



Cross Obj.(MD).No.20 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 04.12.2023

Delivered On : 31.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Cross Obj.(MD)No.20 of 2023

1.Shunmugakani
2.Alagu Madasamy
3.Mari Selvam

... Appellants

Vs.

1.Reliance General Insurance Company Limited,
Through its Branch Manager,
10/04/04/, Thatha Plaza,
South Bye Pass Road,
Vannarapettai,
Tirunelveli.
2.L.K.Ramaraj

... Respondents

PRAYER : Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to set aside the judgment and decree dated 08.04.2011 passed in M.C.O.P.No.283 of 2010 on the file of the Motor Accidents Claims Tribunal (Additional District Court/Fast Track Court NO.II), Thoothukudi.

For Appellants	: Mr.M.P.Senthil
For 1 st Respondent	: Mr.S.Srinivasa Raghavan



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JUDGMENT

This Cross Objection has been filed by the Cross appellants/petitioners/claimants, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal, (Additional District Judge/Fast Track Court No.II), at Thoothukudi in M.C.O.P.No.283 of 2010 dated 08.04.2011.

2.For the sake of convenience, the parties are arrayed herein as per the rank in M.C.O.P.No.283 of 2010.

3.The factual matrix of the present case, briefly stated, are as under:-

This is a fatal case. The first petitioner is the mother of the deceased, the second petitioner is the brother of the deceased and the third petitioner is the sister of the deceased. On 16.08.2008, at about 14.50 hours, the deceased Mahesh was travelling from K.P.Thalavai puram to Chekkarakudi by motorcycle bearing registration No.TN-69-L-1383. While travelling along the Chekkarakudi Main Road keeping the



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extreme left side of the said road, a lorry bearing registration No.TN-69-I-3080 belonging to the first respondent driven by its driver in a rash and negligent manner dashed against the deceased's motorcycle. As the result of which, the said Mahesh sustained multiple fractures and severe head injury. Immediately he was taken to Thoothukudi Government Medical College Hospital and was admitted as in patient on the same day. A major operation was conducted on his right leg. For further treatment, the deceased was shifted to Tirunelveli Government Medical College Hospital on 20.06.2008 and admitted as in patient and two more operations were done. Despite of best treatment given to the said Mahesh, he died on 01.07.2008. Hence, seeking a compensation of Rs. 30,00,000/-, the petitioners have filed this claim petition.

4.The first respondent is the owner of the vehicle involved in the accident and the second respondent is the insurance company, with which the first respondent's vehicle was insured. The second respondent has filed a counter refuting each and every allegations set forth in the claim petition.



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5.The learned Tribunal framed three issues. Two witnesses were examined as P.W.1 and P.W.2 on the side of the petitioners and Ex.P1 to Ex.P10 were marked. Neither any witness was examined nor any document was marked on the side of the respondents. On the basis of the oral and documentary evidence and the arguments put forth by the respective parties, the Tribunal proceeded to conclude that the accident happened only due to the rash and negligent driving of the first respondent's driver. Since the first respondent is the owner of the offending vehicle and since his vehicle was insured with the second respondent, it was held by the learned Tribunal that the respondents 1 and 2 are jointly and severely liable to pay compensation to the petitioners.

6.Though it was claimed that the deceased earned a sum of Rs. 20,000/- per month, the learned Tribunal proceeded to fix a notional amount of Rs.9,000/- as his monthly income. Following the dictum laid down by the Hon'ble Apex Court in the case of ***Sarala Varma and others v. Delhi Transport Corporation and others*** reported in ***AIR 2009 (SCC) 3104***, 1/3th of the income of the deceased has to be deducted for the



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personal expenses of the deceased. Therefore, the monthly income of the deceased was calculated as Rs.6,000/-. On the basis of the copy of the ration card, which was marked as Ex.P7, the age of the mother of the deceased was shown as 43 years and the learned Tribunal has adopted the multiplier '15'. Thereby, the loss of dependency was calculated as Rs. 10,80,000/-(Rs.6,000x12x15). The learned Tribunal has awarded the compensation under the following heads:-

Head	Compensation awarded
(I) Loss of Dependency:	Rs.10,80,000/-
(ii) Loss of love and affection for petitioners:	Rs.10,000/-
(iii) Funeral Expenses:	Rs.2,500/-
Total compensation awarded:	Rs.10,92,500/- with interest @ 7.5 % from the date of the claim until the realization and costs.

