IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2024

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.1002 of 2016
and C.M.P.No.7605 of 2016

M/s.National Insurance Co. Ltd.,
1st Floor, R.V.R.Buildings,
157, Karamadai Road, Mettupalayam,
Coimbatore District. … Appellant

vs.

1.Sivagangai @ Sivagami (Died)
2.Narayanan
3.Sounthari
4.Kamalabai
5.Jegenmohan
6.Padmavathi
7.Murugan
8.M.Mohankumar
9.S.P.Swaminathan … Respondents

(R1 died. R2 to R7 are LRs of the deceased R1 Sivagangai as per the memo dated 09.04.2021 vide Court Order dated 02.08.2021 made in C.M.A.No.1002 of 2016.)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 07.02.2014 made in M.C.O.P.No.1129 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.Ma.P.Thangavel [R2 to R7]

JUDGMENT

Being dissatisfied by the judgment and decree passed in M.C.O.P.No.1129/2010 dated 07.02.2014, by the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Tiruppur, this Civil Miscellaneous Appeal has been preferred by the appellant/Insurance Company in respect of quantum.

2. The claim petition was filed under Section 166 of Motor Vehicles Act, claiming compensation of Rs.15,00,000/- for the death of Nandikesavan in a road accident that occurred on 10.08.2010.

3. The Tribunal after hearing both sides arguments and upon consideration of oral and documentary evidence has passed an award for an amount of Rs.8,67,500/- with 7.5% interest per annum from the date of filing of the petition till date of deposit.

4. The learned counsel appearing for the appellant/Insurance Company Mr.S.Arunkumar would vehemently argue that while calculating the loss of income, the Tribunal has adopted 16 multiplier which is

incorrect. Considering the age of the deceased chances of contributing Rs.4,000/- per month towards his family is too remote.

5. Per contra, the learned counsel appearing for the respondents/claimants Mr.Ma.P.Thangavel would strenuously contend that the 3rd and 7th claimants are physically challenged persons and the 6th claimant is a widow and the income and deduction taken by the Tribunal are reasonable and acceptable. Considering the age and occupation of the deceased, the Tribunal has fixed the income of the deceased at Rs.5,000/- is reasonable. As the claimants are 7 in number, the Tribunal has deducted 1/5th from the income is also acceptable. It is his further argument that the calculation of loss of dependency by the Tribunal is reasonable and need not be interfered with.

6. At trial, on the claimants' side, PW1 to PW3 were examined and Exs.P1 to P7 were marked. On the respondents' side one Suresh Kumar, Assistant Manager of Insurance Company was examined as RW1 and rough sketch is Ex.R1.

7. It is the evidence of PW2 Rajamanickam who is an ocular witness that on 10.08.2010, at about 20.30 Hrs, while the deceased along with his

wife and one Munusamy were walking along Avinashi National Highway from north to south direction, in front of Chenniappa Petrol Bunk, a private bus bearing Reg.No.TN-66-D-7777 came in a rash and negligent manner from west to eastern side, hit at Nandikesavan and he died due to the accident, is not in dispute.

8. The Tribunal after elaborate discussion has fixed the age of the deceased as 70 years. During cross-examination of PW1, wife of the deceased Nandikesavan has stated that her age is 68 years and when she was questioned that whether her husband is 15 years elder to her, she has answered in the affirmative. However, as per Ex.P2, post-mortem certificate, age of the deceased is fixed at 70 years. It was claimed that the deceased was doing agriculture and milk vending business and thereby earning Rs.15,000/- per month. To substantiate the said claim, PW3 Rajendran would state that the deceased was doing agriculture besides milk business and he was working as borewell agent. In the claim petition, it is mentioned that he was doing agriculture and milk business. The date of accident is 10.08.2010. Therefore, this Court deems fit to fix the income of the deceased at Rs.5,000/- p.m.

9. The Hon'ble Supreme Court has standardized the details of

deductions for personal and living expenses and selection of multiplier in ***Smt.Sarla Verma & Ors., v. Delhi Transport Corporation & Another*** reported in ***2009 (2) TN MAC 1 (SC)***, the legal heirs of the deceased are 7 in number, therefore, 1/5th is to be deducted for personal and living expenses. The relevant multiplier to be adopted is 5. Based on the aforesaid details, computing the loss of income, the following formula emerges:

Age of the deceased	:	70 years
Monthly income fixed	:	Rs.5,000/-
Deduction for Personal & Living Expenses	:	1/5
Multiplier to be adopted	:	5m
For Loss of Income	:	Rs.5,000/- X 1/5 X 12 X 5
	:	Rs.2,40,000/-

10. That apart, for loss of estate a sum of Rs.15,000/- is granted. For funeral expenses Rs.8,000/- is granted in addition to the amount already awarded. The Tribunal has granted Rs.30,000/- for loss of love and affection and Rs.22,000/- for loss of mental agony. Considering the same, an amount of Rs.1,90,000/- is granted for loss of parental consortium to the children of the deceased. In all other aspects, the amounts awarded by the Tribunal appears to be reasonable and needs no

interference. Therefore, the Compensation awarded by the Tribunal is reworked and tabulated below:

Sl. No.	***Description***	***Amount awarded by Tribunal***	***Amount awarded by this Court***	***Award confirmed or enhanced or granted or reduced***
1	For Loss of Income	Rs. 7,68,000/-	Rs. 2,40,000/-	**Reduced**
2	For Damages to Clothes and Articles	Rs. 500/-	Rs. 500/-	Confirmed
3	For Loss of Consortium	Rs. 40,000/-	Rs. 40,000/-	Confirmed
4	For Loss of Love and Affection	Rs. 30,000/-	Rs. 30,000/-	Confirmed
5	For Funeral Expenses	Rs. 7,000/-	Rs. 15,000/-	**Enhanced**
6	For Mental Agony	Rs. 22,000/-	Rs. 22,000/-	Confirmed
7	For Loss of Parental Consortium	NIL	Rs. 1,90,000/-	**Granted**
8	For Loss of Estate	NIL	Rs. 15,000/-	**Granted**
	Total	**Rs.8,67,500/-**	**Rs. 5,52,500/-**	

11. Thus, the compensation awarded by the Tribunal is reduced from **Rs.8,67,500/-** to **Rs.5,52,500/-** which would carry interest at the rate of 7.5% per annum.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The Compensation awarded by the Tribunal is reduced from **Rs.8,67,500/-** to **Rs.5,52,500/-**.

(iii) The Appellant / Insurance Company is directed to deposit the modified compensation amount i.e., **Rs.5,52,500/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of filing of petition till the date of realisation to the credit of M.C.O.P.No.1129 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the respondents/claimants are at liberty to withdraw the same as per the apportionment made by the Tribunal along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. Consequently, connected miscellaneous petition is closed.

18.01.2024

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
   Subordinate Judge,
   Uthangarai.

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

R.KALAIMATHI, J.,

ssn

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