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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.01.2024

CORAM :

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN**

**C.M.A(MD)No.489 of 2020
and
C.M.P(MD)No.5389 of 2020**

M/s.HDFC ERGO General Insurance Company Limited,
4th Floor, Rajanarayanan Towers,
No.70, Race Course Road,
Coimbatore.

... Appellant/2nd Respondent

Vs.

1.J.Durgadevi
2.Minor J.Kanishka
3.Minor J.Varshini
4.A.Saravanaprabhu
(Minors rep. by natural
guardian mother Durgadevi,
first respondent herein)

...Respondents 1to3/Petitioners 1to3
...4th Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 24.09.2018 passed in MCOP No.298 of 2016, by the Motor Accidents Claims Tribunal/Principal District Judge, Karur.

For Appellant : M/s.N.Shyllappa Kalyan
For R1 & R3 : M/s.K.Balasubramani



J U D G M E N T

DR G. JAYACHANDRAN,J.

AND

C.KUMARAPPAN,J.

This appeal is filed by the Insurance Company being aggrieved by the quantum fixed by the Tribunal as compensation for the untimely death of one Janarthanan in the motor accident.

2.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows: (i) On 29.04.2016, while the deceased Janarthanan was riding a motorcycle bearing Registration No.TN-28-AW-2092 near Karur to Salem bypass road from east to west, at that time, the first respondent's lorry bearing Registration No.TN-02-C-5049 was driven in a rash and negligent manner and dashed against the motorcycle. Due to which, the deceased Janarthanan died on the spot. At the time of accident, the deceased was 38 years old and he was working as a Manager in the hotel viz., 'South Indian Residency' at Vellore and earning a sum of Rs.24,000/- per month.

(ii) The second respondent filed a counter affidavit before the Tribunal stating that there is no negligence on the part of the driver of the bus and only on the negligent driving of the driver of the two wheeler, the accident had occurred.



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(iii) The claim petition has been preferred by the wife, two minor children and father of the deceased for a sum of Rs.50,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimants, three witnesses were examined as P.W.1 to P.W.3 and 21 documents were marked as Ex.P.1 to Ex.P.21, to substantiate their claim. On the side of the respondent, no witness was examined and one document was marked as Ex.R.1-the family card of the deceased Janarthanan.

4. After considering the evidence, the trial Court fixed the monthly income of the deceased as Rs.24,000/- based on the Salary Certificate marked as Ex.P.7 and the evidence of P.W.3, the Manager of the Hotel, in which, the petitioner was gainfully employed as the Manager. The age of the deceased at the time of accident fixed was 38 years and accordingly, multiplier '15' was applied following the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd-vs-Pranay Sethi and others***, reported in ***2017 ACJ 2700*** and applying the parameters laid in *Pranay Sethi* case, a sum of Rs.47,06,000/- was awarded with interest at the rate of 7.5 % p.a., from the date of application till the date of realization.



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5. The Insurance Company is aggrieved by the quantum on two grounds:

(i) The acceptance of the Salary Certificate-Ex.P.7 is questioned stating that there is no material to show that the deceased was paid a salary of Rs.24,000/- and except the salary certificate, there is no proof of genuineness and no proof of payment of salary like Bank statement or Income Tax returns.

(ii) Secondly, it is contended that a sum of Rs.1,00,000/- towards love and affection, is contrary to the dictum laid down in *Pranay Sethi* case. The Tribunal ought to have awarded only Rs.40,000/- towards love and affection.

6. Per contra, the learned counsel appearing for the claimants submits that the deceased, who was 38 years old at the time of untimely death, leaving behind his wife, two children and father. He was MBA Graduate with Diploma in Hotel Management and Catering Technology. He also had driving license and earning more than Rs.25,000/- per month. Apart from boarding and lodging, the deceased was paid Rs.24,000/- which is reflected in the Salary Certificate-Ex.B.7. Non-payment of income tax or non-production of attendance register cannot be a matter to decide the earning capacity of the deceased. The Tribunal has rightly held that the Salary Certificate-Ex.B.7 and



the testimony of Ex.B.3 cannot be suspected and is reliable. The view of the

Tribunal based on the evidence needs no interference.

7. On considering the materials regarding the fixation of monthly income, this Court finds as a Manager for Catering, he was also provided with lodging. Therefore, the trial Court though fixed monthly salary as Rs.24,000/-, had deducted $\frac{1}{4}$ for the personal expenses of the deceased though the employer has taken care of food and shelter. Therefore, this Court could not find any infirmity in the determination of monthly salary of the deceased.

8. For the aforesaid reasons, this Court is not inclined to interfere with the quantum fixed by the Tribunal. Hence, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.J.,J.) (C.K.,J.)
04.01.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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DR G. JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.
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To

1.The Motor Accidents Claims Tribunal/
Principal District Judge,
Karur.

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

C.M.A(MD)No.489 of 2020
and
C.M.P(MD)No.5389 of 2020

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