



C.M.A.(MD)No.1080 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **R.VIJAYAKUMAR**

C.M.A.(MD)No.1080 of 2018

and

C.M.P.(MD)No.11093 of 2018

The Manager,
Balaji Reliance Insurance Company Limited,
Kathi Village Bavan 2nd Floor,
D.P.K.Road, Madurai -1.

... Appellant

vs.

1.Gowri
2.Kamalakkanna (Minor)
Shanmugathammal
3.Lavanya

... Respondents

(R2 is represented through his mother and guardian, the first respondent.)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.62 of 2015, dated 11.10.2017 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Ramanathapuram.

For Appellant	:Mr.J.S.Murali
For R1 and R2	:Mr.Ramanujam for Mr.J.Karthikeyan



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JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the quantum of award passed in M.C.O.P.No.62 of 2015, on the file of the Motor Accidents Claims Tribunal, Ramanathapuram.

2.According to the claimants, the deceased was 48 years old contractor earning a sum of Rs.45,000/- per month. They have prayed for a compensation of Rs.40,00,000/-.

3.A counter was filed by the Insurance Company disputing the age and quantum of the award as prayed for in the claim petition.

4.The Tribunal has fixed the monthly income at Rs.25,000/- per month based upon Ex-P17 and Ex-P18, income tax returns for the assessment years 2009-10 and 2010-2011 and proceeded to add 30% towards future prospects and deducted 1/3 towards personal expenses and applied a multiplier of 13 and arrived at a compensation of Rs.33,80,000/- under the head of loss of income. The Tribunal has awarded a sum of Rs.1,00,000/- as consortium to the wife and



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Rs.50,000/- towards loss and affection to the second petitioner. The Tribunal has awarded a sum of Rs.50,000/- towards loss of estate and Rs.25,000/- towards funeral expenses and totally a sum of Rs.36,05,000/-, has been awarded as compensation.

5.The present appeal has been filed by the Insurance Company admitting the liability to an extent of Rs,19,60,417/- and disputing the liability to an extent of 16,44,583/-.

6.According to the learned Counsel appearing for the appellant Insurance Company, a perusal of Ex-P17 and Ex-P18, income tax returns would clearly indicate the monthly income at Rs.20,000/-. Therefore, the Tribunal was not right in fixing a notional income at Rs.25,000/- per month. He further contended that the age of the deceased being 48 years, the Tribunal ought to have fixed future prospects only at 25% and not at 30%. He further contended that the award amount under the head of consortium to the wife and loss of love and affection to the second petitioner are on the higher side. Hence, he prayed for reducing the award passed by the Tribunal.



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7. *Per contra*, the learned Counsel appearing for the respondent claimants had contended that as per the contentions of the claimants, apart from the deceased being a Contractor, he was also having agricultural income and therefore, the Tribunal has rightly fixed the notional income at Rs.25,000/- per month. He further contended that 30% of future prospects was added prior to the pronouncement of judgment in *Pranay Sethi* case and therefore, the Tribunal cannot be found fault for fixing 30% towards future prospects. He further contended that the award passed by the Tribunal is reasonable and it does not call for any interference.

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

9. A perusal of Ex-P18 reveals that it is the income tax return for the assessment year 2010-11, wherein, the gross total income was shown as Rs.2,32,402/-. The accident has taken place on 23.03.2012. Therefore, this Court finds it safe to fix the notional income per annum at Rs.2,50,000/-, which would result in the monthly notional income of Rs.21,000/-. Though the judgment *Pranay Sethi* case was delivered after



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the orders of the Tribunal, the judgment of the Hon'ble Supreme Court is having retrospective effect and therefore, it is binding upon all the pending proceedings. Therefore, the Tribunal was not right in fixing 30% towards future prospects and this Court is inclined to reduce the same to 25%.

10.Considering the aforesaid facts, the award of the Tribunal is re-assessed as follows:-

Monthly notional income	Rs.21,000.00	
Add: 25% towards future prospects	Rs. 5250.00	

	Rs. 26,250.00	
Less: 1/3 rd towards personal exp. (Rs.26,250x1/3)	Rs 8,750.00	

	Rs.17,500.00	

Total loss of income (17,500/-x12x13)	Rs.27,30,000.00	Rs.27,30,000.00
Loss of love affection (Rs.40000x2)		Rs. 80,000.00
Loss of estate		Rs. 50,000.00
Funeral expenses		Rs. 15,000.00
Transport expenses		Rs. 10,000.00
Total		Rs.28,85,000.00



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11.The award of the Tribunal is modified from Rs.36,05,000/- to Rs.28,85,000/-. The award amount shall carry 7.5% interest per annum from the date of the claim petition excluding the period of default, if any. Excess amount, if any deposited by the appellant Insurance Company shall be refunded along with accrued interest. The first claimant shall be entitled to withdraw her share of Rs.14,85,000/- along with accrued interest and costs. The second claimant on being declared as major will be entitled to withdraw her share of Rs.14,00,000/- along with accrued interest and costs.

12.The Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

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

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To

The Additional District Judge,
The Motor Accidents Claims Tribunal,
Ramanathapuram.



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R.VIJAYAKUMAR, J.

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