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CMA.No.4639 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.4639 of 2019

and

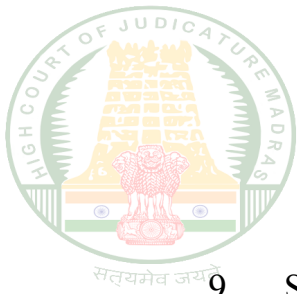
CMP.No.26255 of 2019

The National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai – 600 002.

...Appellant

Vs.

1. S.Thilakavathi Senthil (*Died*)
2. S.Logith (Minor)
Rep. by Aunt, Next Friend & Natural guardian Nalini/8th respondent
(Amended, vide order dated 08.11.2024 made in CMP.No.14255 of
2022 in CMA.No.4639 of 2019)
3. Rani (*Died*)
4. S.Senthil
5. K.Rubavathi
6. Reliance General Insurance Co. Ltd.,
526, 2nd Floor, Balmer Lourie House,
Anna Salai, Chennai.
7. T.Latha
8. H.Nalini



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9. Selvi

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(R7-9 brought on record as LR's of the deceased 3rd respondent, vide order dated 27.04.2023 made in CMP.Nos.12057, 12062 & 12063 of 2022 in CMA.No.4639 of 2018. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and decree dated 29.06.2018 made in MCOP.No.4942 of 2011 on the file of the Motor Accidents Claims Tribunal, Chennai (in the VI Court of Small Causes Chennai).

For Appellant : Mr.S.Vadivel

For Respondents : Mr.K.Varadha Kamaraj, for R1, 2, 7 to 9
: Mr.S.Arun Kumar, for R6
: R3 – Died
: No Appearance, for R4 & R5

JUDGMENT

Challenging the judgment and decree dated 29.06.2018 made in MCOP.No.4942 of 2011 on the file of the Motor Accidents Claims Tribunal, Chennai (in the VI Court of Small Causes), the appellant-insurer has come up with this appeal.

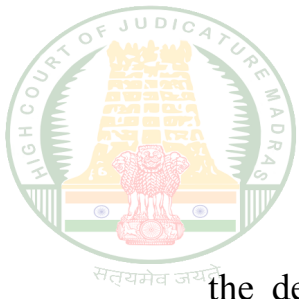
2. It is the case of the claimants that, on 15.06.2011 at about 4.30 hours, when the deceased Senthilkumar was travelling as an occupant in



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the Eicher Van bearing Registration No.TN-20-AZ-5757 owned by the 5th respondent insured with the 6th respondent and was proceeding in G.S.T Road from Chennai towards Salem, near Thirunvennianallur, a lorry bearing Regn.No.TN-28-5900 owned by the 4th respondent insured with the appellant herein driven by its driver which was proceeding ahead of the above said Eicher van without giving any signal suddenly took a turn and came to the first lane from the centre median and in that process dashed the front side of the eicher van in which the deceased was travelling, due to which, the deceased Senthilkumar sustained multiple injuries and succumbed to the same. Thereby, the respondents 1 to 3/ claimants, who are the legal heirs of the deceased filed a claim petition claiming a compensation for a sum of Rs.75,00,000/-. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked exhibits P.1 to P.20 and on the side of respondents therein, one witness viz. R.W.1 was examined and exhibits R.1 to R.3 were marked. After trial, the Tribunal, on appreciation of oral and documentary evidence held that the accident taken place due to the rash and negligent driving on the part of the driver of the appellant insured lorry and awarded a sum of Rs.35,02,200/- towards compensation for the death of



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the deceased Senthilkumar in favour of the claimants payable by the appellant-insurer. Aggrieved by the same, the appellant/insurance company has come up with this appeal.

3. Learned counsel for the appellant/Insurance company submitted that, mere filing of FIR against the driver of the appellant insured lorry cannot be a ground to fasten the entire liability as against the appellant. Further, the tribunal fixed the notional income at Rs.20,000/- which is very high and the compensation under the other heads are also very high. It is the further submission of the learned counsel that the deceased owned a lorry and was running the vehicle on hire by having a business, which is being continued even after the death of the deceased and, therefore, there is no loss of income to the family and, therefore, the quantification of dependency is on the higher side, as the even after the death of the deceased, the legal heirs can derive income from the said business. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the claimants/ respondents 1, 2, 7 to 9 submitted that, the mere fact that the business is



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being continued by the legal heirs cannot be a ground to reduce the compensation, as the income earned by the deceased, who was fully knowledgeable of the said business cannot be expected from the legal heirs, who are new to the business and, therefore, the loss of income on account of the death of the deceased, which is purely due to the act of negligence on the part of the driver of the vehicle insured with the appellant, needs to be compensated by the appellant. Further, it is submitted that the compensation awarded under all the heads are just and reasonable and, therefore, no interference is warranted with the same. Accordingly, he prayed for dismissal of this appeal.

