BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.936 of 2024
and
C.M.P.(MD)No.9878 of 2024

The Branch Manager,
ICICI Lombard General Insurance Company Limited,
No.11/1B, 3rd Floor, G.V.Complex,
Byepass Road, Madurai – 10. .... Appellant / 2nd Respondent

Vs.

1.Kalayarasi

2.Ramar ... Respondents 1 & 2/ Claimants 1 & 2

3.Ramar ... 3rd Respondent / 1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to call for the records pertaining to the fair and decreetal order passed by the Motor Accident Claims Tribunal /

Additional District Court (FTC) in MCOP.No.137 of 2019 dated 15.11.2022, set aside the same by allowing the appeal.

For Appellant : Mr.P.Pethu Rajesh
For Respondents : Mr.D.Srinivasaragavan
for R.1 & R.2

JUDGMENT

This appeal is directed against the award dated 15.11.2022 made in MCOP.No.137 of 2019 on the file of Motor Accident Claims Tribunal / Additional District Court (FTC), Tenkasi. The insurance company is the appellant. The parents of the deceased are the claimants in this case. The Court below had directed the insurance company to pay a sum of Rs.23,98,000/- to the mother of the deceased with interest at 7 ½ % per annum. The question that calls for consideration is whether interference with the said award is warranted.

2.The learned counsel for the insurance company relied on the decisions reported in ***2022 LiveLaw (SC) 841 (Meena Devi Vs Nunu Chand Mahto @ Nemchand Mahto & Others)*** and the judgment rendered in ***Civil Appeal No.6902 of 2021 (Kurvan Ansari @ Kurvan Ali Vs Shyam Kishore Murmu & Another)*** in support of his contention that the notional income for a child should be fixed at Rs.15,000/- per annum. He called upon this Court to reduce the compensation to Rs.5,00,000/- with interest.

3.Per contra, the learned counsel for the claimants submitted that the impugned award is well reasoned and that it does not call for interference.

4.We carefully considered the rival contentions and went through the evidence on record.

5.We may observe at the outset that the deceased hailed from an economically poor background and that he was a meritorious student. He had scored 99 marks out of 100 in Mathematics and 100 out of 100 in Science subject in 10^{th} standard. He had scored a total of 460 marks out of 500 in the board examination. He had scored above 95 marks in 4 out of 5 subjects. Only in English, his performance was not that impressive.

In normal circumstances, he would have pursued his higher secondary education and gone on to secure graduation. On account of his family background, he had work as a part time employee in a work shop. He also studied in the Mechanical Engineering Department of a polytechnic college. He had also done well in sports. His employer was examined as PW.2 and he had issued Ex.P20 certificate stating that the deceased earned around Rs.8000/- per month + Rs.100/- towards daily batta. Since the claimants have adduced evidence establishing that the deceased though aged 15 years was earning, we hold that the decisions relied on by the learned counsel for the appellant are not applicable to the present case and are distinguishable on facts. In those cases, the deceased were admittedly children who were not earning anything. In such circumstances, the notional income has to be fixed as laid down in the statute. That is not the case here. Not only was the income certificate marked, but the employer who was the paymaster of the deceased was also examined as a witness.

6.We therefore hold that the deceased was earning a sum of Rs. 8000/- per month. The employer had stated that he was also getting daily batta of Rs.100/-. One would not be working for all the 30 days in a month. He would have worked for about 24 days a month. Therefore, the monthly income earned by the deceased can be taken as Rs.10,400/-. Adding future prospects at 40%, it comes to Rs.14,560/-. Since 50% deduction has to be made, it will come to Rs.7280/-. 18 would be the multiplier. Therefore, the loss of dependency would come to Rs. 15,72,480/-. Towards loss of estate and funeral expenses Rs.30,000/- has to be awarded. Applying the principle laid down in ***National Insurance Company Limited Vs Pranay Sethi (2017 (16) SCC 680)***, a further sum of Rs.80,000/- has to be awarded. Thus total compensation payable would come to Rs.16,82,480/-. The award passed by the Court below is accordingly modified.

7.The Court below had rightly awarded 7½ % per annum to be given from the date of filing of the petition. The Court below had rightly directed that the compensation has to be paid to the mother of the deceased. The impugned award is accordingly modified. It is seen that the accident took place on 31.08.2015. He was taken for first aid to Raja Hospital, Pavoorchatram and thereafter rushed to Rosemary Mission

Hospital, Tirunelveli. He died only on 04.09.2015. The claimant would have definitely incurred substantial expenditure towards transportation cost and also towards medical treatment. Unfortunately evidence has not been adduced in this regard. Therefore, we are unable to make further addition to the compensation.

8.This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (R.P., J.)
09.12.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

The Motor Accident Claims Tribunal / Additional District Court (FTC), Tenkasi.

G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

MGA

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