



C.M.A(MD).No.209 of 2020

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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.209 of 2020

Cholamandalam M.S.General Insurance Company Limited.

Represented by its Branch Manager

2nd Floor, Dare House

No.2, N.S.C.Bose Road

Chennai Corporation

...Appellant/2nd Respondent

vs.

1.Sumathi

2.Selvakumar

3.Udhayakumar

....Respondents 1 to 3
/Petitioners

4.Asaithambi

...4th Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed in MCOP.No.6 of 2018 on the file of the Motor Accident Claims Tribunal /Additional District Court (III Additional District and Sessions Court), Thanjavur at Pattukkottai dated 30.04.2019.



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For Appellant : M/s.K.R.Shivashankari

For R1 to R3 : Mr.S.Deenadhayalan

R4 : Died

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the award passed in MCOP.No.6 of 2018 on the file of the Motor Accident Claims Tribunal /III Additional District and Sessions Court, Thanjavur at Pattukkottai.

2.The legal heirs of the deceased have filed the claim petition seeking a compensation of Rs.30.00 lakhs.

3.According to the learned counsel for the claimants, the deceased was doing textile business by going around the streets in bicycle and he was earning a sum of Rs.30,000/- per month. The Tribunal has found that there is no proof of actual income of the deceased person and has taken a notional income at Rs.15,000/- p.m and has applied a multiplier of 13 and has proceeded to fix the loss of income at Rs.19,50,000/-. Challenging this portion of the award, the present appeal has been filed by the Insurance Company.



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4. According to the learned counsel for the appellant/Insurance Company, when the claimants have not placed on record any document to establish the monthly income, the notional income fixed at Rs.15,000/- is on the higher side. Hence, he prayed to reduce the monthly notional income to Rs.10,000/- per month.

5. Per contra, the learned counsel for the respondents had contended that the notional income fixed by the trial Court at Rs.15,000/- is reasonable for the year 2017 and hence, he prayed for sustaining the award passed by the Tribunal.

6. I have carefully considered the submissions made on either side and perused the material records.

7. The only issue that has arisen in the present appeal is whether the Tribunal was right in fixing the notional income at Rs.15,000/- per month. The Hon'ble Division Bench of our High Court reported in **2019 (1) TNMAC 54 (Mad) (M.Santhosh Vs.New India Assurance Co.,Ltd.)** has fixed the notional income at Rs.11,000/- for an accident that has



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taken place in the year 2014. Another Division Bench judgment of our High Court reported in **2022 (2) TN MAC 297 (DB) (Future General India Insurance Co.,Ltd., Vs. Baby and others)** has fixed the notional income at Rs.13,000/- per month for an accident that has taken place in the year 2016. In the present case, the accident having taken place in the year 2017, this Court is of the considered opinion that notional monthly income could be fixed at Rs.13,700/-.

8.In view of the above discussions, the quantum of compensation is re-assessed as follows:

Monthly Income = Rs.13,700/-

Add:25% future prospects
(13700+ 25/100) = Rs. 3425/-

Less: 1/3rd personal expenses
(17125x 1/3) =Rs. 5708/-
(Rs.17125-Rs.5708/-)

Loss of monthly income Rs. 17,81,000/-
(Rs.11417/- x12x13)

Loss of consortium Rs. 40,000/-

Loss of estate Rs. 15,000/-

Funeral expenses Rs. 20,000/-

Transportation Rs. 5,000/-

Total Rs. 18,61,000/-



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9.The quantum of award under the head of loss of income is reduced from Rs.19,50,000/- to Rs.17,81,000/-. The award of the amount under other heads stand confirmed.

10.In view of the above said deliberations, the total compensation of Rs.20,30,000/- is hereby modified and reduced to Rs.18,61,000/-. The said amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. The Appellant/Insurance Company is directed to deposit the said modified compensation amount along with interest within a period of six weeks from the date of receipt of a copy of this judgment. The said compensation shall be apportioned among the claimants as per proportion prescribed by the Tribunal. If excess amount has been deposited by the Insurance Company, the same shall be refunded along with accrued interest. In other respects, the award of the Tribunal stands confirmed.

11.In the result, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

26.04.2024

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

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To

1.The Motor Accident Claims Tribunal
/III Additional District and Sessions Court,
Thanjavur at Pattukkottai

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



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R.VIJAYAKUMAR,J.

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