



C.M.A.(MD)No.681 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.681 of 2018

and

C.M.P(MD) No.7845 of 2018

The Regional Manager,
New India Assurance Company Limited,
Market Road,
Thanjavur.

... Appellant/Respondent No.2

-vs-

1. Vinitha
2. Minor Hasini
3. Sumithra
4. Jayaraman

... Respondents 1 to 4/ petitioners

(The Minor 2nd respondent is represented by her mother and natural guardian first respondent. Hence, notice is not necessary to the 2nd Respondent)

5. Amutha

... 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 31.07.2017 passed in M.C.O.P.No.275 of 2017 on the file of the Motor Accident Claims Tribunal /District Court, Thanjavur.



C.M.A.(MD).No.681 of 2018

For Appellant : Mr.C.Prabhu Rajadurai
For Respondents : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award passed by the Motor Accident Claims Tribunal/District Court, Thanjavur in M.C.O.P.No.275 of 2017 on the ground of liability as well as the quantum.

2. According to the learned counsel appearing for the appellant, the claimants have not properly established the fact that the vehicle belonging to the first respondent was involved in the accident and it is a case of the hit and run case and therefore, the appellant is not liable to pay the compensation.

3. A perusal of the discussion of the Tribunal clearly shows that one Dharmarajan has been examined as P.W.2, who is the eyewitness and he has specifically stated that the accident has taken place only due to the rash and negligent driving on the part of the driver of the first respondent. No contra oral or documentary evidence has been let in on the side of the respondents. The credibility of P.W.2 has not been shaken during cross examination. Therefore, the contention of the learned counsel appearing for the appellant



C.M.A.(MD).No.681 of 2018

that the vehicle of the first respondent was not involved in the accident and the case of hit and run is not acceptable.

4. The learned counsel appearing for the appellant had further contended that the Tribunal ought not to have fixed Rs.6,500/- as notional income, when the Salary Certificate produced by the claimants as Ex.P.9 has been rejected by the Tribunal. It is the contention of the claimants that the deceased person was working as a sales man in a private company and they have produced Salary Certificate under Ex.P.9, which reflects that the deceased received a sum of Rs.14,000/- per month. The said document has been rejected by the Tribunal on the ground that the authority, who had issued salary certificate has not been examined. Even assuming that Ex.P.9 is not admissible in evidence, the accident having taken place in the year 2016, the Tribunal ought to have fixed the notional income not at Rs.6,500/-.

5. Even though the names of the respondents are printed in the cause list, no one appeared on behalf of them.

6. The learned counsel appearing for the appellant had further contended that the deceased was not a permanent employee and he was self



C.M.A.(MD).No.681 of 2018

employed person and therefore, the future prospects ought not to have fixed at 50%, in view of the judgment of the Hon'ble Supreme Court reported in ***2017 (16) SCC 680 (Insurance Company Limited Vs. Pranay Sethi and others)***.

7. Considering the fact that the deceased had died at the age of below 40 years and the correct future prospectus is at 40% and therefore, this Court is inclined to reduce the future prospectus from 50% to 40%.

8. The learned counsel appearing for the appellant had further contended that in the judgment of the trial Court in coloumn Nos.9 to 11 under the head of loss of consortium a sum of Rs.3,00,000/- has been awarded to the four claimants. He further contended that only a sum of Rs. 40,000/- would be awarded towards loss of consortium and it would be each one of the claimants. In view of the above said judgment of the Hon'ble Supreme Court, the maximum sum of Rs.40,000/- could be awarded towards loss of love and affection to each one of the claimants. Therefore, only a sum of Rs.1,60,000/- could be awarded to all the four claimants and therefore, the award of the Tribunal under serial Nos. 9 to 11 have to be set aside and instead they should be substituted at Rs.1,60,000/-.



C.M.A.(MD).No.681 of 2018

WEB COPY

9. In view of the above, this Court is inclined to modify the award as follows:

Considering the year of accident is 2016, the monthly income of the deceased is fixed at Rs.8,000/- adding 40% towards future prospectus, after deducting $\frac{1}{4}$ for personal expenses and applying multiplier “15”, adding a sum of Rs.25,000/- towards funeral expenses, and a sum of Rs.10,000/- towards loss of estate, and a sum of Rs.10,000/- towards Transport Expenses, and the loss of love and affection to all the claimants put together a sum of Rs.1,60,000/- can be arrived at.

10. In view of the above said deliberations, the award of the Tribunal is modified as follows:

Monthly Income	: Rs.8,000/-
Add 40% for future prospectus	: Rs.8000 + 40% =11,200/-
Deduction of $\frac{1}{4}$ th for personal Expenses	: Rs.11,200 (-) 2,800= 8,400/-
Annual income Rs. 8,400x12	: Rs. 1,00,800/-
Loss of income after applying multiplier 15 (Rs.1,00,800x15)	: Rs. 15,12,000/-
Loss of love and affection (Rs.40,000x4)	: Rs. 1,60,000/-
Funeral Expenses	: Rs. 25,000/-
Loss of Estate	: Rs. 10,000/-
Transport Expenses	: <u>Rs. 10,000/-</u>
Total	: Rs.17,17,000 /-



C.M.A.(MD).No.681 of 2018

WEB COPY

11. The award of Rs.16,61,160/- is hereby modified and enhanced to a sum of Rs.17,17,000/- (Rupees Seventeen Lakhs and Seventeen Thousand only). The award is sustained under the other heads. The 1st claimant/wife shall be entitled to Rs.8,50,000/- (Rupees Eight Lakhs and Fifty Thousand only), the minor claimant 2 will be entitled to Rs.5,20,000/- (Rupees five Lakhs and Twenty Thousand only) and the claimants 3 and 4 each will be entitled to Rs.1,73,500/- (Rupees One Lakh Seventy Three Thousand and Five Hundred only). The balance award amount shall be deposited by the Insurance Company within a period of eight weeks from the date of receipt of a copy of this order. The entire award amount shall carry interest at the rate of 7.5% from the date of claim petition. In respect of the minor claimant/2nd respondent, the amount shall be deposited in a Nationalized Bank till she attains majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months.



C.M.A.(MD).No.681 of 2018

WEB COPY

12. With the above said observations, this Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

10.04.2024

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

1. The Motor Accidents Claims Tribunal,
District Court, Thanjavur.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.681 of 2018

R.VIJAYAKUMAR,J.

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C.M.A.(MD)No.681 of 2018

10.04.2024