



C.M.A. (MD) No. 408 of 2012

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Dated: 12.02.2024

CORAM:

THE HON'BLE MR. JUSTICE **P. DHANABAL**

C.M.A. (MD) No. 408 of 2012

1. Banumathi

2. Ravi

3. Karthika

... Appellants/Petitioners

(Minor appellants 2 and 3 are declared as Major and their guardianship /Banumathi/1st appellant is discharged vide Court order dated 25.07.2022 made in CMP(MD) No.6416 and 6417 of 2022)

Vs.

1. Neelavathi

2. United India Insurance Co. Ltd

Branch Office, Karur

3. K.Selvaraj

4. K.Suseela

..Respondents/Respondents

(Memo dated 29.11.2023 presented before the Court on 04.12.2023 is recorded to the effect that notice to the respondents 3 and 4 is dispensed with as they set exparte before the Tribunal vide court order dated 04.12.2023)

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed by the Motor Accident Claims Tribunal, Principal District Court, Karur in M.C.O.P.No.94 of 2000 dated 27.04.2001.

For Appellant : Mr.M.P.Senthil

For R2 : Mr.J.S.Murali



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in Motor Accident Claims Tribunal, Principal District Court, Karur in M.C.O.P.No.94 of 2000 dated 27.04.2001, wherein the appellants herein have filed petition for compensation for death of Eswaran who died in the road accident. The appellants are the legal heirs of the deceased Eswaran who died in the road accident.

2.The Tribunal has awarded a sum of Rs.3,70,000/- towards compensation as against the order passed by the Tribunal, the petitioners have preferred his appeal for enhancement of the award amount.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.



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4. The brief averments of the petition filed before the Tribunal are as follows:

The first petitioner is the first wife of the deceased. The second petitioner is son of the deceased through first wife, third petitioner is second wife of the deceased and the fourth petitioner is the daughter of the deceased through second wife. On 19.01.2000 at about 11.00 pm., when the deceased was proceeding in the National Highway from Velayuthampalayam to Namakkal in Karur Main road in a two wheeler bearing Reg. NO. TN 47 C 3787 the driver of the lorry bearing Reg. No. TCQ 7969 drove the vehicle in a rash and negligent manner and dashed against the motor cyclist. As a result of which the said Eswaran sustained injuries all over the body and died on the spot itself. The deceased was aged about 42 years on the date of accident and he was earning Rs.10 000/- per month by working as Manager in the textiles. Therefore the petitioners claimed a sum of Rs. 15,00,000/- towards compensation.

5. The brief averments of the counter filed by the third respondent are as follows:

The respondent denied the manner of accident, age, income and occupation of the deceased. The accident did not take place due to the negligence on the part of the lorry driver on the other hand



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the accident took place only by the negligence on the part of the deceased. Therefore the third respondent is not liable to pay any compensation to the petitioner.

6. The respondents 1 and 2 remained *ex parte* before the Tribunal.

7. Before the Tribunal the petitioners have examined P.W.1 to P.W.3 and marked documents Exs.P.1 to P.8. No witnesses were examined on the side of the respondents and no documents were marked.

8. After hearing both sides the Tribunal has awarded a sum of Rs.3,70,000/- towards compensation to the petitioners. Aggrieved by the above said order the appellant/petitioners have preferred this appeal for enhancing the award amount on various grounds.

9. The learned counsel appearing for the appellant would contend that the deceased was working as a Manager in textile company and he was earning a sum of Rs.10,000/- per month. In order to prove the same, he examined P.W.3 who is the employer of the deceased and he categorically deposed about the income of



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the deceased as Rs.10,000/- and the Tribunal has failed to consider the same and only awarded meagre amount by taking the income of the deceased as Rs. 3000/- per month. Therefore the award passed by the Tribunal is liable to be modified and to be enhanced by allowing this appeal.

10. The learned counsel appearing for the second respondent would contend that the accident took place only due to the negligence on the part of the deceased and not due to the negligence on the part of the driver of the first respondent. Further the appellant/petitioners have examined P.W.3 to prove the income of the deceased and the evidence of P.W.3 and exhibit P.8 are all unbelievable and the salary mentioned in the documents are higher side and thereby the Tribunal has fixed the income of the deceased as Rs.3000/- per month and awarded fair compensation. Hence the petition is liable to be dismissed.

11. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, frames the following point for determination in this appeal:

i) Whether the appeal is liable to be allowed or not?



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12. In this case there is no dispute in respect of the manner of accident and the tribunal has fixed the liability as against the driver of the first respondent and the insurance company has not preferred any appeal as against the findings of the Tribunal in respect of the negligence. Therefore the accident took place due to the negligence on the part of the first respondent. There is no dispute that the first respondent vehicle was insured with the second respondent company. The present appeal is filed only as against the quantum of award passed by the Tribunal. According to appellants/petitioners the deceased was working as Manager in the textiles and he was earning a sum of Rs.10,000/- per month and to prove the same they have examined P.W.3 and marked Ex.P.8. On perusal of evidence of P.W.3 and Exhibit P.8 they revealed that the salary of the deceased was too high and though they have produced the documents of ledgers and other documents relating to the salary of the deceased, they failed to produce parade in which all the expenditure were made. Therefore the Tribunal has correctly held that the petitioners have not proved the employment and income of the deceased. Though the petitioner examined P.W.3 and marked Exps.3 to 8 they have not produced the parade in which each item of the expenditure could be written separately. Therefore the Tribunal had



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disbelieved the evidence of P.W.3 and Exps.P.6 to 8. Therefore this Court also agreed with the finding of Tribunal in respect of employment of the deceased and income of the deceased, Since there is no sufficient records to prove the income and employment of the deceased, the Tribunal has taken a sum of Rs.3000/- as monthly income of the deceased. There is no dispute that the deceased was aged about 42 years and considering the age of the deceased and the dependants of the family he could have earned a nominal amount.

13. As per the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 ACJ 2700*** the deceased is entitled to Rs.25% towards future prospectus. Considering the age of the deceased this Court has taken a sum of Rs.5000/- as monthly income of the deceased including the future prospectus. Considering the dependants of the deceased $\frac{1}{4}$ has to be deducted for his personal expenses and thereby this annual income of the deceased would come to a sum of Rs. 45,000/- Considering the age of the deceased, multiplier of 14 has been adopted and the award would come around Rs.6,30,000/- The petitioners are entitled to a sum of Rs.40,000 towards consortium and Rs.15,000/- towards funeral expenses and Rs. 15,000/- towards



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loss of estate. In total they are entitled to a sum of Rs.7,00,000/-.

The Tribunal has taken a sum of Rs.3000/- per month and failed to consider the dependency of the deceased and to add the future prospectus, thereby the award passed by the Tribunal is liable to be modified as indicated above. The appellant/ petitioners are entitled for a sum of Rs.7,00,000/- and the third respondent is directed to deposit the above said amount with interest @ 7.5% per annum from the date of petition till realization.

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is modified to the effect that the petitioners are entitled for a sum of Rs.7,00,000/- towards compensation along with interest @ 7.5 % per annum from the date of petition till realization. The third respondent/second respondent is directed to deposit the amount with interest by deducting the amount, deposited if any within a period of two months from the date of order of this Court. The petitioners are entitled to the amount with proportionate interest and cost. The first petitioner is entitled for a sum of Rs.3,00,000/-, second petitioner is entitled to Rs.2,00,000/- and the third and fourth petitioners each are entitled to Rs.1,00,000/-. If any award amount already deposited for the said amount the interest will not carry and



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further there will not be any interest for the period of dismissal of default if any. No costs.

12.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal
Principal District Court, Karur
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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