5. On the above said contentions, heard learned counsel appearing on behalf of the 6th respondent and perused the materials available on record.

6. For the purpose of proving the negligence, witnesses have been examined on the side of the claimants, which has not been disputed by the appellant and, therefore, the negligence for the accident fixed on the driver of the lorry insured with the appellant is confirmed.



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7. The next issue that befalls for consideration is that there is no loss of income, as the business venture, which was carried on by the deceased is being carried on by the legal heirs and, therefore, the compensation under the head loss of income is on the higher side. Though such a contention has been advanced, however, there is no material placed by the appellant to establish that the earnings of the deceased has not dwindled on account of his death and that the legal heirs are earning the very same amount and there is no loss of income to the family.

8. The payment of compensation for the fatality experienced by the family is not only to redress their immediate necessity, but also the future necessity, as the loss of the deceased would have an impact on the family, both mentally and financially. May be, the business venture of the deceased is being run by the legal heirs, but is it run in the same manner as was run by the deceased is a question of fact, which ought to have been established by the appellant when the appellant wants to take such a contention. However, the appellant has only raised the aforesaid contention, but no material to show the earnings of the family members



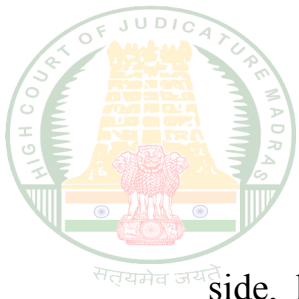
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out of the business run by the deceased has been placed before the Tribunal to buttress their plea that lower compensation alone is entitled to the legal heirs. There is no material whatsoever to establish that the business of the deceased was flourishing during his time and even thereafter and that there is no loss of income to the family. In the absence of any material to establish the same, the compensation under the head loss of income awarded cannot be said to be erroneous.

9. Insofar as the compensation under the head loss of income is concerned, the accident is of the year 2011 and the deceased was running a business and the earnings of the deceased from out of the said business has been placed before the Court, which has not been disproved by the appellant. Such being the case, the fixation of income at Rs.20,000/- and adoption of multiplier for quantifying the compensation cannot be said to be erroneous and the compensation quantified at Rs.35,02,200/- is proper, just and reasonable and does not require any interference.

10. Insofar as the compensation under the other heads are concerned, though it is claimed that the amount awarded is on the higher

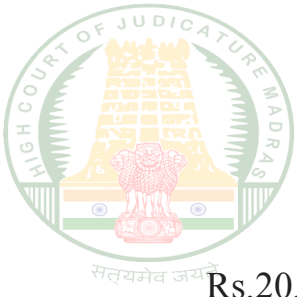


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side, however, a careful perusal of the same reveals that the amount awarded are on the basis of the ratio laid down by the Apex Court in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in *2017 (16) Supreme Court Cases 680, Pranay Sethi case* and this Court finds no error in the compensation awarded by the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal stands dismissed, confirming the impugned award dated dated 29.06.2018 passed by the tribunal in MCOP.No.4942 of 2011 and the Appellant-insurance company is directed to deposit the compensation of **Rs.35,02,200/-** awarded by the tribunal to the credit of MCOP.No.4942 of 2011 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. Since, the 1st respondent passed away, the Minor 2nd respondent, who is the only legal heir of the deceased 1st respondent is entitled to the compensation of Rs.10,02,000/- awarded by the tribunal in his favour along with the compensation of



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Rs.20,00,000/- awarded by the tribunal in favour of the deceased 1st respondent. On such deposit being made, the tribunal is directed to transfer the share of compensation amount apportioned in respect of the 3rd respondent, who is since deceased, directly to the bank accounts of the respondents 7 to 9, who are the legal heirs of the deceased 3rd respondent equally through RTGS within a period of two (2) weeks thereafter. Insofar as the share of the compensation amount of the minor 2nd respondent now modified by this Court is concerned, the Tribunal is directed to invest the same in an interest bearing fixed deposit initially for a period of three years to be renewed till he attains majority and the quarterly interest accrued thereon shall be paid to the 8th respondent/aunt of the minor claimant for being used for the welfare of the minor 2nd respondent by the guardian. No costs. Consequently, the connected Miscellaneous petition is closed.

08.11.2024
(2/2)

skt

NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

9/11



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M.DHANDAPANI, J.

skt

To:

1. The Motor Accidents Claims Tribunal,
VI Court of Small Causes, Chennai.
2. The Section Officer,
VR Section, High Court of Madras.

CMA.No.4639 of 2019
and
CMP.No.26255 of 2019
(2/2)

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in
CMA.No.4639 of 2019

M.DHANDAPANI, J.

The present Miscellaneous petition filed seeking to permit Mrs.Nalini to represent the Minor S.Logith as Aunt, next friend and natural guardian is ordered as prayed for.

08.11.2024
(1/2)

skt

Note: Registry is directed to carry out the necessary amendment in the cause title and in all other records.