



C.M.A.(MD)No.1387 of 2016

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Dated: 12.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1387 of 2016

1. Rajalakshmi
2. Minor. Subanandhini
3. Minor. Shyam
4. Subbammal

(Minors 2 and 3 petitioners are represented by their mother and next guardian 1st petitioner herein)

.. Appellants/Petitioners

Vs.

1. Esakkiappan
2. M/s.M.Sundaram Chettiyar & Sons
Office No.17, Perumal Chetty Lane,
Bigh Bazaar Street, Dindigul
3. The New India Assurance Co. Ltd
through its Divisional Manager
No.3, Main Road, First Floor,
Dindigul-624 001

.. Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in MCOP No.229 of 2011 on the file of the Motor Accident Claims Tribunal(Fast Track Court No.2) Tirunelveli dated 08.08.2011.

For Appellant : Mr. T.Selvakumaran

For R1 : Mr.P.Samuel Gunasingh
For R2 : No appearance
For R3 : No appearance



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed as against the common order passed in MCOP No.229 of 2011 on the file of the Motor Accident Claims Tribunal(Fast Track Court No.2) Tirunelveli. Wherein the appellant herein has filed claim petition before the Tribunal for the death of one Chidambaranathan who died in the road accident.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. The brief facts of the petition filed by the petitioner are as follows:

On 06.01.2011 when the deceased was riding in a motor cycle bearing Reg. No. TN 74 Y 0671 from Thuckalay to Tirunelveli along with his wife and his son as pillion rider, at about 11.00 am., a tanker lorry bearing Reg. No. TN 57 A 7273 came in a rash and negligent manner and dashed against the two wheeler, due to which the rider of the two wheeler as well as the pillion rider sustained injuries. Thereafter the rider of the two wheeler died on 17.01.2011. The accident took place due to the negligence on the part of the driver of the first respondent and he was aged about 40



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years and was working as Junior Telecom Officer, BSNL, Nagercoil and earning a sum of Rs.51,819/- and also earning a sum of Rs. 25,000/- from tuition. Therefore the petitioners claim a sum of Rs.2 Crores towards compensation.

4. The brief facts of the counter filed by the first respondent are as follows:

The petition is not maintainable either in law or on facts. The petitioners are put to strict proof of the age, occupation, monthly income, manner of accident and the legal heirs of the deceased. The accident was took place due to the negligence on the part of the deceased and not due to the negligence on the part of the driver of the tanker lorry. The vehicle involved in the accident was insured with the third respondent, thereby the third respondent is liable to pay the compensation to the petitioners.

5. The brief facts of the counter filed by the third respondent are as follows:

The petition is not maintainable either in law or on facts. The first respondent vehicle was insured with the second respondent on the date of accident. The driver of the first respondent lorry has no valid permit at the time of accident. The salary particulars of the



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deceased are not correct. The accident took place due to the negligence on the part of the deceased and not on the part of the first respondent. The amount claimed by the petitioners are too high, hence the petition is liable to be dismissed.

6. Before the Tribunal, on the side of the petitioners they have examined P.W.1 to P.W.3 and marked exhibits Ex.P.1 to P.18 and on the side of the respondent R.W. 1 to R.W. 3 were examined and documents Ex.R.1 to R.3 were marked.

7. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a sum of Rs. 63,06,300/- with interest @8% per annum from the date of petition till realization of the amount towards compensation. As against the order passed by the Tribunal, the petitioners have preferred the present appeal on the ground of inadequacy of compensation.

8. The learned counsel appearing for the appellant would contend that the deceased was working in BSNL department and he was earning monthly salary of Rs.51,819/- but the Tribunal has not taken the salary of the deceased as per the salary certificate. But



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the Tribunal failed to consider the future prospectus and also failed to award fair and just compensation, therefore the order passed by the Tribunal is liable to be set aside

9. The learned counsel appearing for the respondents would contend that the Tribunal has taken the salary of the deceased after deducting the statutory deductions and adopted proper multiplier method and awarded a sum of Rs. 63,06,600/- along with interest @ 8% per annum from the date of petition till realization of the amount. The Tribunal after taking into consideration all the evidences adduced on both sides passed the order of just compensation and hence the petition is liable to be dismissed.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeals is :

i)whether the appeal is liable to be allowed or not?

