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CMA.(MD)No.1131 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08/07/2024

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The Hon'ble Mr.Justice **G.ILANGO VAN**

CMA(MD)No.1131 of 2021

1.M.Ramalingam
R.Subbulaxmi (Died)
2.R.Hemalatha
3.R.Pandipachamuthu : Appellants/
Petitioners 1, 3 and 4

Vs.

1.The Managing Director,
KSRTC, Fort,
Thiruvananthapuram,
Kerala-695 023.
2.The Branch Manager,
The New India Assurance Company Ltd.,
Having its Branch Office,
Jerome Building,
Fort Station Road,
Trichy-18. : Respondents/Respondents

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award made in MCOP No.538 of 2017, dated 14/07/2021 on the file of the Motor Accident Claims Tribunal/Special District Court, Trichy and pass such other or further orders.



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For Appellants : Mr.D.Boopal
For 1st Respondent : Mr.S.Srinivas Raghavan
For 2nd Respondent : Mr.J.S.Murali

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking to set aside the award passed in MCOP No.538 of 2017, dated 14/07/2021 by the Motor Accident Claims Tribunal/Special District Court, Trichy.

2.The facts in brief:-

On 01/05/2017, the deceased Thangavel was travelling along with his friend in a two wheeler bearing registration No.TN-39-CB-0869 on the Ooty-Cudaloor main road. He was the rider of the vehicle. At that time, a Bus bearing registration No.KL-15-A-504 was driven by its driver in a rash and negligent manner, tried to overtake the deceased Thangavel's vehicle. In that process, it hit the deceased. As a result of which, he fell down and taken to the Hospital where he was declared to be dead.

3.Over the occurrence, a case in Crime No.155 of 2017 was registered by the Pudumand Police Station for the offences under sections 279 and 304(A) IPC. He was aged about 27 at the time of the occurrence and earning Rs.18,000/- per month by working in a private Company at



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Tiruppur. The dependents filed the claim petition claiming compensation of Rs.20,00,000/- before the Tribunal.

4.That was resisted by the respondents by filing counter before the Tribunal stating the the occurrence took place because of the rash and negligent riding on the part of the deceased; The driver of the Bus is noway responsible for the occurrence.

5.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 6 documents were marked. On the side of the respondents, one witness was examined and one document was marked.

6.At the conclusion of the enquiry process, regarding the first aspect of negligence, the Tribunal recorded a finding that it occurred due to the rash and negligent driving on the part of the offending vehicle driver.

7.Regarding the compensation, the age of the deceased was fixed at 22 and the notional income of the deceased was fixed at Rs.6,000/- per month. To that, 40% future prospects was added. By doing so, the monthly



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income was fixed at Rs.8,400/-. From that amount, half of the amount was deducted towards personal and living expenses. Multiplier 18 was taken. The loss of dependency was fixed Rs.9,07,200/-. To that, customary amounts were added as per the tabulation given as under:-

Loss of Dependency	Rs. 9,07,200/-
Transport charges	Rs. 7,000/-
Loss of estate	Rs. 10,000/-
Filial Consortium	Rs. 1,40,000/-
Funeral expenses	Rs. 10,000/-
Total	Rs.10,74,200/-

8.Against which, this appeal is preferred by the claimants for enhancement.

9.Regarding the negligent aspect, no discussion is required, since no serious argument was advanced by the respondents herein. No separate appeal was also filed challenging the award passed by the Tribunal. So, no discussion is required on that aspect. Regarding the quantum only, this appeal has been preferred.

10.The learned counsel appearing for the appellants would submit that fixation of Rs.6,000/- per month as notional income of the deceased is on the lower side. He was aged about 22 years at the time of the occurrence.



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11.The learned counsel appearing for the appellants would rely upon the judgments viz., **1)S.Chinnaraj Vs. Sureshkumar (2019(1) TN MAC 189(DB)]**; and **(2)Vethambal and others Vs. The Oriental Insurance Company and others [2024(1)SAR (AC) 625]** to show that the monthly income must be reasonably fixed by this court. But the fixation of the monthly income in the absence of documentary evidence, is always a guess work depending upon the age, job and wage structure during the relevant period.

12.No doubt that no document was filed on the side of the claimants to show the employment and the salary of the deceased. But the earliest document is available in the form of Ex.P1 complaint given by one Kanagaran, who was travelling in another vehicle along with the deceased and others. Wherein, he has stated that the deceased Thangavel was working in a private company at Tirupur. Since it is the earliest statement, that can be taken to show that the deceased was working in a private company at Tirupur. But in the absence of any proper evidence to show the employment, etc. particulars, only the notional income can be taken. So, considering the age of the deceased and the year of occurrence, the monthly income is reasonably fixed at **Rs.10,000/-** per month. It will meet the ends of justice. Therefore, Rs.6,000/-



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determined by the Tribunal as notional income is liable to be enhanced to Rs.10,000/- per month and accordingly, it is enhanced as such. 40% has to be added towards future prospects. After adding 40%, the notional monthly income is fixed as Rs.14,000/- (Rs.10,000/- + 40% (Rs.4,000/-). Half of the amount has to be deducted, since the deceased is a bachelor. Proper multiplier is 18. By doing so, the loss of dependency is calculated at **Rs.15,12,000/-**. The conventional amounts are also required modification as per the judgment of the Hon'ble Supreme court in **Pranay Sethi's** case.

13.The re-calculation of compensation made by this court is as follows:-

Head	Award of the Tribunal	Award of this court
Loss of Dependency	Rs. 9,07,200/-	Rs.15,12,000/-
Transport charges	Rs. 7,000/-	Rs. 7,000/-
Loss of estate	Rs. 10,000/-	Rs. 15,000/-
Filial Consortium (Only 3 claimants, since 2 nd claimant reported to be dead)	Rs. 1,40,000/-	Rs. 1,20,000/-
Funeral expenses	Rs. 10,000/-	Rs. 15,000/-
Total	Rs.10,74,200/-	Rs.16,69,000/-



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14. In the result, this Civil Miscellaneous Appeal is **partly allowed**. The award of the Tribunal is modified as **Rs.16,69,000/-**. The respondents are directed to pay the modified amount of **Rs.16,69,000/-** along with interest @ 7.5% per annum from the date of petition till the date of deposit. On such deposit, the claimants are entitled to get their share as per apportionment of the Tribunal. No costs.

08/07/2024

Index:Yes/No
Internet:Yes/No
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To,

1. The Motor Accident Claims Tribunal/
Special District Court,
Trichy.
2. The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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