BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2015

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

C.M.A.(MD) No. 70 of 2013 and
M.P.(MD).No.2 of 2013

Shriram General Insurance Company Limited,
1000, 3E-8, Rico Industrial Area Site Pura,
Jaipur, Rajasthan. ... Appellant/Respondent 2

Vs.

1. A.Mookammal
2. Minor Vennila
3.Minor Kumarasamy ...Respondents 1 to 3/Petitioners 1 to 3
(Minors represented by 1st respondent)
4. Selvalingam
5. R. Suresh ..Respondents 4&5/Respondents 1&3
6. Cholamandalam General Insurance Company Limited,
Karur Branch Office,
Karur.
(Respondents 5 and 6 are given up and no notice
need be served on them) .. 6th Respondent/Respondent 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decreetal order dated 11.02.2011 made in MCOP.No.204 of 2010 on the file of Motor Accident Claims Tribunal / Additional District Judge / Fast Track Court-II), Tuticorin.

For Appellant : Mrs.K.R. Shivasankari

For R1 to R3 : Mr. K. Karthik for
Mr. S. Meenakshisundaram

For R4 : No appearance

Flor R5 and R6 : Given up

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the fair and decreetal order dated 11.02.2011 made in MCOP.No.204 of 2010, on the file of Motor Accident Claims Tribunal / Additional District Judge / Fast Track Court-II), Tuticorin.

2. The appellant, Insurance Company is the second respondent in MCOP.No.204 of 2010. The respondents 1 to 3 are the petitioners / claimants. The fourth respondent is owner of the lorry, in which deceased was travelling and the appellant is the insurer of said Lorry. The fifth respondent is the owner of another lorry which was involved in the accident and the sixth respondent is the insurer of said lorry.

3. The facts of the care are as follows:-

(I) One Athikumar, husband of the first respondent and father of the respondents 2 and 3 was travelling in the Cabin of the Lorry bearing Registration No.TN 69 K 4379 on 21.12.2009, belonging to the fourth respondent, along with his goods i.e. fire woods, The driver of the lorry belonging to fourth respondent drove the lorry in a rash and negligent manner dashed against the lorry bearing Registration No.TN 47 S 6598 in the Palaniyandavar Road Vilakku, on Madurai to Dindigul road. He dashed against the lorry belonging to the fifth respondent, which was also proceeding in the same direction. In the said accident, the deceased P. Athikumar, died on the spot. The Criminal case was registered in Crime No.794/09 under Section 304(A) of IPC, by Vadipatti Police Station, against the driver of fourth respondent. The accident took place only due to rash and negligent driving by driver of fourth respondent. The appellant is insurer of lorry belonging to the fourth respondent. Therefore, respondents 1 to 3 filed claim petition claiming a sum of Rs.25,00,000/-, against the appellant and fourth respondent. The respondents 5 and 6 were impleaded as formal parties in the claim petition.

(ii) The deceased was doing fire wood business and was earning a sum of Rs.10,000/- per month. The respondents 1 to 3 were depending on the income of the deceased and by his sudden death they suffered financial loss and mental agony. Therefore, they claimed a sum of Rs.25,00,000/-, against the fourth respondent and appellant.

(iii) The fourth respondent remained ex parte before the Tribunal.

(iv) The appellant filed counter statement denying various averments made by the respondents 1 to 3. The appellant has stated that respondents 1 to 3 must prove the accident, age and income of the deceased and that they are the legal heirs of the deceased and prayed for dismissal of claim petition.

4. The fifth respondent filed counter statement stating that accident took place only due to rash and negligent driving by the driver of fourth respondent and respondents 5 and 6 are added only as a formal parties and therefore, prayed for dismissal of claim petition against the respondents 5 and 6.

5. Before the Tribunal, first respondent was examined as PW.1, one L.Trankey, eye witness was examined as PW.2. Four documents were marked as Exs.A1 to A4. The appellant examined one Lingakumar as RW.1 and marked Ex.P1, driving licence of driver of fourth respondent.

