



C.M.A.No.498 of 2

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No. 498 of 2023

1.Saraswati Behera

2.Ramesh Behera

3.Rabindra

4.Siba Shankar Behera

...Appellants

Vs.

1.G.Rajan

2.United India Insurance Co. Ltd.,
No.134, Greams Road,
IV Floor, Anna Salai,
Chennai - 600 006.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.08.2021 and made in MACTOP.No.2068 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.



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For Appellants : Mr.A.G.F.Terry Chella Raja

For Respondents : Mr.J.Chandran for R2
R1 - Exparte

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The claimants, who are wife and children of one Sanya Behera who died in a motor accident that occurred on 14.02.2019 are on appeal, complaining that the quantum of compensation awarded by the Tribunal is very low.

2. The claimants sought for a compensation of Rs.50,00,000/- for the death of the said Sanya Behera, claiming that when he was crossing the road near Lakshmi Narayana Mahal InGate, Mudichur Main Road, Old Perungulathur, the motor cycle bearing Registration No.TN-11-S-5130 owned by the 1st respondent which was driven in a rash and negligent manner dashed against him resulting in multiple injuries and caused his death on 16.02.2019. The claimants contended that the deceased's age was 50 years at the time of the accident and was earning Rs.900/- per day as a



Mason. It was claimed that the claimants were totally dependent on the income of the deceased and they have lost their only source of sustenance.

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3. The Insurance Company resisted the claim contending the manner in which the accident occurred was not as narrated by the claimants. The age and income particulars of the deceased were also disputed. Before the Tribunal, the 4th claimant was examined as P.W.1 and one Dillibabu, an eye-witness to the accident was examined as P.W.2. Exs.P1 to P10 were marked. The copy of the First Information Report and the Accident Register were marked as Exs.P1 & P2. The 2nd respondent / Insurance Company did not let in any evidence either oral or documentary.

4. On a consideration of the evidence on record, relying upon the First Information Report and the evidence of P.W.2 / eye-witness, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the rider of the motor cycle and it has held that the Insurance Company as the Insurer of the motor cycle would be liable to pay the compensation.

5. On the quantum, the Tribunal took the minimum wages fixed and



arrived at the monthly income of the deceased at Rs.9,810/-. It added 10% towards future prospects as the deceased was 50 years old. It deducted 1/3 towards personal expenses and the loss of dependency per month was worked out at Rs.8,093/-. Applying the multiplier of 11, the Tribunal arrived at the total loss of dependency at Rs.10,68,276/-. The Tribunal awarded Rs.40,000/- each to the claimants towards loss of consortium and loss of love and affection. A sum of Rs.15,000/- each was awarded towards loss of estate and funeral expenses. Thus, the total compensation worked out to Rs.12,58,276/-. While the Insurance Company accepted the award, the claimants have come up with this appeal, contending that the award is far too low.

6. We have heard Mr.A.G.F.Terry Chella Raja, learned counsel appearing for the appellants / claimants and Mr.J.Chandran, learned counsel for the Insurance Company / 2nd respondent in the appeal.

7. Mr.A.G.F.Terry Chella Raja, learned counsel for the appellants would contend that the Tribunal erred in taking the monthly income at Rs.9,810/- for an accident that had occurred on 14.02.2019. According to the learned counsel, the Tribunal has taken minimum wages fixed for an



unskilled worker. He would submit that there is enough and more evidence to show that the deceased was working as a Mason and therefore, the minimum wages fixed for skilled workers should have been taken into consideration. The learned counsel has no grievance with the quantum of future prospects and deduction towards personal expenses as well as the multiplier adopted by the Tribunal. The awards made under the conventional heads namely, loss of consortium, loss of love and affection, loss of estate and funeral expenses are also in accordance with the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd., Vs. Pranay Sethi and Others* reported in (2017) 16 SCC 680. Therefore, the only contention of the learned counsel for the appellants is, regarding fixation of the monthly income.

8. Contending contra, Mr.J.Chandran, learned counsel for the Insurance Company would submit that no doubt, an Identity Card issued in the year 2015 showing that the deceased was a construction worker has been placed before the Tribunal. He would submit that the same cannot be evidence for the claim that the deceased was a Mason. The learned counsel for the Insurance Company would also point out that the deceased was working in an unorganized sector and there is no possibility of him getting



work everyday. Hence, according to the learned counsel for the Insurance Company, the assessment made by the Tribunal is just and reasonable. We have considered the rival submissions.

9. Since the Insurance has accepted the award, there is no need for us to delve into the aspect of negligence. On the quantum, the Tribunal has adopted the minimum wages fixed by the Tamil Nadu Government at the relevant point of time. As rightly pointed out by the learned counsel for the appellants, the minimum wages fixed are only for unskilled workers and the same cannot be applied for skilled workers like Mason. According to him, we must take note of the situation prevailing at the time of the accident. We must take judicial notice of prevailing wages where a Mason was nearly earning Rs.750/- to Rs.1000/- per day for arriving the Compensation. Even assuming, he would not have got the work for 20 days, t as a Mason, the deceased would have earned at least Rs.20,000/- per month.

10. There is enough evidence to show that the deceased was working as a Mason. He was aged 50 years at the time of the accident so, he must have had enough experience as a Mason. Therefore, the Tribunal was not justified in adopting the wages fixed for an unskilled worker. Even last

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grade servants employed by the PWD of the State of Tamilnadu as NMRs were paid around Rs.20,000/- as monthly emoluments. As rightly pointed out by the learned counsel for the Insurance Company, since the deceased was working in an unorganised Sector, there was no possibility of him having work everyday in a month.

11. Hence, we can safely take the income at Rs.15,000/- per month. If we adopt 10% towards future prospects, the monthly income would be Rs.16,500/-. If 1/4 is deducted towards personal expenses of the deceased, since he had left surviving four heirs, the monthly loss of dependency would be Rs.12,375/-. The deceased, was 50 years old and hence, the multiplier applicable would be 11. Therefore, the loss of dependency would be $Rs.12,375/- \times 12 \times 11 = Rs.16,33,500/-$. The award made under the conventional heads which comes to Rs.1,90,000/- is confirmed. Therefore, the total compensation payable would be Rs.18,23,500/-.

12. The interest granted by the Tribunal at 7.5% is confirmed. The apportionment made by the Tribunal is also confirmed. The Insurance Company will have eight weeks time to deposit the award amount with interest as awarded by the Tribunal within a period of eight weeks from the

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date of receipt of a copy of this order. The claimants are permitted to withdraw the compensation as enhanced, as and when it is deposited, including the compensation of 50% that is directed to be kept in a fixed deposit by the Tribunal. This Civil Miscellaneous Appeal is **partly allowed**.
No costs.

(R.S.M., J.) (R.S.V., J.)
12.07.2024

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Internet: Yes

Index: No

Speaking

Neutral Citation : No

To:-

The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.

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