BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.1379 & 779 of 2024
& C.M.P.(MD).No.8573 of 2024

C.M.A.(MD).No.1379 of 2024

1.Palaniappan

2.Azhagu

3.Ramanathan ... Appellants

Vs.

1.Udayakumar

2.The Divisional Manager,
New India Assurance Company Limited,
Sethu Amirtham Towers,
Seenivasampillai Road,
Thanjavur. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in M.C.O.P.No.58 of 2020 on the file of the Motor Accident Claims Tribunal (Special District Judge), Thanjavur, dated 12.01.2024.

For Appellants : Mr.G.Karnan

For R-1 : Mr.S.Venkatesan

C.M.A.(MD).No.779 of 2024

The Divisional Manager,
New India Assurance Company Limited,
Sethu Amirtham Towers,
Seenivasampillai Road,
Thanjavur. ... Appellant

Vs.

1.Palaniappan

2.Azhagu

3.Ramanathan

4.Udayakumar ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in M.C.O.P.No.58 of 2020 on the file of the Motor Accident Claims Tribunal (Special District Judge), Thanjavur, dated 12.01.2024.

For Appellant : Mr.J.S.Murali

For R-1 to R-3 : Mr.G.Karnan

For R-4 : Mr.S.Venkatesan

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COMMON JUDGMENT

The claimants have preferred the appeal in C.M.A.(MD).No.1379 of 2024 seeking enhancement of compensation.

2. The Insurance Company has preferred the appeal in C.M.A.(MD).No.779 of 2024 challenging the award relating to 'pay and recover' and the quantum of compensation. The learned counsel of the appellant / Insurance Company would submit that since the appellant had established that the driver of the insured vehicle did not have a valid licence, the tribunal ought not to have directed pay and recovery. As regards quantum, the learned counsel would submit that considering the number of dependents 1/3rd of the income ought to have been deducted towards personal expenses and the tribunal had not deducted any amount towards personal expenses.

3. Since the findings on negligence is not under challenge, the facts leading to the filing of these claim petitions are unnecessary for the disposal of these two appeals.

4. The learned counsel appearing for the appellants / claimants in C.M.A.(MD).No.1379 of 2024 submitted that though the claimants have produced income tax returns for the period from 2016-2017 to 2019-2020 which would show that the deceased was earning nearly Rs.75,000/- per month, the same has been ignored by the Tribunal and hence, the compensation has to be enhanced.

5. The learned counsel appearing for the appellant / Insurance Company in C.M.A.(MD).No.779 of 2024, per contra, submitted that, the Tribunal had rightly rejected the income tax returns filed by the claimants and fixed the notional income correctly and that no deductions were made towards personal expenses and hence, the compensation has to be reduced.

6. The learned counsel appearing for the owner / fourth respondent in C.M.A.(MD).No.779 of 2024 submitted that the award of the Tribunal directing the Insurance Company to pay and recovery from him cannot be sustained. He further submitted that the compensation awarded by the Tribunal need not be interfered with.

7. The points for consideration in the instant appeal are as follows:

(a) Whether the direction to the appellant / Insurance company to pay and recover is justified?

(b) Whether the quantum of compensation awarded by the tribunal is just and reasonable?

8. As regards the first point, it is seen that the appellant / Insurance Company had established that the driver of the insured vehicle did not have a valid licence. It is well settled that where there is a violation of policy condition, the insurance company can be directed to pay the compensation at the first instance and thereafter, recover from the owner. Therefore, this Court finds no infirmity in the award of the tribunal directing the appellant / insurance company to pay and recover the compensation.

9. As regards compensation, the claimants have produced the evidence before the Tribunal that the deceased was a partner in a firm called Palaniyappa Agencies. The firm was doing the contract business in loading and unloading of goods for the Railways and that the deceased was also a partner of another firm called Srimathy Palaniappan, Laniappan and Alamelu Agencies and they were doing the business of transportation of goods for the Railways.