6. The Tribunal considering the pleadings and evidence came to the conclusion that accident took place only due to rash and negligent driving by driver of fourth respondent. Before the Tribunal, the respondents 1 to 3 did not produce any document to prove the income of the deceased. The Tribunal fixed Rs.9,000/- per month as notional income and after deducting 1/3rd for personal expenses held that deceased would have contributed Rs.6,000/- for his family. The Tribunal fixed age of the deceased at 44 years, as per Postmortem report, applying multiplier 15, as per Schedule II of Motor Vehicles Act, the Tribunal awarded a sum of Rs.10,80,000/- as compensation, for loss of income and awarded a sum of Rs.10,000/- towards of loss of love and affection and another sum of Rs.15,000/-

towards loss of consortium and another sum of Rs.2,500/- towards funeral expenses. Totally, Tribunal awarded a sum of Rs.11,07,500/- as compensation. Against the said order present appeal is filed.

7. The learned counsel for the appellant contended that:-

(i) The respondents 1 to 3 did not produce any evidence to substantiate their claim that deceased was earning Rs.10,000/- per month. The Tribunal without any basis fixed notional income of the deceased at Rs.9,000/- per month which is on higher side.

(ii) The Tribunal ought to have seen that the deceased was non earning person without proof of avocation and income, the Tribunal failed to consider this aspect.

(iii) The learned counsel for the appellant relied on the following judgments:-

(a) *2013(1) TNMAC 481 (SC) (Reshma Kumari and others Vs. Madan Mohan and another)*, para 36 reads as follows:-

> *36. ... In the case where the deceased was self employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases.*

(iv) *2013(2) TNMAC 453 (DB) (M. Senbagama and others Vs. V. Vinodkumar)*, para 10 reads as follows:-

> *10. Tribunal had taken the notional income of the deceased at Rs.4,500/- and the Annual Income at Rs.54,000/-. Learned counsel for the Claimants submitted that at the time of accident, deceased was doing cattle business apart from doing Agricultural work and was earning Rs.10,000/- per month and that the monthly income fixed by the Tribunal is on the lower side. Though the claimants have not produced any documentary proof to show that deceased was earning Rs.10,000/- per month, considering the nature of agricultural work that he was doing at the time of accident and also the Firewood business run by the deceased, we are of the view that the Notional Income of Rs.4,500/- fixed by the Tribunal is very low. By doing the Agricultural work and Firewood business, deceased would have earned atleast Rs.200/- per day I.e. Rs.6,000/- per month. Therefore, the monthly income of the deceased is fixed at Rs.6,000/- per month.*

8. The learned counsel for the appellant contended that in the judgment reported in *2013(2) TNMAC 450 (DB) (M. Senbagama and others Vs. V. Vinodkumar)*, the Division Bench of this Court fixed Rs.6,000/- as notional income of the deceased in the absence of any documentary proof and when the deceased was self employed *or was on a fixed salary without provision for annual increments, the actual*

income at the time of death without any addition to income for future prospects can be granted.

9. Per contra, the learned counsel for the respondents 1 to 3contended that:-

(i) Tribunal appreciated the materials on record in proper perspective and rightly held that accident took place only due to rash and negligent driving by driver of fourth respondent. The Tribunal has failed to grant future prospects, even though the deceased was self employed. He relied on judgment reported in *2012 (6) SCC 421 (Santhosh Devi Vs. National Insurance Company Limited and others)* and the said judgment it has been held that even for self employed or persons paid fixed wages increment of 30 percent can be applied for calculating the amounts of compensation. The Tribunal granted very meagre amount towards loss of consortium and loss of love and affection and prayed for enhancement of compensation invoking Order 41 Rule 33 CPC.

10. For this proposition, the learned counsel for the respondents 1 to 3 relied on the judgments reported in *2015(1) TNMAC 161 (SC) (Neeta and others Vs. Divisional Manager, MSRTC, Kolhpur) and 2014(3)TLNJ 101(Civil) (Managing Director, Metropolitan Transport Corporation Limited Vs. N. Rajendran and another)* and prayed for enhancement of compensation.

11. I have carefully perused the materials available on record and considered the arguments of counsel for both sides.

12. Before the Tribunal, respondents 1 to 3 examined eyewitness to the accident and proved that accident took place only due to rash and negligent driving by driver of fourth respondent. From the records it is seen that the Tribunal by appreciating the materials on record in proper perspective has come to the conclusion that accident took place only due to rash and negligent driving by the driver of the fourth respondent. There is no reason warranting interference by this court.

