



C.M.A.(MD)No.561 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05.02.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

C.M.A.(MD)No.561 of 2013

1.Nachammal

2.Chinnathurai

... Appellants/ Petitioners

Vs.

1.Selvarani

2.The Branch Manager,

New India Assurance Co.Ltd.,

No.34/35, Opposite to Bus Stands,

Kokku Complex, Dharapuram Bypass Road,

Erode District.

3.Mariammal

4.Maheswari

... Respondents /Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.810 of 2007 on the file of the Motor Accident Claims Tribunal - Principal District Judge, Dindigul, dated 29.06.2009.

For Appellants : Mr. Sankara Ramasubramanian
for C.K.M.Appaji

For Respondents : Mr. D.Sivaraman for R2



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.810 of 2007 on the file of the Motor Accident Claims Tribunal - Principal District Judge, Dindigul, wherein the appellants / petitioners herein have filed the claim petition for a sum of Rs.5,00,000/-. The Tribunal has awarded a sum of Rs.1,12,000/- as compensation.

2. Being aggrieved by the above said order of the Tribunal, the petitioners have filed this Civil Miscellaneous Appeal.

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

4. The brief facts of the petition averments are as follows:

On 12.06.2007, at about 09.00 p.m., when the deceased – Kuppusamy was riding a motorcycle bearing Registration No. TN-57-V-0509 from Oddanchatram-Dharapuram main Road, near Kallimandhayam Amudham Bridge, at that time, a Tempo bearing Registration No.TN-33-W-1929, belonged to the first respondent, came in



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the opposite direction in a rash and negligent manner and dashed against the motorcycle. Due to which, the deceased – Kuppusamy thrown out from the motorcycle and sustained injuries all over the body and thereafter, he died in the spot itself. At the time of accident, the deceased was aged about 55 years and he was an Agriculturist and was earning Rs.7,000/- per month. The accident took place due to the negligence on the part of the first respondent's driver. The first respondent's vehicle was insured with the second respondent. Hence the petitioners, who are the legal heirs of the deceased, have filed the claim petition for claiming compensation for a sum of Rs.5,00,000/-.

5. The brief facts of counter filed by the second respondent are as follows:

The accident did not take place due to the negligence on the part of the driver of the first respondent and the same was occurred due to the negligence on the part of the deceased. The deceased without having any valid driving licence and without observing the traffic rules, negligently crossed the road and thereby, he himself invited the accident. The respondent denied the age, income and occupation of the deceased. Since the accident took place due to the negligence on the part of the deceased,



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the respondent is not liable to pay compensation to the petitioners. Hence, this Petition is liable to be dismissed.

6. Inorder to prove the case of the petitioners, the second petitioner examined himself as P.W.1 and one other witness- Selvaraj was examined as P.W.2 and 4 documents were marked as Exs.P.1 to Ex.P.4 and on the side of the respondents, no oral or documentary evidence was adduced.

7. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.1,12,000/- towards compensation with interest of 7.5 % pa.

8. As against the award passed by the Tribunal, the claimants have preferred this appeal for enhancing the compensation amount, on various grounds.

9. The learned counsel appearing for the appellants / petitioners would contend that the appellants / petitioners are the dependents of the deceased. The accident took place due to the negligence on the part of the



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driver of the first respondent and the first respondent's vehicle was insured with the second respondent. Thereby, both the respondents are liable to pay compensation. The Tribunal has only ordered a meagre amount of Rs. 1,12,000/- and the appellants / petitioners are entitled to Rs.5,00,000/- towards compensation. However, they restricted the claim only Rs. 2,00,000/-. The deceased was aged about 55 years and he was earning Rs. 7,000/- per month. But, the Tribunal failed to consider of this aspect and awarded only meagre amount. Hence, the award passed by the Tribunal is liable to be enhanced.

10. The learned counsel appearing for the second respondent would contend that the appellants / petitioners have not produced any document to show the income of the deceased and thereby, the Tribunal has taken a sum of Rs.15,000/- per annum towards the income of the deceased and awarded a fair and just compensation. Therefore, the present Appeal is liable to be dismissed.

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



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

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12. In this case, there is no dispute that the first respondent's vehicle had involved in the accident and the same was insured with the second respondent and there is no dispute that the accident took place due to the rash and negligence on the part of the driver of the first respondent. The Tribunal also after analysing the evidence rendered the findings that the accident took place due to the negligence on the part of the driver of the first respondent. The respondents have not disputed the negligence and there is no appeal preferred by the respondents and thereby, the findings of the Tribunal was accepted by the parties. The appellants / petitioners are only disputing the quantum of compensation.

13. It is not in dispute that the deceased was aged about 35 years on the date of accident. According to the appellants, the deceased was an Agriculturist and was earning a sum of Rs.7,000/- per month. In order to prove the income of the deceased, no independent witness was examined. However, the petitioner side evidence shows that the deceased was an agriculturist and the same has not been confronted through rebuttal evidence. But the Tribunal has only taken a sum of Rs.15,000/- per annum



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and the same is too low. Considering the age and nature of work of the deceased, this Court has taken a sum of Rs.3,000/- towards the monthly income of the deceased. Considering the dependents of the deceased, 1/3rd (Rs.1,000/-) of the income has to be deducted for personal expenses of the deceased. Considering the age of the deceased (55 years), the multiplier '11' is to be adopted. By adopting multiplier '11', the appellants / petitioners are entitled to Rs.2,64,000/- (Rs.2,000/- X 12 X 11) towards loss of income. As per the decision of the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd., V. Pranay Sethi* reported in **2017(2) TNMAC 609 (SC)**, the appellants / petitioners are entitled to Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium.

14. Though the appellants /petitioners restricted to Rs.2,00,000/- as compensation, as per the dictum of the Hon'ble Supreme Court in the case of *Nagappa V. Gurudayal Singh and others* reported in **2003(2) SCC 274**, this Court can enhance the award amount. In view of the above discussion, the appellants / petitioners are entitled for a sum of Rs.3,30,000/- as compensation.



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15. In the result this Civil Miscellaneous Appeal is **partly allowed** and the order passed by the Tribunal in M.C.O.P.No.810 of 2007 is modified to the effect that the appellants / petitioners are entitled for a sum of Rs.3,30,000/- as compensation with interest at the rate of 7.5% per annum. The second respondent / Insurance Company is directed to deposit the enhanced award amount with interest at the rate of 7.5% per annum and costs, from the date of claim petition till the date of realization, within period of two months from the date of this judgment, after deducting the amount already deposited, if any. On such deposit being made, the petitioners / appellants are permitted to withdraw their share amount as apportioned by this Court, by filing application before the Tribunal. Each of the appellants / petitioners are entitled to 50% of the award amount with proportionate interest and costs. The appellants / petitioners are directed to pay the balance court fee, within a period of 10 days from the date of this judgment. No costs.

05.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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1.The Motor Accident Claims Tribunal -
Principal District Judge,
Dindigul. .

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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