IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2017

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.2021 and 1517 of 2007

National Insurance Company Limited,
No.10/40E, Raja Street,
Kangeyam, Erode District … Appellant in both appeals/ Respondent No.3 in both MACTOP

Versus

CMA.No.2021 of 2017
1. N. Suseela ..1st Respondent/1st Respondent
2. R.Somalatha ..2nd Respondent/2nd Respondent
3. Rajagopalan ..3rd Respondent/1st Respondent
4. Balakrishnan ..4th Respondent/2nd Respondent

CMA.No.1517 of 2017
1. Saraswathi .. 1st Respondent/Petitioner
2. Rajagopalan .. 2nd Respondent/1st Respondent
3. Balakrishnan .. 3rd Respondent/2nd Respondent

Prayer in C.M.A. No.2021 of 2007 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the decree and judgment passed in MACTOP No.912 of 2002, dated 14.06.2005 on the file of the Motor Accidents Claims Tribunal and Additional District Judge, Fast Track Court No.1, Coimbatore.

Prayer in C.M.A. No.1517 of 2007 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the decree and judgment passed in MACTOP No.842 of 2002, dated 14.06.2005 on the file of the Motor Accidents Claims Tribunal and Additional District Judge, Fast Track Court No.1, Coimbatore.

For Appellant : Mrs.N.B.Surekha in both CMAs
For Respondents : Mrs.Ramya V. Rao for R2 in CMA No.2021 of 2017
Mr.J.Pothiraj, for R1 in CMA No.1518 of 2017
CMA.No.2021/17 - R1 died, vide Memo,R3 & 4-C/N not ready
CMA.No.1517/17 - R2 not ready, R3 Sd-NA

COMMON JUDGMENT

The deceased, Vidya Prakash and Babu, both apprentice, aged 18 years, met with an accident on 6.4.2002 and succumbed to the injuries. The mother and sister of the respective deceased filed a separate claim petitions in M.C.O.P. Nos.842 & 912 of 2002 claiming compensation in a sum of Rs.3,50,000/=.

2. The Tribunal, on a consideration of oral and documentary evidence, awarded compensation in a sum of Rs.3,39,000/= along with interest at 9% p.a. in each of the claim petitions under the following heads :-

Loss of Dependency	:	Rs.3,24,000/-
Funeral Expenses	:	Rs. 5,000/-
Love & Affection	:	Rs. 10,000/-
Total		Rs.3,39,000/-

Challenging the awards as excessive, the Insurance Company has filed these appeals.

3. Though very many grounds have been raised in the appeal assailing the order of the Tribunal, however, at the time of argument, learned counsel appearing for the appellant restricted his argument only insofar as the quantum of compensation awarded by the Tribunal and the rate of interest awarded and, therefore, this Court is dealing only with those issues.

4. Learned counsel appearing for the appellant contended that the deceased, though have studied ITI, however, were only apprentice and, therefore, the fixation of Rs.3,000/- as monthly income is on the higher side and, therefore, the same needs reduction. It is the further submission of the learned counsel for the appellant that the award of interest at 9% p.a. is on the higher side and the same needs to be reduced.

5. In order to appreciate the contentions advanced above, it is necessary to have a perusal of the findings rendered by the Tribunal and the reasonings assigned therein for fixation of monthly income and award of interest. It is also to be pointed out that the deceased are said to be ITI apprentice/trainee and in that context, it is necessary to decide whether the fixation of monthly income at Rs.3,000/- is justifiable.

6. The aspect of negligence has been gone into by the

Tribunal and the same has been fastened on the driver of the offending vehicle. The said aspect is not in dispute and, therefore, this Court is not inclined to go into the issue.

7. A perusal of the records reveal that the deceased had completed his ITI course and was working as an apprentice. The deceased was a bachelor and the claimants of the deceased were dependent on his income.

8. It is clear from the records that the families of the deceased were dependent upon them as they were the sole breadwinner of the family. The father of the deceased had already died and, therefore, the responsibility of maintaining the family was on the shoulder of the deceased. In such circumstances, the fixation of Rs.3,000/- as the monthly income of the deceased cannot be said to be on the higher side. It is also to be borne in mind that the deceased were educated individuals, more specifically a diploma holders.