13. As far as quantum of compensation is concerned, the respondents 1 to 3 did not substantiate their claim that deceased was earning Rs.10,000/- per month. The Tribunal fixed notional income at Rs.9,000/- per month. This is on higher side. In the similar circumstances the Division Bench of this Court reported in *2013(2) TNMAC 450 (DB) (M. Senbagama and others Vs. V. Vinodkumar),* held that Rs.6,000/- per month will be reasonable notional income. In the circumstances Rs.6,000/- per month as notional income will be proper income the deceased would have earned at the time of death.

14. The learned counsel for the respondents 1 to 3 relied on judgment reported in *2012(6)SCC 421 (Santhosh Devi Vs. National Insurance Company Limited and others)* and contended that the Hon'ble Apex Court held that even for self employed or to persons who are paid for person fixed wages on increase of 30% can be granted as future prospects.

15. On the other hand the learned counsel for the appellant relied on the judgment reported in *2013(1) TNMAC 481 (SC) (Reshma Kumari and others Vs. Madan Mohan and another)* and contended that

self employed or person on a fixed salary without provision for annual increments, the actual income at the time of death is to be fixed without any addition to income for future prospects. In the very same Judgment it has been held that a departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases.

16. In the present case by considering the judgments relied on by counsel for the appellant and respondents 1 to 3, I am inclined to grant 30% increases in notional income as future prospects as per the Judgment of Hon''ble Supreme Court reported in *2012(6)SCC 421 (Santhosh Devi Vs. National Insurance Company Limited and others).* Therefore, notional income of the deceased is fixed at Rs.6,000/- and 30% enhancement is granted which comes to Rs.7,800/- (Rs.6000 + Rs.6000 x 30/100) and the 1/3rd of the same is deducted towards personal expenses. The Tribunal applied multiplier 15 as mentioned in Schedule II to Act which is not correct multiplier. As per the Judgment reported in *2009(2) TNMAC 1 (SC) (Smt. Sarla Verma Vs. Delhi Transport Corporation and another)*, correct multiplier applicable is only 14. By applying multiplier 14, loss of income is Rs.7,800/-x12x14x2/3 = Rs.8,73,600/-.

17. The Tribunal awarded a sum of Rs.15,000/- for loss of consortium. This is very meager amount. The compensation awarded by the Tribunal for loss of consortium is enhanced to a sum of Rs.50,000/-. Further, a sum of Rs.10,000/- awarded to the respondents 2 and 3 for loss of love and affection, is hereby enhanced to Rs.25,000/- each.

18. In all other aspects, the amount awarded by the Tribunal is hereby confirmed. Therefore, the award of the Tribunal is reduced from Rs. 11,07,500/- to Rs.9,76,100/- in the following manner:-

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1	Loss of income	10,80,000	8,73,600	Reduced by Rs.2,06,400/-
2	Loss of love and affection to R2 and R3	10,000.00	50,000	Enhanced by Rs.40,000/-
3	Loss of consortium to R1	15,000.00	50,000	Enhanced by Rs.35,000/-
4	Funeral expenses	2,500.00	2,500	Confirmed
	Total	11,07,500	9,76,100	Reduced by Rs.1,31,400/-

The award of interest at the rate of 7.5% per annum remains un-altered.

19. For the reasons aforesaid, the Civil Miscellaneous Appeal filed by the appellant / Insurance Company is disposed of and the amount awarded by the Tribunal is reduced to Rs.9,76,100/- (Rupees Nine Lakhs Seventy Six Thousand and Hundred only). The appellant is directed to deposit the above said amount with interest at 7.5% per annum, to credit of MCOP.No.204 of 2010, on the file of Motor Accidents Claims Tribunal / Additional District and Sessions Judge / Fast Track Court -II, Tuticorin, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent would be entitled to Rs.4,76,100/-, and the respondents 2 and 3 would be entitled to a sum of Rs.2,50,000/- each, with respective proportionate interest and costs, less the amount, if any already withdrawn. The Tribunal shall deposit the share of the respondents 2 and 3, who are minor claimants, in a Fixed Deposit in any one of the Nationalized Banks, which shall be renewed periodically till they attain majority. The first respondent - mother of the minors is permitted to withdraw interest on the share of her minor children viz., the respondents 2 and 3 herein, once in three months from the Bank directly. The appellant is entitled to refund of any amount deposited over and above Rs.9,76,100/-. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal /

Additional District Judge / Fast Track Court-II), Tuticorin.

+One cc to Mr.S.Meenakshi Sundaram, Advocate, SR.no.41831

trp

RL/3 c- 14/9/2015

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