

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2044 of 2016

Rajammal

.. Appellant

*Versus*

1.P.Umapathi

2.The Branch Manager,  
National Insurance Company Ltd.,  
Branch Office: 7, No.50, Janapath,  
New Delhi.

.. Respondents

(first respondent herein called absent  
and remained exparte before the Tribunal)

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 26.07.2012 made in M.C.O.P.No.496/2011 on the file of the Motor Accidents Claims Tribunal, (I Additional District Judge) Erode.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.R.Sree Vidhya for R2

**J U D G M E N T**

It is a case of death of the deceased Thangavel, who was aged about 58 years at the time of accident and was doing Den Ping Warp for a monthly income at Rs.10,000/-. Aggrieved by the impugned award dated 26.07.2012 made in M.C.O.P.No.496/2011 on the file of the Motor Accidents Claims

Tribunal, (I Additional District Judge) Erode, awarding a sum of Rs.2,84,900/- for the loss of life of the bread winner of the family, the present appeal has been filed.

2. According to the claimant, on 14-07-2011 at about 8.00 a.m., when the deceased Thangavel was standing at extreme Northern side of East West Erode-Sathy Main Road, a motorcycle bearing Registration No.TN 36 W 1719, which was driven by its driver, came from West to East direction in a rash and negligent manner and hit against the deceased. Due to the same, the deceased Thangavel fell down on the road. Immediately after the accident, he was taken to Government Hospital, Erode where he took first aid treatment and then brought to KMCH Hospital, Erode. Subsequently, he was brought to Coimbatore Medical College Hospital, Coimbatore. The deceased died on 15-07-2011 at 3.00 am at Coimbatore Medical College Hospital, Coimbatore. According to the claimant, the accident had occurred due to the rash and negligent driving of the first respondent.

3. Learned counsel appearing for the claimant/appellant would submit that the learned Tribunal ought not to have awarded a meagre amount of Rs.2,84,900/- for a claim of Rs.10,00,000/- in a case of fatal which is not acceptable and hence it has to be enhanced. Learned counsel would further submit that the learned Tribunal failed to consider the fact that at the time of accident, the deceased was working as Den Ping Warp work and thereby he

earned a sum of Rs. 10,000/- per month, has simply fixed Rs.5,000/- as monthly income of the deceased, which is not sustainable under law. Adding further, he would submit that the learned Tribunal ought not to have deducted  $\frac{1}{2}$  of income towards the personal income of the deceased, which is not correct, since the deceased is a married person and hence  $\frac{1}{3}^{\text{rd}}$  deduction has to be made. He would further submit that under the heads 'loss of love and affection', 'loss of consortium' and 'transportation', meagre amount was awarded by the learned Tribunal and hence, the same have to be enhanced.

4.Learned counsel for the Insurance Company is unable to refute the said arguments.

5.When the learned Tribunal has fixed Rs.5,000/- as notional monthly income of the deceased in the absence of any proof to the employment and monthly income, it ought not to have made deduction of 50% towards personal expenses. Therefore, this Court is inclined to modify the same. Accordingly,  $\frac{1}{3}^{\text{rd}}$  of the income is to be deducted towards personal expenses of the deceased. Learned Tribunal has committed apparent mistake in adopting the multiplier '8' instead of '11' and therefore, considering the age of the deceased, this Court is inclined to adopt the multiplier '11'. With regard to the head 'loss of consortium' and 'loss of love and affection', as per the ratio laid down by the Hon'ble Apex Court in the case of **Rajesh and others**

vs. Rajbir Singh and others reported in 2013 (4) TN MAC 44 (SC) wherein it has been held that a minimum a sum of Rs.1,00,000/- should be given towards loss of consortium, this Court is inclined to fix Rs.50,000/- towards loss of Consortium and Rs.50,000/- towards loss of love and affection. This Court is inclined to fix Rs.10,000/- towards transport charges and the same is hereby fixed.

The modified compensation as per the above discussion are as follows:

|                                                                                          |                  |
|------------------------------------------------------------------------------------------|------------------|
| Loss of dependency<br>( $60000 \times 1/3 = 20000$ ; $60000 - 20000 = 40000 \times 11$ ) | ...Rs.4,40,000/- |
| Loss of consortium                                                                       | ...Rs. 50,000/-  |
| Loss of love and affection                                                               | ...Rs. 50,000/-  |
| Transportation                                                                           | ...Rs. 10,000/-  |
| Medical expenses                                                                         | ...Rs. 14,900/-  |
|                                                                                          | -----            |
| Total                                                                                    | ...Rs.5,64,900/- |
|                                                                                          | -----            |

6. Therefore, the Insurance Company/second respondent herein is directed to deposit the modified amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the modified amount, on making proper application.

7. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs.

8. Learned counsel appearing for the Insurance company has

submitted that the appeal was filed with 681 days delay. Therefore, the said delay period would be excluded for the purpose of calculating interest.

**20.10.2016**

Index : Yes / No  
vga

To

1.The Motor Accidents Claims Tribunal,  
(I Additional District Judge) Erode.

2.The Section Officer,  
V.R.Section,  
High Court, Madras.

T.RAJA, J.

vga

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