7.Challenging the same, the cross appellants/petitioners/claimants had filed the Cross Objection seeking enhancement of compensation awarded by the learned Tribunal.

8.The learned counsel for the Cross appellants/petitioners submitted that the learned Tribunal ought not to have fixed Rs.9,000/- as



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notional income of the deceased without proof of avocation and ought to have fixed the income on the basis of his higher qualification. That part the multiplier applicable was calculated on the basis of the age of the deceased's mother and not of the deceased which is incorrect.

9.Per contra the learned counsel for the first respondent insurance company submitted that in the absence of proof of monthly income, the award passed by the learned Tribunal is just and reasonable and in view of the fact that the deceased was a bachelor pressed for dismissal of Cross Objection.

10.A careful perusal of materials available on record would reveal that the learned Tribunal had marked the 10th standard mark sheet and provisional certificate of the deceased as Ex.P6 and Ex.P7 respectively. Though it was contended by the petitioners that the deceased had done contract work and constructed buildings and earned Rs.20,000/- per month, it was admitted by P.W.1 in her cross examination, no document had been filed on the side of the petitioners to prove the same. Hence, the learned Tribunal had proceeded to fix a notional monthly income of the



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deceased as Rs.9,000/- on the basis of diploma in Civil Engineering and I find no infirmity in the same. On the basis of postmortem report, Ex.P2, the age of the deceased is 20 years. Following the principles of the Hon'ble Apex Court in the case of ***Sarala Verma and others v. Delhi Transport Corporation and others*** reported in ***AIR 2009 (SCC) 3104***, 1/2th of the income of the deceased has to be deducted for personal expenses of the deceased. Therefore, the contribution towards family as monthly income is Rs.4,500/- (Rs.9,000-4,500). As per ***Sarala Verma*** case, multiplier '18' is to be adopted. Thereby, the loss of dependency would be calculated as Rs.9,72,000/-(Rs.4,500x12x18).

11.However, the learned Tribunal proceeded to pass an award of compensation of Rs.10,000/- for loss of love and affection.

12.A careful perusal of materials available on record would reveal that the accident had happened in the year 2008 and the compensation awarded by the learned Tribunal towards love and affection for the petitioners is very less. Following the dictum laid down by the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs.***



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Praney Sethi and others reported in ***(2017) 16 Supreme Court Cases***

680, this Court is inclined to enhance the compensation for loss of love and affection from Rs.10,000/- to Rs.1,20,000/- (Rs.40,000/- each of the petitioners). That apart the compensation towards funeral expenses is enhanced from Rs.2,500/- to Rs.15,000/- and no compensation has been awarded under the head of transportation and an amount of Rs.10,000/- is included. Thereby, the total compensation is enhanced from Rs.10,92,500/- to Rs.11,17,000/-.

Head	Compensation awarded before learned Tribunal	Compensation awarded before this Court	Reduced/Enhanced/ Confirmed
(i) Loss of Dependency:	Rs.10,80,000/-	Rs.9,72,000/-	Reduced
(ii) Loss of love and affection for the petitioners:	Rs.10,000/-	Rs.1,20,000/- (Rs.40,000/- each)	Enhanced
(iii) Transportation Expenses:	-	Rs.10,000/-	Enhanced
(iv) Funeral Expenses:	Rs.2,500/-	Rs.15,000/-	Enhanced
Total compensation awarded:	Rs.10,92,500/-	Rs.11,17,000/-	Enhanced



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13.The appellants are entitled to a sum of Rs.11,17,000/- as compensation. The first respondent/insurance company directed to deposit Rs.11,17,000/- with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the appellants are permitted to withdraw the award amount as per apportionment made by the learned Tribunal, after deducting any amount received by them earlier without filing any formal petition before the Tribunal. The appellants are directed to pay the additional Court fee on enhanced compensation, if any.

14.Accordingly, the Cross Objection stands allowed. There shall be no order as to costs.

31.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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L.VICTORIA GOWRI, J.

Mrn

To

- 1.The Motor Accidents Claims Tribunal,
(Additional District Court/Fast Track Court No.II),
Thoothukudi.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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