11. In this case the appellants herein have filed petition for compensation before the Tribunal. The petitioners are legal heirs of the deceased Chidambaranathan. According to the petitioners the deceased was aged about 40 years at the time of accident and he



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was earning a sum of Rs.51,819/- at the time of accident but the Tribunal has taken the salary of the deceased as Rs.50,400/-. The Tribunal has also not awarded future prospectus, since the deceased was working in the permanent job., future prospectus to be added in the salary.

13. In order to prove the case of the petitioners they have examined P.W.1 to P.W.3 and marked exhibits Ex.P.1 to P.18 and the respondents have examined R.W. 1 to R.W. 3 and marked documents Ex.R.1 to R.3. The petitioners have produced the salary certificate of the deceased as Ex.P.4. On perusal of Ex.P.4, it reveals that the deceased was earning a sum of Rs.51,819/- towards monthly salary. In order to prove the age of the deceased, the petitioners have produced salary certificate and as per the certificate his date of birth is 03.06.1969. The date of accident was 06.01.2011, therefore the deceased completed 41 years. Since the deceased was working in permanent job and as per the case of **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, 30% can be added for future prospectus. As stated above this Court also has taken the income of the deceased as Rs. 51,819/- and after adding 30% future prospectus, the monthly income of the deceased would come to Rs.67,364/- and his annual



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income would come to Rs.8,08,368/-. Considering the salary of the deceased statutory deductions have to be deducted, thereby 10% of the income has to be deducted for professional tax and income tax, thereby the amount would come around to Rs.7,27,532/-. This Court also considering the dependency of the deceased $\frac{1}{3}^{\text{rd}}$ of the income of the deceased has to be deducted for his personal expenses, thereby the annual income of the deceased would come to Rs.4,85,021/-. Considering the age of the deceased multiplier of 14 is adopted, thereby award amount would come to Rs.67,90,300/-. Further the petitioners have also produced medical bills for a sum of Rs.2,28,900/- but the Tribunal allowed the medical bills for a sum of Rs.2,06,600/- after rejecting the bills which were not as cash bills. Therefore this Court is inclined to allow the medical bills for a sum of Rs.2,06,600/-. The petitioners are entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate, Rs.40,000/- each towards loss of consortium, thereby the petitioners in total are entitled to Rs.70,91,900/- (rounded to Rs. 72,00,000/- towards compensation.

14. In the result this Civil Miscellaneous Appeal stands partly allowed and the award passed by the Tribunal in MCOP No. 229 of 2011 is modified to the effect that the petitioners are



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entitled for a sum of Rs. 71,86,900/- (Rupees Seventy Two Lakhs only) towards compensation and the second respondent is directed to deposit the amount awarded by this Court with interest @ 7.5 % per annum from the date of petition till the realization of the amount within a period of two months from the date of this judgment. The petitioners 1 to 3 each are entitled to a sum of Rs.20,00,000/- (Rupees Twenty Lakhs each) and the fourth petitioner is entitled to Rs.12,00,00/- (Rupees Twelve lakhs only) with proportionate interest and cost. On the deposit being made the petitioners are at liberty to withdraw the same by filing appropriate petition before the Tribunal and the award amount of the minors two and three are ordered to be deposited in to a nationalized bank for three years or till the date of attaining majority whichever is earlier. The first petitioner is at liberty to receive the interest of the deposit amount. The appellants are directed to pay the additional court fee for the enhanced award amount. No costs.

12.03.2024

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

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1. The Motor Accident Claims Tribunal
Fast Track Court No.2, Tirunelveli
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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