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CMA.No.2830 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.2830 of 2022

1. Palaniammal
2. Ramasamy

Appellants

Vs

1. Tamil Selvi
2. The National Insurance Company Limited
Namakkal District

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 06.04.2017, made in MCOP.No.158 of 2011, by the Principal District Judge (MACT) Namakkal.

For Appellants : Mr.S.P.Yuaraj

For Respondents : Ms.R.Sreevidhya-R2
R1-No Appearance

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimants, challenging the quantum of compensation, awarded by the judgement and decree, dated, 06.04.2017, made in MCOP.No.158 of 2011, by the Principal District Judge (MACT) Namakkal.
2. The claimants, who are none other than the mother and father of the deceased Suresh, have filed the claim petition before the Tribunal, seeking a compensation of Rs.10,00,000/- on various heads, for the death of the deceased, who died in a motor road accident, which took place on



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20.02.2011. The 1st Respondent herein/owner of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the 2nd Respondent/ Insurance Company, by filing a counter. On the side of the claimants, PW.1 and PW.2 were examined and Ex.P1 to Ex.P8 were marked. On the side of the 2nd Respondent Insurance Company, RW.1 and RW.2 were examined and Ex.R1 to R4 were marked. Ex.C1 to C3 were marked.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle belonged to the 1st Respondent and insured with the 2nd Respondent, the Tribunal has awarded a total compensation of Rs.6,60,00-/-, on various heads, with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be paid by the 2nd Respondent Insurance Company, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Income (6000x1/2x12x18)	648000
2	Loss of Estate	3000
3	Funeral Expenses	5000
4	Loss of Love and Affection	2000
5	Transportation Expenses	2000
Total Compensation		660000

Aggrieved by the quantum of compensation, this appeal has been filed by the claimants.

4. This Court heard the learned counsel for the Appellants and the 2nd Respondent Insurance Company, considered their submissions and also perused the entire materials placed on record.
5. Since there is no quarrel over the negligence aspect and the liability aspect



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as well and the dispute is only with regard to the quantum of compensation, the findings of the Tribunal with respect to the negligence aspect and liability aspect are confirmed and also it is not necessary to narrate the entire facts in detail in respect of the accident.

6. According to the learned counsel for the Appellants, at the time of the accident, the deceased was a bachelor, aged about 23 years old and the accident had occurred in the year 2011 and he was earning a sum of Rs.10,000/- p.m. as a Medicine Injector in a Poultry Farm and hence, even in the absence of evidence to prove the monthly income of the deceased, the monthly notional income arrived at Rs.6000/- by the Tribunal appears to be on the lower side and the compensation awarded under the other heads are also not reasonable. Further, while arriving at the loss of income, compensation towards future prospects was not added and hence, the impugned compensation is to be redetermined and enhanced.

7. Per contra, the learned counsel for the 2nd Respondent submits that in the absence of evidence to prove the monthly income of the deceased, the impugned compensation is just and proper, however, the learned counsel, while not disputing the avocation of the deceased i.e. Medicine Injector, as claimed, would submit that appropriate orders may be passed in the facts and circumstances of the case.

8. Considering the nature of the avocation as claimed by the claimants, the year of the accident, i.e. 2011, considering the age of the deceased at the time of the accident, i.e. 23 years, the cost of living due to inflation rate at



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the relevant point of time and the fact that the claimants are none other than the parents of the deceased, the notional monthly income arrived at by the Tribunal at Rs.6,000/- is not just and proper and hence, even in the absence of evidence to show the monthly income of the deceased, it would be just and appropriate to fix the monthly notional income of the deceased at Rs.8,500/-. After adding 40% future prospects and deducting 50% towards personal expenses as the deceased was a bachelor, the loss of monthly dependency would come to Rs.5,950/-. Since the deceased was aged 23 years old at the time of the accident, the multiplier of 18 adopted by the Tribunal is proper. Thus, the total compensation under the head of loss of income is redetermined at Rs.12,85,200/- $(8500+3400) \times 1/2 \times 12 \times 18$.

9. The compensation amounts of Rs.3,000/- under the head of loss of estate, Rs.5,000/- under the head of funeral expenses, Rs.2,000/- towards love and affection and Rs.2,000/- towards transportation expenses appear to be on the lower side and hence, the same are enhanced to Rs.15,000/-, Rs.15,000/- Rs.80,000/- and Rs.5,000/- respectively. In all, the total compensation is redetermined at Rs.14,00,200/-, which shall carry interest 7.5% p.a. from the date of the claim petition till the date of realisation.
10. In fine, this Civil Miscellaneous Appeal is partly allowed. In all, the claimants are entitled to a total compensation of Rs.14,00,200/-, (Rupees fourteen lakhs two hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as redetermined below:-



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S.No	Category	Award Amount (Rs.)
1	Loss of Income $(8500+3400) \times 1/2 \times 12 \times 18$	1285200
2	Loss of Estate	15000
3	Funeral Expenses	15000
4	Loss of Love and Affection	80000
5	Transportation Expenses	5000
Total Compensation		1400200

Out of the total compensation, the claimants 1 and 2 are entitled to a sum of Rs.7,00,200/- and Rs.7,00,000/- respectively, with proportionate interest. The claimants shall pay proper court fee for the enhanced compensation amount. In all other aspects, the impugned judgement and decree shall stand confirmed. The 2nd Respondent / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited and also the interest for the delay in filing the appeal if any for the enhanced compensation, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer, by way of RTGS, the respective compensation amounts with proportionate interest directly to the respective bank accounts of the claimants, within a period of three weeks thereafter. No costs.

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To

1. The Principal District Judge (MACT) Namakkal.
2. The Record Keeper, VR Section, High Court, Madras



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KRISHNAN RAMASAMY, J.

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