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CMA.(MD)No.828 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31/07/2024

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The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 828 of 2019
and
CMP (MD) No. 10894 of 2019

The Divisional Manager,
National Insurance Co., Ltd.,
2nd Floor, No.3 North Veli Street,
Madurai. : Appellant/2nd Respondent

Vs.

1.Surya Ganthi
2.Muthammal
3.Thangamari
4.Chitra : Respondents 1 to 4/
Petitioners
5.S.Vijayalakshmi : 5th Respondent/
1st Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order, dated 25/01/2017 made in MCOP No.104 of 2010 on the file of the Motor Accident Claims Tribunal (Sub Court), Sivakasi.

For Appellant : Ms.S.Srinivasa Raghavan

For R1 to R4 : Mrs.S.Mahalakshmi

For 5th Respondent : Dispensed with

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the award, dated 25/01/2017 passed in MCOP No.104 of 2010 by the Motor Accident Claims Tribunal (Sub Court), Sivakasi.



2. The facts in brief:-

On 16/04/2008 at about 8.00 am, the deceased Muthuramalingam was going to his work place in his two wheeler bearing registration No.TN-67-D-8329 from east-west direction on Nathathupatti. When he was nearing the place of occurrence, a vehicle bearing registration No.TN-58-K-7047 which belongs to the first respondent in the main petition came from the north to south direction and dashed against the deceased. As a result of which, he sustained grievous injuries, taken to the Government Hospital, Thirumangalam, then to the Government Hospital, Madurai. But without recovering from the injuries, he died.

3.A case in Crime No.33 of 2008 was registered by the Vachakarapatti Police for the offences under sections 279 and 304(A) IPC against the driver of the first respondent vehicle. The deceased was working as an Assistant in Government Veterinary Hospital at Kannisery and earning Rs.7,891/- as monthly salary. His age was about 52 at the time of the occurrence. Seeking compensation amount of Rs.11,60,000/-, the claim petition was filed by the dependents.



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4. That was resisted by the appellant herein by filing counter stating that the deceased was responsible for the occurrence; he drove the vehicle in a rash and negligent manner, turned to his right without minding the traffic and invited the accident. Apart from that, other customary denials were made.

5. Before the Tribunal, on the side of the claimants. 2 witnesses were examined and 3 documents were marked. On the side of the Insurance Company, 2 witnesses were examined and one document was marked.

6. Regarding the first aspect of negligence, the Tribunal recorded a finding that the occurrence took place because of the rash and negligent driving on the part of the first respondent driver. Regarding the second aspect of compensation, it was concluded that he was working as Assistant in Government Veterinary Hospital, Kanniseri and earning a monthly salary of Rs.7,891/- per month. 50% was added towards future prospects. 1/4th was deducted towards his personal and living expenses. Multiplier '11' was adopted. The Loss of Dependency was fixed at Rs.11,79,863/-. To that, customary amounts were added, which is noted in the tabulation given as under:-



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Loss of Dependency	Rs.11,71,863/-
Loss of consortium	Rs. 1,00,000/-
Loss of love and affection	Rs. 4,00,000/-
Transportation charges	Rs. 5,000/-
Funeral expenses	Rs. 25,000/-
Loss of estate	Rs. 5,000/-
Total	Rs.17,06,863/-

Finally, it awarded a total amount of Rs.17,06,863/- together with 8% interest per annum.

7.Against which, this appeal is preferred on the ground that the future prospects of 50% is not correct, since he was aged about 52 years; interest is on the higher side, it has to be reduced to 7.5% pa. It was the usual lending rate of the nationalized bank.

8.According to the respondents 1 to 4, since the age of the deceased was only 52 and salaried person, future prospects and deductions are proper.

9.Regarding the first aspect of negligence, no argument was advanced on the side of the appellant.

10.As indicated in the order passed by the Tribunal, there is no evidence on record to show that the deceased



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tried to cross the road without giving any signal to his right and invited the accident. In the absence of any such direct evidence on this aspect, the manner of the accident was taken into account by the Tribunal for recording the finding that rash and negligent act on the part of the first respondent vehicle. So, the manner of the accident does indicate the rash and negligent act on the part of the insured vehicle.

11.Regarding the compensation, the monthly salary was taken as per the documents and the salary slip produced under Ex.P3. But the Tribunal has committed a mistake in taking future prospects at 50% instead of 15%. Since the deceased was aged about 52 and working as permanent employee. an addition of 15% should be added where the deceased was between the age of 50 to 60 years as per the **Pranay Sethi's** case. Accordingly, the monthly income of the deceased would be **Rs.9,075/-** (Rs.7,891/- + Rs.1,184/-) $1/4^{\text{th}}$ amount has to be deducted towards personal and living expenses of the deceased, since the dependents are 4. so the loss of income after deduction would be **Rs.6,806/-** (Rs.9,075/- Less Rs.2,269/-). The Tribunal rightly applied the Multiplier '11' and therefore, the same is confirmed and hence, the Loss of Income would be **Rs.8,96,392/-** (Rs.6,806/- x 11 x 12)).



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12. So far as the conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively as per the **Pranay Sethi's** case. Accordingly, the award of the Tribunal is recalculated as per the tabulation given hereunder:-

Head	Award of the Tribunal	Award of this Court
Loss of Dependency	Rs.11,71,863/-	Rs. 8,96,392/-
Loss of consortium to the 1 st claimant	Rs. 1,00,000/-	Rs. 40,000/-
Loss of Love and affection	Rs. 4,00,000/-	-Nil-
Transport charges	Rs. 5,000/-	-Nil-
Funeral expenses	Rs. 25,000/-	Rs. 15,000/-
Loss of estate	Rs. 5,000/-	Rs. 15,000/-
Parental consortium to the claimants 2 to 4	-	Rs. 1,20,000/-
Total	Rs.17,06,863/-	Rs.10,86,392/-

13. In so far as the interest portion, 8% per annum awarded by the Tribunal is reduced to Rs.7.5% per annum.

14. In the result, this Civil Miscellaneous Appeal is **partly allowed**. The award of the Tribunal is modified as Rs.10,86,392/- together with interest @ 7.5% p.a from the date of the claim petition till the date of deposit. On such deposit, the claimants are entitled to get their



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share as per the apportionment of the Tribunal. Excess amount if any deposited shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

31/07/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Motor Accident Claims Tribunal/
Sub Court, Sivakasi.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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