



C.M.A(MD)No.92 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.92 of 2019

and

C.M.P(MD)No.1066 of 2019

The New India Assurance Company Limited,
Nagercoil, Represented by its Branch Manager,
Opposite Anna Stadium,
Nagercoil and Village,
Agastheeswaram Taluk,
Kanniyakumari District.

... Appellant/3rd Respondent

Vs.

1.F.Jasmine

2.Pushparani

... 1st & 2nd Respondents/Petitioners

3.Manivel Murugan (Driver)

... 3rd Respondent/1st Respondent

4.M.Pandiarajan (Owner)

... 4th Respondent/2nd Respondent

*(R-3 set ex parte in Tribunal: Notice
dispensed with)*

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree in M.C.O.P.No.58 of 2017, dated 08.10.2018 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagercoil



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and allow the appeal with costs.

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For Appellant : Mr.J.S.Murali

For R-1 & R-2 : Mr.K.Vamanan

R-3 : *Ex parte*

For R-4 : Mr.M.John Robert Kennedy

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the quantum of award in M.C.O.P.No.58 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagercoil.

2. According to the claimants, the deceased was a fisherman, who was earning a sum of Rs.25,000/- per month, at the time when he passed away in an accident on 28.01.2010. The claimants have prayed for a sum of Rs.50,00,000/- as compensation.

3. The Insurance Company has filed a counter disputing their liability and quantum. The Tribunal was not convinced with the documents presented by the claimants and fixed the notional income at



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Rs.15,000/- and arrived at a sum of Rs.26,88,000/- under the head of loss of income. This portion of the award by taking into consideration a sum of Rs.15,000/- as notional income is under challenge in the present appeal.

4. The learned Counsel appearing for the appellant Insurance Company had contended that, as per the judgment of the Hon'ble Supreme Court of India reported in **2014 (1) TN MAC 459 (SC) [Syed Sadiq etc., Vs. Divisional Manager, United India Insurance Co. Ltd.,]**, for an accident, in the year 2008, a sum of Rs.6,500/- has been fixed as notional income and therefore, the same may be fixed for the accident that has taken place in the year 2010.

5. Per contra, the learned Counsel appearing for the respondent herein had relied upon Exhibit P.6, which is the Identity card issued to the deceased person as a fisherman and also relied upon Exhibit P.10, which is an award passed in M.C.O.P.No.46 of 2013, wherein, another fisherman, who was involved in the same accident was awarded compensation taking into consideration, a sum of Rs.9,000/- as notional income per month. Hence, he prayed for fixing the compensation amount



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on the basis of the above said submissions.

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6. I have carefully considered the submissions made on either side and perused the materials available on record.

7. A perusal of Exhibit P.10 reveals that another fisherman, who was involved in the same accident had filed M.C.O.P.No.46 of 2013 on the file of the Chief Judicial Magistrate, Kanyakumari District (Motor Accident Claims Tribunal), Nagercoil as against the present appellant Insurance Company. The Tribunal has fixed the notional monthly income at Rs.9,000/- per month. The said award has been complied with by the Insurance Company.

8. Therefore, this Court finds it stay safe to follow the said notional income of Rs.9,000/- per month. Considering the fact that the deceased was aged 32 years and working in an un-organized sector, this Court is inclined to fix the future prospects at 40%. The age of the deceased was 32 years and the correct multiplier is 16. There are two claimants and therefore, 1/3 could be deducted towards personal expenses. Considering the above said facts, the loss of income could be



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arrived at $(9,000 + 3,600 \times (40\%)) \times 12 \times 16 \times \frac{2}{3} = 12,600 \times 12 \times 16 \times \frac{2}{3} = \text{Rs.}16,12,800/-$.

9. Considering the above said facts, the award of the Tribunal can be re-assessed as follows:

S.No.	Head	Compensation
01.	Loss of Earning Capacity	Rs.16,12,800/-
02.	Loss of Estate	Rs.15,000/-
03.	Loss of Consortium to the first claimant	Rs.40,000/-
04.	Loss of love and affection to the second claimant	Rs.40,000/-
05.	Funeral expenses	Rs.15,000/-
06.	Transportation	Rs.15,000/-
07.	Medical Expenses	Rs.15,000/-
08.	Attendant Charges	Rs.10,000/-
	Total	Rs.17,62,800/-

10. In view of the above said deliberations, the award of the Tribunal is modified from Rs.27,73,000/- (Rupees Twenty Seven Lakhs Seventy Three Thousand only) to **17,62,800/-** (Rupees Seventeen Lakhs Sixty Two Thousand and Eight Hundred only), which will carry interest at the rate of 7.5% from the date of claim petition. The claimants shall



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share the award amount as per the proposition laid by the Tribunal. Any excess amount deposited by the Insurance Company shall be refunded with accrued interest.

11. The appeal stands partly allowed to the extent as stated above.

It is made clear that the order of pay and recovery passed by the Tribunal is hereby confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

29.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Nagercoil.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
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