BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

C.M.A.(MD)No.495 of 2019
and
C.M.P.(MD)No.5807 of 2019

1.The Divisional Manager,
I.C.I.C.I. Lombard General Insurance
Company Ltd., Office,
Prabhavadi, Mumbai.

2.The Branch Manager,
I.C.I.C.I. Lombard General Insurance
Company Ltd.,
7 A.A. Road, Neare Layola Technical Institute,
Madurai District. ... Appellants

-Vs-

1.Palaneeswari
2.Jeyakumar
3.Bhagavathy Priya
4.Vijayalakshmi
5.Jeyaraman ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying this Court to set aside the judgment and decree dated 14.12.2016 passed in M.C.O.P.No.66 of 2012 on the file of the Motor Accident

Claims Tribunal, Sub Judge, Devakottai and allow this Civil Miscellaneous Appeal.

For Appellants	: M/s.V.Muthu Kamatchi
For R1 to R4	: Mr.J.Ananda Kumar
For R5	: Given Up

JUDGMENT

DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.

This appeal is preferred by the Insurance Company being aggrieved by the quantum fixed by the Tribunal for the death of one Ganesan, aged about 56 years in the motor accident occurred on 18.03.2012 at about 10.45 p.m., near Kovilur Road opposite to Ganga Hotel.

2.According to the claimants, the said Ganesan, who is the husband of the 1st claimant and father of the claimants 2 to 4, is running a bakery in the name and style of Jhansi bakery at Kovilur Road, Karaikudi. On the fateful day, while he was about to leave home after closing the shop along with one Soundara Pandian, the offending vehicle bearing Registration No.TN 63 AZ 1137 owned by the 1st respondent, namely, Jayaraman, which is duly insured by the respondents 2 and 3 Insurance Company, dashed against the said Ganesan. In the said accident, the said Ganesan along with his vehicle bearing Registration No.TN 63 D 8597 was thrown to the road. The pillion rider, namely, Soundara Pandian also sustained injury. Both were taken to the Karaikudi Government Hospital and later, the said Ganesan was shifted to Apollo Hospital on 19.03.2012. After treatment for nearly 16 days, the said Ganesan succumbed to the injury on 05.04.2012. As per the claim petition, the said Ganesan was earning around a sum of Rs.20,000/- per month from his agricultural land and bakery business. At the time of his death, he was aged about 56 years. The claimants are the dependants of the said Ganesan. Therefore, they are entitled for compensation of Rs.30 lakhs.

3.The claim petition was opposed by the Insurance Company. The owner of the offending vehicle remained absent and was set *ex-parte*.

4.To prove the claim, the claimants had relied upon 29 documents and examined 8 witnesses. To negate the claim one Umasankar was examined as D.W.1 and no documents were filed on behalf of the respondents.

5.The Tribunal, after taking note of the fact that the income of the deceased is well supported by the certificate given by the Tahsildar and the documents supporting the property held by the deceased, has awarded a sum of Rs.25,41,188/-. The compensation breakup is as under:-

Sl.No.	Heads	Award
1	Loss of income	Rs.16,20,000/-
2	for Medical Bills	Rs.7,91,188/-
3	Loss of Consortium (for 1st claimant)	Rs.50,000/-
4	Loss of Love and Affection (Rs.30,000X3)	Rs.30,000/-
5	For Nourishment	Rs.10,000/-
6	For Transport Expenses	Rs.30,000/-
7	For Funeral Expenses	Rs.10,000/-
	Total	Rs.25,41,188/-

6.The Tribunal apportioned 50% of the compensation amount to the wife of the deceased / 1st claimant and the remaining 50% awarded to be shared among three children. The quantum of the award is under challenge in this appeal.

7.The learned counsel appearing for the appellants would submit that the Tribunal had erred in fixing monthly income of the deceased as Rs.20,000/- solely relying upon the certificate given by the Tahsildar, which is marked as Ex.B.14, which has not been corroborated with adequate proof. He would further submit that admittedly, the 3rd respondent Bhagavathy Priya / daughter of the deceased is a married lady and she is living independently with her husband and children and she is not the dependant of the deceased and therefore, the deduction under the personal expenditure of the deceased ought to have been 1/3, whereas the Tribunal has deducted only 1/4th of the income for personal expenditure.

8.Per contra, the learned counsel for the respondents 1 to 4 would submit that the deceased, apart from running a bakery in the name and style of Jhansi Bakery, was having sufficient income from his agricultural property and buildings. To show his wherewithal and source of income, the claimants have marked Ex.B.14 income certificate issued by the Tahsildar, sale deed of the bakery Ex.B.10, sale deed of vacant residential site and house, which were marked as Ex.B.11 and B.12. Therefore, the Tribunal has rightly appreciated the evidence placed by the claimants and had fixed monthly income of the deceased as Rs.20,000/- per month and had deducted ¼ towards his personal expenditure, taking into account the size of the dependants.

9.This Court perusing the evidence finds that the deceased Ganesan died, when he was 56 years old and considering the source of income, which is proved through Ex.B.10 to B.13, the Tahsildar issued income certificate, which is marked as Ex.B.14. The Insurance Company has not let in any contra evidence to disbelieve the veracity of the documents mentioned above. Particularly, Ex.B.13 indicates that the deceased had 7 acres of land and had immovable properties, apart from running bakery business. Therefore, this Court finds no merit in the appeal against the award passed by the Tribunal, insofar as the income of the deceased fixed by the Tribunal is concerned.

10.Regarding deduction towards personal expenditure, this Court finds that the Tribunal had considered the fact that the deceased has left behind four dependants and therefore, $1/4^{th}$ of his income had been deducted.

11.This Court, while considering the aforesaid submission, though agreed with the submission of the learned counsel for the appellants that the 3^{rd} claimant is married to one Sathish Kumar and living independently, it does not mean that she had no dependency on her father. As a daughter, she has to depend on her father both emotionally even at times financially. In such circumstances, the Tribunal had rightly deducted $1/4^{th}$ of his income towards personal expenditure.

12.At this length of time, this Court finds that there is no justification in interfering with the award passed by the Tribunal. Therefore, this Civil

Miscellaneous Appeal is dismissed, confirming the order of the Tribunal. The appellants shall deposit the award amount with interest within a period of twelve weeks from the date of receipt of a copy of this order, if not already deposited. No costs. Consequently, connected miscellaneous petition is closed.

[G.J., J.] & [R.P., J.]
05.02.2025

NCC : Yes / No
Index : Yes / No

Yuva

To

1.The Sub Judge,
Motor Accident Claims Tribunal,
Devakottai.

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

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

Yuva

C.M.A.(MD)No.495 of 2019

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