



C.M.A(MD)No.455 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2024

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.455 of 2020

and

C.M.P(MD)No.5204 of 2020

National Insurance Company Limited,
Through its Branch Manager,
B.11 Vardhman Plaza,
2nd Floor Sector-16, Noida 201 301,
Gautam Budha Nagar,
Uttar Pradesh State.

... Appellant/2nd respondent

Vs.

1.Kuruvalakshmi

2.Devi

3.Sundar

4.Rajagopal

... Respondents/Petitioners

5.M/s.Dinesh Transport Service,
Through its Manager,
Sector 17/18, Divider Road Sardha,
In front of MGF Toyota Gurgoan,
Gurgoan, Haryana State.

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Special Sub Court, Tirunelveli in M.C.O.P.No.954 of 2014, dated 13.06.2017.



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For Appellant : Mr.D.Sivaraman

For R1-R3 : Mr.S.Ganapathyraman

JUDGMENT

The Insurance Company is the appellant herein.

2. The present appeal has been filed challenging the quantum fixed by the tribunal in M.C.O.P.No.954 of 2014 on the file of Motor Accident Claims Tribunal, Tirunelveli.

3. According to the claimants, the deceased was a lorry driver and he was aged 46 years on the date of accident which took place on 13.06.2012. The tribunal has fixed the notional income at Rs.7,000/- with the future prospects at 30%. The tribunal has further awarded a sum of Rs.1,00,000/- towards loss of consortium to the wife of the deceased, Rs. 2,00,000/- to both the minor children, Rs.50,000/- to the father and Rs. 1,00,000/- towards loss of love and affection to the wife. A sum of Rs. 20,000/- has been awarded towards transport, Rs.25,000/- has been awarded towards funeral expenses, Rs.1,300/- towards loss of estate and a sum of Rs.9,000/- towards pain and suffering. In total, a sum of Rs.

15,70,000/- has been awarded. Challenging the said award, the present appeal has been filed.



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4. According to the learned counsel appearing for the appellant/Insurance company, the deceased being aged about 46 years and working in an un-organized sector, future prospects can be fixed only at 20% and not 30%. He further pointed out that each one of the claimant would only be entitled to Rs.40,000/- towards loss of love and affection and in total a sum of Rs.1,60,000/- alone can be awarded. However, a sum of Rs.4,50,000/- has been awarded by the tribunal. The learned counsel appearing for the appellant also questioned the rationale behind awarding a sum of Rs.9,000/- towards pain and suffering in the case of fatal accident.

5. Per contra, the learned counsel appearing for the claimants had contended that as per the judgment of the Hon'ble Supreme Court reported in **2014 1 TN MAC 459 SC (Syed Sadiq & Others Vs. The Divisional Manager, United India Insurance Company Limited)** the notional income was fixed at Rs.6,500/- for an accident that has taken place in the year 2008. In the present case, the accident having taken place in the year 2012, monthly notional income should not have been fixed at Rs.7,000/-, but at Rs.10,000/-. He further prayed for enhancement of the award on the ground that just compensation has not been awarded by the tribunal.



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

7. As rightly contended by the learned counsel appearing for the appellant, as per the judgment of the Hon'ble Supreme Court reported in **2017 (16) SCC 680 (National Insurance Company Limited Vs. Pranay Sethi & Others)**, the deceased being a driver, he would be entitled to only 25% towards future prospects. Therefore, the said percentage should be reduced from 30% to 25%. The tribunal has also awarded a huge sum towards loss of love and affection and loss of consortium to each one of the claimants without considering the judgment of the Hon'ble Supreme Court, wherein it is held that each one of the claimant is entitled to receive only a sum of Rs.40,000/- towards loss of love and affection. Further, in the case of fatal accident, a sum of Rs.9,000/- could not have been awarded towards pain and suffering. Considering the above said facts, this Court is inclined to re-assess the award amount as follows:

Monthly notional income : Rs.8,000/-

25% towards future prospects : Rs.2,000/-

Monthly notional income : Rs.10,000/-

8. Considering the fact that there are 4 claimants, 1/4th is deducted towards personal expenses, which results in Rs.7,500/-. The total



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compensation under the head of loss of income would be Rs.11,70,000/-
(7,500x12x13).

S.No.	Head	Award by the tribunal	Award by the High Court
1.	Loss of income	Rs.10,64,700/-	Rs.11,70,000/-
2.	Loss of love & affection To wife To children To father Loss of consortium to wife	Rs.1,00,000/- Rs.2,00,000/- Rs.50,000/- Rs.1,00,000/-	In total, Rs.1,60,000/-
3.	Transportation	Rs.20,000/-	Rs.20,000/-
4.	Funeral expenses	Rs.25,000/-	Rs.25,000/-
5.	Loss of estate	Rs.1,300/-	Rs.1,300/-
6.	Pain and suffering	Rs.9,000/-	Nil
	Total	Rs.15,70,000/-	Rs.13,76,300/-

9. In view of the above said deliberations, the award of the tribunal is modified from Rs.15,70,000/- (Rupees Fifteen Lakh Seventy Thousand only) to Rs.13,76,300/- (Rupees Thirteen Lakh Seventy Six Thousand and Three Hundred only). It is brought to the notice of the Court that the father of the deceased had passed away pending appeal. The apportionment shall be on the same proportion as that of the tribunal. Any excess amount deposited by the Insurance Company shall be refunded along with accrued interest.



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10. This Civil Miscellaneous Appeal is partly allowed to the extent

as stated above. No costs. Consequently, connected Civil Miscellaneous

Petition is closed.

16.04.2024

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

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To

1.The Motor Accident Claims Tribunal,
Special Sub Court,
Tirunelveli.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.455 of 2020

16.04.2024