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CMA.No.597 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.597 of 2023

1. Thirumalai
2. Thamizharasi

Appellants

Vs

1. Phillips
2. The Divisional Manager, The New India Assurance Company Limited, Vellore-1

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 21.11.2019, made in MCOP.No.782 of 2017, by the Special Sub Judge (MACT) Tiruvannamalai.

For Appellants : Ms.M.Srinithi Abirami

For Respondents : Mr.R.Sivakumar-R2
R1-Exparte

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimants, challenging the quantum of compensation, awarded by the judgement and decree, dated, 21.11.2019, made in MCOP.No.782 of 2017, by the Special Sub Judge (MACT) Tiruvannamalai.
2. The claimants, who are husband and daughter of the deceased Muniammal, have filed the claim petition before the Tribunal, seeking a compensation of Rs.15,00,000/- on various heads, for the death of the deceased, who died in a motor road accident, which took place on 08.07.2017. The 1st Respondent



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herein/owner cum driver 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 to PW.3 were examined and Ex.P1 to Ex.P3 were marked.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver cum owner of the offending vehicle insured with the 2nd Respondent, the Tribunal has awarded a total compensation of Rs.8,10,000/- 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 (7500x2/3x12x13)	780000
2	Loss of Estate	15000
3	Funeral Expenses	15000
Total Compensation		810000

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 manner, in which the accident had occurred, negligence aspect and the liability aspect as well and the dispute is only with regard to the quantum of compensation, the findings of the Tribunal with respect to the manner of the accident, 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 aged about 49 years old as per the post mortem certificate and the accident had occurred in the year 2017 and she was earning a sum of Rs.15,000/- p.m. as a coolie in a Mutt and the deceased was taking care of the entire family 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. The claimants being the husband and daughter of the deceased, the Tribunal ought to have awarded compensation under the heads of loss of consortium and loss of love and affection to them, but it failed to do so and hence, the impugned compensation is to be redetermined and enhanced accordingly.
7. The learned counsel for the 2nd Respondent submits that in the absence of evidence to prove the monthly income of the deceased, the notional monthly income of the deceased may be fixed as Rs.10,000/- p.m. and appropriate orders may be passed in the facts and circumstances of the case.
8. In a decision of the Division Bench of this Court reported in **2019 (1) TNMAC 54 (DB) (Andal Vs. Avinav Kannan)**, a sum of Rs.13,750/- was arrived at as the notional monthly income of a Meat Chopper, considering the cost of inflation index issued by the Central Board of Direct Tax.
9. In the case on hand, considering the submissions of the learned counsel on either side, the nature of the avocation as claimed by the claimants, the year of the accident, i.e. 2017, the age of the deceased at the time of the



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accident, i.e. 49 years as per the post mortem certificate, the cost of living due to inflation rate at the relevant point of time, 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, in the light of the above said decision, it would be just and appropriate to fix the monthly notional income of the deceased at Rs.13,000/-. After adding 25% future prospects as rightly adopted by the Tribunal and deducting $1/3^{\text{rd}}$ towards personal expenses, the loss of monthly income would come to Rs.10,833/-. Since the deceased was aged 49 years old at the time of the accident, the multiplier of 13 adopted by the Tribunal is proper. Thus, the total compensation under the head of loss of income is redetermined at Rs.16,89,948/- $(13000+3250) \times 2/3 \times 12 \times 13$, which is rounded off to Rs.16,90,000/-.

10.The compensation amounts of Rs.15,000/- under the head of loss of estate and Rs.15,000/- under the head of funeral expenses awarded by the Tribunal appear to be reasonable and hence, they are confirmed. However, the claimants being the husband and daughter of the deceased, no compensation was awarded under the heads of loss of consortium and loss of love and affection to them. Hence, a sum of Rs.40,000/- under the head of loss of consortium and a further sum of Rs.20,000/- towards loss of love and affection are hereby awarded. A further sum of Rs.10,000/- towards funeral expenses is hereby awarded. In all, the total compensation is redetermined at Rs.17,90,000, which shall carry interest 7.5% p.a. from the



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date of the claim petition till the date of realisation.

11. In fine, this Civil Miscellaneous Appeal is partly allowed. In all, the claimants are entitled to a total compensation of Rs.17,90,000/-, (Rupees seventeen lakhs ninety thousand only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as redetermined below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Income $(13000+3250) \times 2/3 \times 12 \times 13$	1690000
2	Loss of Estate	15000
3	Funeral Expenses	15000
4	Loss of Consortium (1 st claimant)	40000
5	Loss of Love and Affection (2 nd Claimant)	20000
6	Transportation Expenses	10000
Total Compensation		1790000

Out of the total compensation, the claimants 1 and 2 are entitled to a sum of Rs.13,00,000/- and Rs.4,90,000/- respectively, with proportionate interest. The claimants shall pay proper court fee for the enhanced compensation amount. 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 as apportioned above, with proportionate interest directly to the respective bank accounts of the claimants, within a period of three weeks thereafter. No costs.

06.02.2024



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KRISHNAN RAMASAMY, J.

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To

1. The Special Sub Judge (MACT) Tiruvannamalai.
2. The Record Keeper, VR Section, High Court, Madras

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