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CMA.No.928 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.928 of 2022
and
C.M.P.Nos.6901 and 6903 of 2022

The Divisional Manager,
M/s.United India Insurance Co. Ltd.,
Third Party Claim,
II Floor, Katpadi Road, Vellore.

... Appellant

Vs.

1.S.Rathna

2.Minor Jai Sri

3.Minor S.Tamil

4.K.Chandran

5.J.Prabu

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 22.02.2021 made in MCOP.No.232 of 2017 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Vaniyambadi.

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For Appellant : Mr.S.Arun Kumar
For R1 to R4 : Mr.A.G.F.Terry Chella Raja
For R5 : No appearance

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The Insurance Company is on appeal. Challenge is to the quantum of compensation awarded by the Tribunal. Since the challenge is restricted to the quantum of compensation, we do not deem it fit to delve upon the other aspects viz., negligence and liability.

2. Mr.S.Arun Kumar, learned counsel appearing for the appellant/ Insurance Company would contend that the Tribunal has taken the monthly income of the deceased at Rs.47,649/-, overlooking the fact that the deceased was paid a sum of Rs.6,674/- as arrears of allowance and pay. Therefore, the amount should have been deducted from the salary bill for the month of January 2017.



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3. Mr.A.G.F.Terry Chella Raja, learned counsel appearing for the claimant would submit that the deceased being an army man, arrears of pay and allowance is a recurring feature and the same cannot be said to be an excessive addition.

4. We have considered the rival submissions.

5. We find that Ex.P10 itself provides for a fair calculation of the income of the deceased. In Ex.P10 the actual taxable income received upto January 2017 has been shown as Rs.4,06,744/- that is for the period of 10 months from 1st April 2016 to January 2017. Therefore, the monthly average income would be Rs.40,674/-. If that figure is adopted, either of the counsel will have no grievance.

6. Hence, the award of the Tribunal is modified by adopting the monthly income at Rs.40,674/-, while sustaining the compensation granted under the other heads as well as the loss of future prospects. Thus worked out, the compensation that the claimant would be entitled to will be Rs.40,674/-. If we add 50% towards future prospects i.e., Rs.20,337/-, the



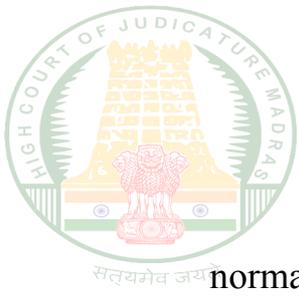
monthly income would be Rs.61,011/-. We round it off to Rs.61,000/-.

After deducting 1/4th towards personal expenses, the total loss of dependency would be worked out as follows:-

$$\text{Rs.61,000/-} \times 12 \times 16 \times \frac{3}{4} = \text{Rs.87,84,000/-}$$

7. Thus, the total loss of dependency would be Rs.87,84,000/-. If we add other compensation granted under the other heads, which is about Rs.1,65,000/-. The total compensation would be Rs.89,49,000/-.

8. The Tribunal had deducted 15% towards contributory negligence, since the deceased was not wearing the helmet. We approve the said conclusion of the Tribunal. Therefore, we have to deduct a sum of Rs.13,42,350/- [15% of Rs.89,49,000/-] from the compensation as fixed above. Thus, the total compensation payable would be Rs.76,06,650/-. Out of the said sum, the wife of the deceased/ 1st claimant will take Rs.26,06,650/-. The children viz., the minor claimants will take Rs.22,00,000/- each. The remaining Rs.6,00,000/- will go to the father of the deceased.



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9. We find that the Tribunal has awarded only interest at 6%. The normal interest awarded in the motor accident cases will be 7.5%. Hence, we enhance the interest to 7.5%. It is made clear that the claimant will be entitled to interest at 7.5% on the amount apportioned to each of them. The share of the minor claimants inclusive of interest shall be kept in a Fixed Deposit in a Nationalized Bank till they attain the age of majority. Upon their attaining the age of majority, their shares shall be paid over to them. The Insurance Company will have eight (8) weeks time to deposit the above compensation, less the amount, if any, already deposited.

10. Accordingly, this Civil Miscellaneous Appeal is **partly allowed**.

No costs. Consequently, the connected miscellaneous petitions are closed.

(R.S.M., J.) (R.S.V., J.)
27.03.2024

dsa

Index : No

Internet : Yes

Neutral Citation : No

Speaking order



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R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

dsa

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Vaniyambadi.

C.M.A.No.928 of 2022

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