9. In this regard, useful reference can be had to the decision of the Supreme Court in Syed Sadiq & Ors. - Vs - United India Insurance Co. (2014 (2) SCC 735), wherein the Supreme Court, in the case of vegetable vendor, an unskilled labour, had fixed the monthly income at Rs.6,500/-. In the said case, the accident had happened in the year 2008. However, in the present case, the accident had happened in the year 2002. A gap of only six years between the two incidents and the level of education of the deceased in both cases leads this Court to the inescapable conclusion that the fixation of Rs.3,000/- as the monthly income of the deceased cannot be said to be on the higher side.

10. The Tribunal, fixing the monthly salary at Rs.3,000/- and deducting 50% towards the personal expenses of the deceased and adopting proper multiplier of 18, has quantified the compensation towards loss of dependency at Rs.3,24,000/-. This compensation amount cannot be said to be excessive In fact, it is to be pointed out that the Tribunal has not considered the future prospective increase in income of the deceased.

11. It is also evident from the order passed by the Tribunal that while fixing the age for the purpose of quantification of compensation under the head loss of dependency, the Tribunal has erroneously considered the age of the deceased

12. Insofar as the compensation awarded under the other heads, viz., love and affection and funeral expenses are concerned, a careful perusal of the award reveals that the deceased was aged only 18 at the time of the accident. However, the Tribunal has awarded only a sum of Rs.10,000/- towards love

and affection. This amount, by no stretch of imagination, could be said to be excessive or disproportionate. The 1st claimant, viz., the mother has lost her only son, who was aged just 18 years and, thereby, her hold on life itself has been put in jeopardy. The love and affection that the son would have showered on her old age have been lost due to the untimely tragic demise of her only son. In such circumstances, the compensation awarded towards love and affection cannot be said to be excessice. Accordingly, the same is confirmed. Similarly, the compensation of Rs.5,000/- awarded towards funeral expenses is very conservative and cannot be said to be excessive or disproportionate. Accordingly, the said compensation is also confirmed.

13. It is the submission of the learned counsel for the appellant that the interest awarded at 9% p.a. is on the higher side and the same needs to be reduced. The accident, as already stated, had happened in the year 2002. Almost a decade and a half has passed since the date of the accident. Though the money value has fallen down drastically, since the year of accident, however, keeping in mind the interest of either parties, this Court deems it fit that interest at 7.5% p.a. from the date of petition till the date of deposit would be just and reasonable interest. Accordingly, this Court awards interest at 7.5% p.a. from the date of petition till date of deposit.

14. For the reasons aforesaid, these appeals are dismissed confirming the compensation awarded by the Tribunal, however, modifying only the component of interest payable from 9% p.a. to 7.5% p.a. No costs. Consequently, connected miscellaneous petition is closed.

15. It is reported that the mother of the deceased, viz., the 1st respondent/ 1st petitioner in M.C.O.P. No.912 of 2002 died pending the appeal. In such circumstances, the 2nd respondent, viz., the daughter of the 1st respondent and the sister of the deceased is entitled to the compensation awarded by the Tribunal. Accordingly, the 2nd

respondent in M.C.O.P. No.912 of 2002 is entitled to receive the compensation awarded to the 1st claimant.

16. The appellant/Insurance Company is directed to deposit the entire award amount as quantified by the Tribunal along with interest at 7.5% per annum from the date of petition till the date of deposit, less the amount, if any, already deposited, to the credit of the respective claim petitions, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respective

claimants through RTGS within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petitions, if any are also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsi2

1. The Motor Accidents Claims Tribunal
   and Additional District Judge,
   Fast Track Court No.1, Coimbatore.

2. The Section Officer,
   V.R. Records, High Court,
   Madras - 104.(2 Copies)

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.89552
+1cc to Mrs.N.B.Surekha , Advocate, S.R.No.89559

C.M.A.Nos.2021 and 1517 of 2007

RSK(CO)
CS/11/06/18