BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30/07/2024

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

CMA(MD)No.213 of 2022

1.Alwin Subramaniyan
2.Anthoniyammal : Appellants/Petitioners

Vs.

1.Venkatesh

2.The Manager,
United India Insurance Company Ltd.,
LIC Complex, Gandhiji Road,
Thanjavur,
Thanjavur District. : Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award passed in MCOP No.1680 of 2019, dated 24/02//2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur.

For Appellants : Mr.N.Tamilmani

For 1st Respondent : No appearance

For 2nd Respondent : Mr.A.Ilango

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking enhancement of the award passed in MCOP No.1680 of 2019, dated 24/02//2021 by the Motor Accident Claims Tribunal, Special District Court, Thanjavur.

2.**The facts in brief**:-

On 14/10/2019 at about 08.20 pm in the night, the deceased was riding a two wheeler bearing registration No.TN-49-BM-4604 on the Bangalore-Krishnagiri National Highways road. At that time, a Lorry bearing No.TN-18-AA-1555 was parked without signal in the downward portion. The deceased hit the back side of the Lorry, sustained injuries, taken to the Hosur Government Hospital, later to Salem Government Hospital and died there.

3.A case in Crime No.276 of 2019 was registered for the offences under sections 279, 338 and 304(A) IPC by the Traffic Investigation Wing, Hosur. At the time of occurrence, the deceased was aged about 19 years. He was studying 3rd year B.Sc., in Thanjavur Bharath Science College, subject was computer Science. Since the occurrence took place because of the negligent act on the part of the Lorry driver, the claim petition was filed by the dependents seeking compensation of Rs.25,00,000/-.

4.That was resisted by the 2nd respondent Insurance Company stating that the occurrence took place because of the deceased. So, the Insurance Company is not liable to pay any compensation. Apart from that, customary denials were made.

5.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 14 documents were marked. On the side of the Insurance Company, no witness was examined and one document was marked.

6.At the conclusion of the enquiry process, regarding the first aspect of negligence, it was found that the occurrence took because of the rash and negligent driving on the part of the deceased as well as the negligent act on the part of the first respondent Lorry driver. It was fixed at the ratio of 10:90. That is 10% upon the deceased and 90% upon the first respondent Lorry driver.

7.Regarding the compensation, the age of the deceased was fixed at 19. Multiplier '18' was adopted. The notional income was fixed at Rs.9,000/-. To that, 40% future prospects was added. After deducting half of the amount, the Loss of Dependency was fixed at Rs.13,60,800/-. 10% was deducted towards the negligence on the part of the deceased. Accordingly, the Loss of Dependency was arrived at Rs.12,24,720/-. To that, customary amounts were added. Finally, the Tribunal awarded the compensation of Rs.12,57,720/- as per the tabulation given hereunder:-

Loss of dependency after deducting 10% towards negligence on the part of the deceased	Rs.12,24,720/-
Funeral expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Additional 10% for three years	Rs. 3,000/-
Total	**Rs.12,57,720/-**

8.Against which, this appeal is preferred by the claimants seeking enhancement of compensation.

9.Heard both sides.

10.The learned counsel appearing for the appellants would rely upon the Division Bench of this court in the judgement reported in ***Iffco-Tokio General Insurance Com.Ltd., Vs. Raja (2021(1) TN MAC 764 (DB).*** Wherein the student undergoing +2 Course was dead and his notional income was fixed at Rs.10,000/-. He would submit that Rs.10,000/- may be fixed as notional income of the deceased in this case also.

11.There is no cross appeal by the Insurance Company with regard to the negligent aspect. So, that portion of the finding of the Tribunal is confirmed. It does not require any interference.

12.Regarding compensation, as noted above, the Tribunal has taken Rs.9,000/- as notional monthly income. The deceased was undergoing III year B.Sc., Computer Science in a private college. Usually for Engineering Graduate, the notional income was fixed between Rs.15,000/- and Rs.20,000/-. The range between Rs.15,000/- and Rs.20,000/- depending upon the facts and circumstances of the case. Here, the deceased was studying III Year B.Sc. So considering the above said course he was undergoing, fixation of **Rs.10,000/**- per month appears to be reasonable. After adding 40% towards future prospects, it comes to Rs.14,000/-. Half of the amount is to be deducted towards his personal and living expenses. So the notional monthly is fixed at Rs.7,000/-. By adopting multiplier '18, the Loss of Dependency is calculated at Rs.15,12,000/-. After deducting 10% towards negligence on the part of the deceased, the Loss of Dependency comes to **Rs.12,85,200/-**.

13.Further the Tribunal has committed a mistake in not awarding the compensation under the head of filial consortium. So, the parents of the deceased are entitled to Rs.40,000/- each towards filial consortium.

13.The award of the Tribunal is recalculated as per the tabulation given hereunder:-

Head	Award of the Tribunal	Award of this Court
Loss of Dependency	Rs.12,24,720/-	Rs.15,12,000/-
Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
Loss of estate	Rs. 15,000/-	Rs. 15,000/-
Filial consortium	-	Rs. 80,000/-
Additional 10% for three years	Rs. 3,000/-	-
Total	Rs.12,57,720/-	Rs.16,22,000/-
Less:10% negligence on the part of the deceased		**Rs.14,59,800/-**

14.In the result, this Civil Miscellaneous Appeal is **partly allowed.** The award of the Tribunal is modified as Rs.**Rs.14,59,800/-.** The 2nd respondent 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. The claimants are directed to pay the necessary court fee for the enhanced amount. No costs.

30/07/2024

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

1.The Motor Accident Claims Tribunal/
Special District Court,
Thanjavur.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J

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