- (Rupees Forty Three Thousand Two Hundred and Eighty Nine only) per month as salary. After deducting income tax, the income of the deceased is Rs.11,560/- (Rupees Eleven Thousand Five Hundred and Sixty only) per month. The age of the deceased at the time of the accident is 53 years.



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10. After deducting $\frac{1}{3}^{\text{th}}$ of the income and after applying multiplier '11', the Tribunal has calculated the loss of income as Rs.42,83,356/- (Rupees Forty Two Lakhs Eighty Three Thousand Three Hundred and Fifty Six only) and rounded the same as Rs.42,80,000/- (Rupees Forty Two Lakhs Eighty Thousand only), which is reasonable.

11. The Tribunal has awarded Rs.15,000/- (Rupees Fifteen Thousand only) towards funeral expenses, Rs.15,000/- (Rupees Fifteen Thousand only) towards loss of articles, Rs.40,000/- (Rupees Forty Thousand only) towards loss of consortium and Rs.1,60,000/- (Rupees One Lakh and Sixty Thousand only) towards loss of love and affection. Considering the date of accident, the dictum of Hon'ble Supreme Court in *Praney Sethi* case is applicable to the case, the claimants are entitled to Rs. 70,000/- (Rupees Seventy Thousand only) towards conventional charges. In total, a sum of Rs.43,50,000/- (Rupees Forty Three Lakhs and Fifty Thousand only) is awarded as compensation.

12. In the result, this Civil Miscellenaous Appeal is **partly allowed**. The compensation is reduced from Rs.45,10,000/- to Rs.43,50,000/-.

(i) The respondents 1 to 5 are entitled to a sum of Rs.43,50,000/- (Rupees



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Forty Three Lakhs and Fifty Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of deposit. The appellant is directed to deposit Rs.43,50,000/- (Rupees Forty Three Lakhs and Fifty Thousand only) with 7.5% interest from date of the claim petition till the date of deposit 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 respondent/ wife of the deceased is entitled to Rs.15,50,000/- (Rupees Fifteen Lakhs and Fifty Thousand only) with propotionate interest and costs. The respondents 2 to 5 are entitled to Rs.7,00,000/- (Rupees Seven Lakhs only) each with propotionate interest. On deposit, the respondents 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. Excess amount if any shall be refunded to the appellant. No Costs.

27.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

MRN

To

1.The Motor Accidents Claims Tribunal,
Principal District Judge, Ramanathapuram.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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R. THARANI, J.

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