

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 02.06.2016****CORAM:**

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.334 of 2016
and
C.M.P. (MD) .No.4637 of 2016

National Insurance Company Limited,
175-A, Great Cotton Road,
Thoothukudi.

.. Appellant/Respondent No.2

Vs.

1.K.Sivasuriyan	.. Respondent No.1/Petitioner No.1
2.S.Saroja	.. Respondent No.2/Petitioner No.2
3.S.Shanmuga Priya	.. Respondent No.3/Petitioner No.3
4.S.Kavitha	.. Respondent No.4/Petitioner No.4
5.Minor S.Kumaresan	.. Respondent No.5/Petitioner No.5
(Minor is Represented through his father and next friend Sivasuriyan the I Respondent herein)	
6.S.Selva Nayagam	.. Respondent No.6/Respondent No.1

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, against the fair and decretal order, dated 11.09.2013, made in M.C.O.P.No.67 of 2013 on the file of the Motor Accident Claims Tribunal (II-Additional District Court), Thoothukudi.

For Appellant : Mr.D.Sivaraman

For Respondents: Mr.S.Sivathilakar
For R1 to R5

O R D E R

Aggrieved over the award passed by the Motor Accidents Claims Tribunal, II-Additional District Court, Thoothukudi, in M.C.O.P.No.67 of 2013, dated 11.09.2013, the insurance company has filed the present appeal.

2. Case in brief are as follows:

On 27.09.2012, at about 19.30 hours, when the deceased Arun Manesh was standing in front of Mohadoom's house at Koman West Street, Kayalpattinam, a lorry bearing registration No.TN-69-AW-



7048 driven by its driver on a rash and negligent manner dashed against him. In that process, the deceased died on the spot. Alleging that the driver of the lorry was responsible for the accident, a petition was filed by the legal heirs of the deceased claiming compensation of Rs.30,00,000/- (Rupees thirty lakhs only).

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3. The claim petition was resisted by the respondent disputing the manner of the accident and their liability.

4. During trial, the claimants examined two witnesses and marked Exhibits P1 to P6 to substantiate their case. The Tribunal, based on the evidence of PW1, accepting Ex.P1 to P3 came to the conclusion that the driver of the lorry was responsible for the accident and awarded a compensation of Rs.6,05,000/- (Rupees six lakhs and five thousand thousand only) along with proportionate interest at the rate of 7.5% per annum. Questioning the award, the present appeal is filed.

5. Mr.D.Sivaraman, the learned counsel for the appellant would submit that they are not disputing their liability, but the quantum awarded by the Tribunal is on higher side. He would further submit that the Tribunal has fixed the income of the deceased as Rs.10,000/-per month, holding that he was running a hardware business in the name and style of Kumaresan Hardware Shop, but the licence was standing in the name of his father. When there was no proof to show the income of the deceased, the Tribunal has to fix the income as Rs.6,000/- p.m. Hence, the award has to be reduced.

6. Per contra Mr.S.Sivathilakar, the learned counsel for the claimants submitted that the deceased was aged 27 years at the time of accident, the Tribunal without considering the future prospects of the deceased fixed income as Rs.10,000/- p.m. and even the income of the deceased is taken as Rs.6,000/- p.m., 50% of the income i.e., Rs.3000/- has to be further added towards future prospects and that the award is reasonable and prayed for dismissal of the appeal.

7. Heard both sides and perused the materials available on record.

8. It is seen from the records that the Tribunal relying upon the decision of this Court reported in **2012 (2) TNMAC182** has rightly deducted 50% of the income towards his personal and living expenses as the deceased was the bachelor . Further the Tribunal fixed multiplier as per the decision reported in **2009 (2) TNMAC (1) SC**, and awarded a sum of Rs.50,000/- towards love and affection and Rs.5,000/- towards funeral expenses.



9. In **2013 (3) CTC 883**, the Hon'ble Supreme Court held that the deceased below 40 years are entitled for addition of 50% of their income towards future prospects. However, the Tribunal, while fixing the income of the deceased, has not taken into consideration of his future prospects. It is not in dispute in this case, that the deceased is aged 27 years old, so he is entitled for addition of 50% of the income towards future prospectus. Considering the facts of the case, this Court is of the opinion that the award passed by the Tribunal is fair and reasonable.

10. In the result, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed.

11. The appellant insurance company shall deposit the entire award amount along with the proportionate interest and cost within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 to 4 are at liberty to withdraw their share amount, out of deposited amount with proportionate interest and costs, without filing any formal application seeking permission. The Claims Tribunal is directed to deposit the share of the minor claimant in any one of the nationalised banks, in fixed deposit, initially for a period of three years, renewable thereafter, till he attains majority. No Costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

PJL

The Motor Accident Claims Tribunal
II Additional District Judge, Thoothukudi.

+1CC to Mr.D.Sivaramanan Advocate Sr.No.27607
+1CC to Mr.S.Sivathilakar, Advocate Sr.No.27520

GJM/Sk/SKN/SAR-III-24.6.16-3p-4C

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