



C.M.A.(MD)No.57 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.07.2024

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

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and

C.M.P.(MD)No.539 of 2017

The Branch Manager,
National Insurance Company Limited,
Branch III, Thanthai Periyar Market Complex,
Govindhasamy Pillai Street,
Palaiya Perunthu Nilayam Near, Salem. ... Appellant

vs.

1.Vasuki
2.Namasivayam
3.Balasubramanian
4.S.Ramasamy ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree made in M.C.O.P.No.93 of 2010, dated 22.04.2016 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Srivilliputhur.

For Appellant	:Mr.J.S.Murali
For R1 and R2	:Mr.R.Nivesh Kumar
For R3	:No Appearance
For R4	: <i>Ex parte</i>



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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.93 of 2010 on the file of the Motors Accidents Claims Tribunal, Srivilliputhur.

2. According to the claimants, the deceased was 22 years old diploma holder working as a Trainee in Apollo Tyres Limited. They have further contended that he was receiving a stipend of Rs.6,000/- for the first year and Rs.8,000/- for the second year. The claimants have further contended that on 22.05.2010, when the victim was travelling in a Transport Corporation bus, the tyre of the said bus got burst and it was stationed. The victim, driver and the conductor of the bus were stand in front of the bus. At that point of time, a lorry owned by the first respondent and insured with the second respondent came and dashed against the parked bus and in turn, the parked bus moved forward and dashed against the standing victim. The victim had sustained grievous injuries and he passed away.



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3.The claimants have further contended that the deceased had completed Diploma in Electronics and Communication Engineering in first class and he was selected in campus interview and received an appointment order from Apollo Tyers Limited. They have prayed for a compensation of Rs.25,00,000/-.

4.The Insurance Company has filed a counter disputing the negligence and liability of the driver of the lorry.

5.The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the accident has taken place only due to the rash and negligence driving on the part of the driver of the lorry. The Tribunal has fixed the notional monthly income at Rs.10,000/- per month and added 50% towards future prospects and deducted 50% towards personal expenses. It applied multiplier of 18 and fixed a compensation of Rs.16,20,000/- under the head of loss of income. The Tribunal has further awarded a sum of Rs.2,00,000/- under the head of loss of love and affection to the parents and another sum of Rs.50,000/-



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to the brother of the deceased towards loss of love and affection. The Tribunal has further awarded a sum of Rs.25,000/- towards funeral expenses, Rs.1,000/- towards paper publication, Rs.7,200/- towards tax receipts and Rs.9,900/- towards ambulance charges and totally a sum of Rs.19,13,100/- and rounded off to Rs.19,14,000/-. Challenging the said award, the present appeal has been filed.

6. According to the learned Counsel for the appellant, the Tribunal was not right in fixing the notional income at Rs.10,000/- per month, when the claimants themselves have pleaded that the stipend during the training period is only Rs.6,000/-. He further contended that the Tribunal has awarded on the higher side under the head of loss of love and affection to the claimants. He further contended that the Tribunal was not right in adding 50% towards future prospects, when the deceased was only a Trainee in a private company. Hence, he prayed for modification of the award.

7. *Per contra*, the learned Counsel appearing for the respondent claimants had contended that the deceased was a bright student and he



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has passed out Diploma in Electronics and Communication Engineering in first class. He was selected in campus interview as a Trainee in Apollo Tyres Limited. He was offered a stipend of Rs.6,000/- per month for the first year and a sum of Rs.8,000/- for the second year. The call letter received by the deceased has been marked as Ex-P17. Therefore, he contended that the award of the Tribunal is reasonable and it does not call for any interference.

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

9.The Tribunal has fixed the monthly income at Rs.10,000/- per month. A perusal of the records indicate that the deceased has received a call letter to work as a Trainee with a stipend of Rs.6,000/- per month for the first year and Rs.8,000/- per month for the second year. The Tribunal has taken into consideration the oral evidence of PW-3, who was an Officer of Apollo Tyres Limited, to fix the monthly notional income of Rs.12,000/- per month. However, this Court is of the considered opinion that as on the date of the accident, the deceased was only a Trainee and



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therefore, the Tribunal was not right in fixing the notional monthly income of Rs.12,000/- per month and it would be appropriate to fix Rs.7,500/- as notional monthly income.

10.Considering the fact that the deceased was aged 21 years, this Court is inclined to add 40% as future prospects. The Tribunal has erroneously awarded a sum of Rs.2,00,000/- towards loss of love and affection to the first and second claimants and another sum of Rs.50,000/- towards loss of love and affection to the brother of the deceased. It would be appropriate to award Rs.40,000/- to each one of the claimants totalling a sum of Rs.1,20,000/- under the head of loss of love and affection.

11.In view of the aforesaid deliberations, the award of the Tribunal is re-assessed as follows:-



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Monthly notional income	Rs. 7,500.00	
Add: 40% towards future prospects	Rs. 3,000/-	

Total notional monthly income	Rs.10,500/-	

Less: 50% towards personal expenses	Rs.5,250/-	
Resultant monthly income	Rs.5,250/-	
Total Loss of income (Rs.5250x12x18)	Rs.11,34,000/-	Rs.11,34,000/-
Loss of love affection (Rs.40000x3)		Rs.1,20,000/-
Funeral expenses		Rs.25,000/-
Paper publication		Rs.1,000/-
Tax Receipts		Rs.7,200/-
Ambulance Charges		Rs.9,900/-
Loss of estate		Rs.50,000
Total		Rs.13,47,100/-

12.The award of the Tribunal is reduced from Rs.19,40,000/- to Rs.13,47,100/- The award amount will carry 7.5% interest per annum from the date of claim petition, excluding the period of default, if any. The first and second claimants shall entitled to Rs.5,38,840/- each and the balance sum of Rs.2,69,420/- shall be paid to the third claimant. Any excess amount deposited by the Insurance Company shall be refunded



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along with accrued interest. The claimants are entitled to withdraw the entire award amount as per their respective shares.

13.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

30.07.2024

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To

The Subordinate Judge,
Motor Accidents Claims Tribunal, Srivilliputhur.



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R.VIJAYAKUMAR, J.

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