

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 12.12.2016

Coram:

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THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN**C.M.A(MD)No.1418 of 2016****and****C.M.P. (MD)No.11848 of 2016**

The Branch Manager,
M/s. United India Insurance Company Limited,
23-C, East Car Street,
Tenkasi,
Tirunelveli District.

... Appellant/2nd Respondent

-Vs-

1. Poornam
2. Edward
3. M.Avulia Mohaideen

...Respondents 1 and 2/Claimants
...3rd Respondent/1st Respondent

4. Royal Sundaram Alliance Insurance Company Limited,
represented by its Branch Manager,
Trichy.

(Notice to the 3rd and 4th Respondent is given up)... 4th Respondent/3rd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.04.2008 made in M.C.O.P.No.275 of 2005 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi.

For Appellant : Mr.B.Rajesh Saravanan

For R1 and R2 : Mr.A.K.Ajay for
Mr.K.Sami Durai**J U D G M E N T**

The Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award of Rs.6,37,000/- as compensation for the death of one Manoj, aged about 21 years, alleged to be working as electrician earning about Rs.10,000/- per month, in an accident which occurred on 06.05.2005, when he was riding a motorcycle along with two other persons and hit by Mahindra Van driven in a rash and negligent manner. Due to the death of the said Manoj, the respondents 1 and 2/claimants filed the claim petition. On contest, the Tribunal found that the accident occurred due to rash and negligent driving of the van and determined the compensation at Rs.6,37,000/-.

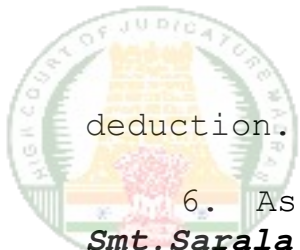
2. Heard Mr.B.Rajesh Saravanan, learned counsel appearing for the appellant and Mr.A.K.Ajay, learned counsel appearing for the

respondents/claimants.

3. It is evident that the victim Manoj along with two other persons was riding a T.V.S.Victor vehicle bearing Registration No.TN 76-19550 and it was hit by the Mahindra Van, resulting in his death and injuring two other persons. Based on the documents Ex.P1 - F.I.R. and Ex.P7 - charge sheet against the driver of the van and also the evidence of eye-witness viz., P.W.3, one of the injured, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the van driver. Further, the Tribunal took note of the evidence of the van driver that at the time of accident, the steering got struck. Therefore, the finding regarding negligence is confirmed.

4. The other question which has to be decided by this Court is whether there was negligence on the part of the deceased having taken two other persons along with him, while he was riding the two wheeler. It is submitted that the deceased was having expired learners licence and therefore, the liability cannot be fastened on the Insurance Company. However, the learned counsel appearing for the respondents/claimants opposed the said plea. It is admitted by the claimants that the deceased was not having a valid driving licence. Though it is contended by the learned counsel for the appellant that the deceased was having expired learner's licence, as already found by the Tribunal and confirmed by this Court, the negligence was on the part of the driver of the van and therefore, this issue has got no relevance at all.

5. The quantum of compensation is challenged on the ground that multiplier '17' was adopted wrongly as the dependents age alone have to be the criterion to determine the multiplier, whereas the age of the deceased formed the basis for adopting multiplier and wrongly, '17' has been adopted. The learned counsel appearing for the appellant would submit that the Tribunal took Rs.3,000/- as monthly income and adopting multiplier '17', determined the loss of income at Rs.6,12,000/-; Rs.20,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses, totally Rs.6,37,000/- was awarded as compensation. The accident occurred on 06.05.2005. The deceased was an I.T.I. diploma-holder as proved by Exs.P8 and P9 and he got registered with employment exchange as per Ex.P10. Further, Ex.P11 proves that he has been employed by J.P. Electrical. Though as per Ex.P11, from 20.01.2002 till 02.01.2003, the deceased was earning about Rs.3,500/- from J.P. Electrical, however, the Tribunal took Rs.3,000/- as monthly income and no deduction has been made towards personal expenses. As stated above, the deceased was a diploma holder in I.T.I and was earning about Rs.3,000/-. However, in the absence of any material evidence regarding income, the Honourable Supreme Court in **New India Assurance Company Limited vs. Smt. Kalpana and others** reported in (2007) 3 SCC 538, for the accident occurred during 1999 took Rs.3,000/- as monthly income, after deduction towards personal expenses. Therefore, this Court determines the monthly income of the deceased at Rs.4,500/- without



deduction.

6. As per the judgment of the Honourable Supreme Court in **Smt. Sarala Varma and other vs. Delhi Transport Corporation and another** reported in **2009 (2) TNMAC 1 (SC)**, 50% is required to be added as future income. Therefore, the monthly income would be Rs.4,500/- + 50% (Rs.2,250/-) = 6,750/-. Since the deceased was a bachelor, 50% has to be deducted towards personal expenses which the Tribunal did not do. After 50% deduction, the monthly contribution would be Rs.6750/- - 50% = Rs.3,375/-. The Tribunal rightly adopted multiplier '17', as per the age of the deceased viz., Manoj, aged 21 years as proved by Ex.P2 postmortem certificate, relying upon the judgment of the Honourable Supreme Court in **New India Assurance Company Limited vs. Kalpana (Smt) and others** reported in **(2007) 3 SCC 538**, and if '17' multiplier is adopted, then the loss of income would be Rs.3,375/- x 12 x 17 = Rs.6,88,500/-. The claimants are the parents and the deceased was their only son. The pain and mental agony underwent by the parents cannot be estimated. Moreover, the only son, who would have looked after the parents, when they become old and the love and affection which would have been showed by him cannot be estimated in terms of money. Therefore, Rs.1,00,000/- each is awarded to the parents towards loss of love and affection enhancing from Rs.20,000/-. Rs.5,000/- awarded towards funeral expenses is too low and therefore, along with the transportation, it is enhanced to Rs.15,000/-. The award of Rs.6,37,000/- is enhanced to Rs.9,03,500/- which is rounded off to Rs.9,00,000/-.

7. Though the appeal has been preferred by the Insurance Company against the award of Rs.6,37,000/-, this Court *suo motu* enhanced compensation to Rs.9,00,000/-, even in the absence of appeal / cross-appeal by the claimants, by invoking Order 41 Rule 33 and Article 227 of the Constitution of India. Since just compensation was not given, this Court has awarded just compensation, for which this Court has power and jurisdiction.

8. This Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

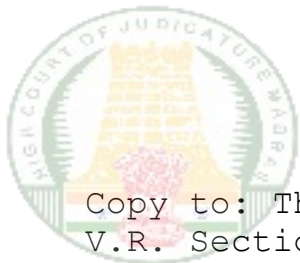
Assistant Registrar (CS III)

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Sub Assistant Registrar (CS)

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The Motor Accident Claims Tribunal, (The Principal Sub Judge),
Tenkasi.



Copy to: The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1cc to Mr.B.RAJESH SARAIVANAN, Advocate, SR.No. 80921

C.M.A (MD) No.1418 of 2016
12.12.2016

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KK/SAR/10.05.2019/ 4P- 5C

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