



C.M.A(MD).No.19 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 26.04.2024

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.19 of 2019
and CMP(MD).No.202 of 2019

Oriental Insurance Company Ltd.,
Through its the Branch Manager
Office at Bhuvaneshwari Pandian Complex
No.127/8, Madurai Road
Virudhunagar

... Appellant/2nd Respondent

vs.

1.Bhuvaneshwari

2.Palanivel

3.Uma Maheshwari

4.Narmada

5.Pandieswari

...Respondents /Petitioners

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, amended by Motor Vehicles (Amendment) Act, 1994, to set aside the judgment and decree in MCOP.No.303 of 2015 on the file of the Motor Accident Claims Tribunal Cum Special



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Sub-Court Tirunelveli dated 04.10.2017 and allow this appeal.

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For Appellant : Mr.Israel K.Mani

For Respondents : No appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the award passed in MCOP.No.303 of 2015 on the file of the Motor Accident Claims Tribunal/ Special Sub-Court, Tirunelveli primarily on the ground of quantum.

2.The deceased was travelling as a passenger in an Indigo Car. Due to the rash and negligent driving on the part of the driver of the said Car, it dashed against the median and due to the said impact, the deceased sustained serious injuries and admitted to the Hospital on 20.11.2014. He succumbed to the injuries on 30.11.2014. According to the learned counsel for the claimants, the deceased was aged 55 years and he was working as a sales-agent and earning a sum of Rs.13,000/- per month. Hence, he prayed for a sum of Rs.15.00 lakhs as compensation.



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3.The Insurance Company had filed a counter contending that the vehicle involved in the accident being a taxi, the fitness certificate was not subsisting on the date of the accident and therefore, they are not liable to pay compensation. The Insurance Company had further questioned the quantum of award.

4.The Tribunal after considering the oral and documentary evidence, had arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the taxi. The Tribunal had also arrived at a finding that the fitness certificate had expired on 10.10.2013 ie one year prior to the date of the accident.

5.In view of the said finding, the Tribunal has ordered pay and recovery. The Tribunal further fixed the notional income at Rs.7500/- per month and proceeded to assess the total compensation at Rs.10,60,000/-. This award is under challenge in the present appeal.

6.According to the learned counsel appearing for the appellant that the Tribunal ought not to have taken a sum of Rs.7500/- as notional income when the claimants were not able to establish the monthly



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income of the deceased person. He had further pointed out that the Tribunal has awarded a sum of Rs.1,00,000/- to the wife of the deceased towards loss of consortium. Another sum of Rs.1,00,000/- to the wife towards loss of love and affection. Another sum of Rs.1,50,000/- was awarded to the children of the deceased person towards loss of love and affection. Hence, he prayed that the award under these heads shall be modified. He had further contended that a sum of Rs.15,000/- ought not to have awarded towards mental agony and shock in a case of death. Hence, he prayed for modifying the award passed by the Tribunal.

7.Though the claimants have been served and their names are printed in the cause list, they have not chosen to appear either in person or through their counsel.

8.This Court proceeds to pass orders on merits based on the submissions made on the side of the learned counsel for the appellant/Insurance Company.

9.The accident has taken place on 20.11.2014. The Tribunal has taken a notional income at Rs.7500/- per month. As per the judgment of the Hon'ble Supreme Court reported in **2014 (2) SCC 735 – Syed Sadiq's**



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Case, the Hon'ble Supreme Court had fixed the notional income at Rs.6500/- per month for an accident that has taken place in the year 2008. Therefore, this Court does not find it to be unreasonable to fix the notional income to Rs.7500/- for an accident that has taken place in the year 2014. Therefore, this Court is not inclined to accept the contention of the learned counsel appearing for the appellant with regard to the fixation of the notional income by the Tribunal.

10.As per the judgment of the Hon'ble Supreme Court reported in **2017 (16) SCC 680 Pranay Sethi's Case** each one of the claimants is entitled to Rs.40,000/- towards loss of love and affection/consortium. In the present case, there are four claimants and therefore, only a sum of Rs.1,60,000/- could be awarded to all the claimants towards loss of love and affection/consortium. The Tribunal had proceeded to pass award of Rs.3,50,000/- towards loss of love and affection/consortium. Therefore, this Court is inclined to reduce the said amount from Rs.3,50,000/- to 1,60,000/-. The learned counsel for the appellant had further contended that a sum of Rs.15,000/- ought not to have been awarded towards mental agony and shock. However, this Court is of the opinion that the Tribunal



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has not awarded any sum towards loss of estate. Therefore, this Court is inclined to retain the said sum under the head of loss of estate.

11.In view of the above said discussions, the award of the Tribunal is re-assessed as follows:

Loss of Income	Rs. 6,60,000.00
Loss of love and affection/consortium	Rs. 1,60,000.00
Transportation	Rs. 10,000.00
Funeral Expenses	Rs. 25,000.00
Loss of estate	Rs. 15,000.00
Total	Rs. 8,70,000.00

12.The award of the Tribunal is modified from a sum of Rs.10,60,000/- to Rs.8,70,000/- with interest at the rate of 7.5% p.a. from the date of claim petition. The appellant / Insurance Company is directed to deposit the reduced award amount ie., Rs.8,70,000/-, less the amount already deposited with accrued interest and costs, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. The claimants shall share the reduced compensation in the proportion as prescribed in the award of the Tribunal. In other respects, the award of the Tribunal stands confirmed.



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13.In the result, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

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

1.The Motor Accident Claims Tribunal
/Special Subordinate Court
Tirunelveli

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



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R.VIJAYAKUMAR,J.

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