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CMA.(MD)No.213 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No.213 of 2021

and

CMP (MD) No.1833 of 2021

Through its Branch Manager,
The Oriental Insurance Company Ltd.,
Sri Vijay Complex, 2nd Floor,
Door No.555/1,GH Road,
Theni Town,
Theni District.

: Appellant/2nd Respondent

Vs.

1.Kaliammal
2.Balamurugan
3.Manikandan
4.M.Saravanan

: Respondents 1 to 4/
Petitioners 1 to 5

5.M.Alagarsamy (Died)

: 5th Respondent/
5th Petitioner

(Memo dated 16/04/2024 presented
before the court on 18/04/2024 is
recorded. R5 died and R1 who is
already on record, is recorded
as LR of the deceased R5, vide
Court Order, dated 18/04/2024
made in CMA(MD)No.213 of 2021)

6.M.Kanagaraj : 6th Respondent/R1

PRAYER:- Civil Miscellaneous Appeal is filed under
Section 173 of the Motor Vehicles Act, 1988, to set aside
the order of the Motor Accident Claims Tribunal-cum-
Additional District and Sessions Judge, Theni at
Periyakulam made in MCOP No.88 of 2016, dated 27/02/2019.

For Appellant : Mr.E.Chandrasekaran

For R1 to R4 : Mr.R.Shankar Ganesh

For 5th Respondent : Died



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against award, dated 27/02/2019 passed in MCOP No.88 of 2016 passed by the Motor Accident Claims Tribunal-cum-Additional District and Sessions Judge, Theni at Periyakulam.

2.The facts in brief:-

On 22/03/2007 at about 07.45 pm, the deceased Ganesan was coming to his house in a two wheeler bearing registration No.TN-60-A-5845. When he was nearing the place of occurrence, at that time, a Tractor bearing registration No.TN-67-A-0938 was driven by its driver behind his back from Kailasapatti to Periyakulam in a rash and negligent manner and hit the deceased. Ganesan died on the spot.

3.A case in Crime No.209 of 2007 was registered against the driver of the Tractor for the offences under section 304(A) IPC by the Thenkarai Police Station. The age of the deceased was 22 at the time of the occurrence and earning a sum of Rs.30,000/- by running workshop. Claiming compensation of Rs.25,00,000/-, the claim petition was filed.



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5.That was resisted by the appellant by filing counter stating that the occurrence took place because of the rash and negligent driving on the part of the deceased.

6.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 8 documents were marked. On the side of the Insurance Company, no oral and documentary evidence was adduced.

7.At the conclusion of the enquiry process, the Tribunal recorded a finding that it occurrence due to rash and negligent driving on the part of the first respondent driver. Regarding the compensation, the age of the deceased was fixed as 22. The notional income Rs. 10,000/- was taken due to the absence of the direct documentary evidence. To that, 40% future prospects was added. Half of the amount was deducted towards personal and living expenses. Multiplier '13' was adopted. Accordingly, the loss of dependency was calculated at Rs. 10,92,000/-. To that customary amounts were added. In total, the Tribunal awarded the compensation as per the tabulation given hereunder:-



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Loss of Dependency	Rs.10,92,000/-
Loss of love and affection (Claimants 1 to 5)	Rs. 2,50,000/-
Transport expenses	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs.13,72,000/-

8.Challenging the above said award, this appeal is preferred by the appellant stating that calculation mistake has been committed by the Tribunal by adding 40% of the future prospects, after deducting half of the amount and the loss of love and affection category has been wrongly calculated.

9.Per contra, the learned counsel appearing for the respondents 1 to 4 would submit that the Tribunal ought to have adopted '18' multiplier instead of '13'. On that account, he made a request for re-calculation.

10.Regarding the negligence aspect, no argument was advanced. But however, to set right the records, we have to set right the award on that aspect.

11.It is a case of hit behind. The manner of the occurrence does indicate that it occurred due to the rash and negligent driving on the part of the first respondent vehicle driver. No contra evidence was let in from the



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appellant. So, that portion of the Tribunal is confirmed without any further discussion.

12.Regarding the compensation amount, as mentioned above, the Tribunal has committed a calculation mistake. The monthly was fixed at Rs.10,000/- appears to be reasonable considering the age of the deceased. To that, future prospects 40% must be added, which comes to Rs. 14,000/-. Since the deceased is a bachelor, half of the amount is to be deducted. So the notional income is fixed at Rs.7,000/-. Since the deceased is aged about 22, the proper multiplier is '18'. Accordingly, the loss of dependency is calculated at **Rs.15,12,000/-**. To that, as per the judgment of the Hon'ble Supreme court in **Praney Sethi's**, the conventional amounts were added. In this case, only the first claimant, being the mother of the deceased alone is entitled for filial consortium at Rs. 40,000/- The claimants 2 to 4 are the brothers, they are not entitled. So the compensation awarded by the Tribunal under the head of of loss of love and affection is set aside.

13.The recalculation is made by this court is tabulated hereunder:-



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Head	Award of the Tribunal	Award of this Court
Loss of Dependency	Rs.10,92,000	Rs.15,12,000/-
Loss of love and affection	Rs. 2,50,000	-
Loss of consortium	-	Rs. 40,000/-
Loss of estate	-	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
Transport expenses	Rs. 15,000/-	-
Total	Rs.13,72,000	Rs.15,82,000/-

14.In the result, this Civil Miscellaneous Appeal is **dismissed**. The award of the Tribunal is modified as **Rs.15,82,000/-**. The appellant Insurance Company is directed to pay the above said modified amount together with interest at the rate of 7.5% p.a, from the date of petition till the date of deposit. On such deposit, the claimants are entitled to get their share as per apportionment of the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

18/07/2024

Index:Yes/No
Internet:Yes/No
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To,

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- 1.The Motor Accident Claims Tribunal/
Additional District and Sessions Judge,
Theni.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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18/07/2024