10. The income tax returns of the partnership firms before the Tribunal were marked as Exs.9 and 10 and Exs.17 to 21. All these income tax returns pertained to partnership firms. From the above documents, one cannot decide the exact income of the deceased. However, this Court finds from the income tax returns for the Assessment Year 2017-2018 that the gross total income is shown as Rs.8,61,057/-. Similarly, for the Assessment Year 2018-2019, the gross income is shown as Rs.9,11,012/- as per Ex.P.21. For the Assessment Year 2018-2019, the gross total income is shown as Rs.9,20,540/- in respect of Alamel Palaniappa Agencies. In respect of Palaniappa Agencies for the Assessment Year 2017-2018, Rs.5,45,000/- was shown as gross income. Admittedly, the first claimant and the deceased were partners in the two firms. Though the first claimant had admitted that he continued the business of the partnership firms even after the death of his wife, this Court is of the view that the contribution made by the deceased and the loss of income cannot be ruled out.

11. Considering the facts and circumstances of the case, this Court is of the view that the notional income of the deceased can be fixed at Rs. 18,000/- p.m. The deceased was aged 54 years at the time of accident.

Hence, 10% has to be added towards future prospectus and the multiplier has to be applied as '11'. Therefore, the compensation under the loss of income has to be Rs.18,000/-+1800*12*11=26,13,600/-(@1/3=8,71,200)=17,42,400/-(1/3 has to be deducted towards personal expenses which was erroneously not computed by the Tribunal).

12. The award under the other heads, *viz.,* loss of consortium towards spouse and children, loss of estate and loss of funeral expenses are not under challenge. Therefore, they are confirmed. Thus, the compensation is modified as follows:

Sl. No	*Description*	*Amount awarded by the Tribunal*	*Amount awarded by this Court*	*Award confirmed, enhanced or granted*
1	Loss of Income	Rs. 15,97,200/-	Rs. 17,42,400/-	Enhanced
2	Loss of Spousal Consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
3	Lose of Parental Consortium towards children	Rs.40,000 *2= Rs.80,000	Rs.80,000/-	Confirmed
4	Loss of Funeral Expenses	Rs.15,000/-	Rs. 15,000/-	Confirmed
5	Loss of Estate	Rs. 18,000/-	Rs. 18,000/-	Confirmed
Total		**Rs.17,50,200/-**	**Rs.18,95,400/-**	Enhanced by **Rs.1,45,200/-**

13. The second respondent / Insurance Company in C.M.A.(MD).No.1379 of 2024 is directed to deposit the compensation amount as determined by this Court. The second respondent is at liberty to recover the compensation from the first respondent / owner of the vehicle in the above said appeal in accordance with the guidelines issued by the Hon'ble Supreme Court in the case of ***Nanjappa vs. State of Karnataka*** reported in ***2015 (1) SCC 550.***

14. The second respondent is directed to deposit the compensation amount of **Rs.18,95,400/- (Rupees Eighteen Lakhs Ninety Five Thousand and Four Hundred only)** as determined by this Court before the Tribunal in M.C.O.P.No.58 of 2020 with accrued interest at 7.5% p.a., from the date of the claim petition till the date of realization and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this order.

15. On such deposit, the appellants/claimants in C.M.A.(MD).No.1379 of 2024 are entitled to withdraw their award amount as per the apportionment fixed by the Tribunal with proportionate interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal. The appellants/claimants are directed to pay the necessary Court Fee, if any, on the enhanced amount.

16. In the result, the Civil Miscellaneous Appeal in C.M.A.(MD).No.1379 of 2024 is partly allowed and the Civil Miscellaneous Appeal in C.M.A.(MD).No.779 of 2024 is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

23.10.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
TSG/ars

To:
1.The Motor Accidents Claims Tribunal,
Special District Judge, Thanjavur.
2.The Divisional Manager,
New India Assurance Company Limited,
Sethu Amirtham Towers,
Seenivasampillai Road,
Thanjavur.

3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

SUNDER MOHAN, J.

TSG

C.M.A.(MD) Nos.1379 & 779 of 2024

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