

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2017

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THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.No.3771 of 2010

National Insurance Company Limited
Cuddalore

... Appellant/3rd Respondent

Versus

1. Jayalakshmi
2. Jayakumar
3. Kanasabapathy
4. Senthilmurugan
5. Suresh Kumar

... Respondents

Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree, dated 18.02.2010 made in MCOP No.260 of 2008, on the file of the Motor Accidents Claims Tribunal Sub Court at Udumalpet.

For Appellant : Mrs. Sreevidhya

For Respondents: Mr.D.R.Arunkumar for R1 & R2

JUDGMENT

The appellant/ insurance company has filed this appeal against the award made in MCOP No.260 of 2008, dated 18.02.2010, on the file of the Motor Accidents Claims Tribunal Sub Court at Udumalpet.

2. The brief facts of the case are as under :-

On 13.06.2008, while the deceased Dhandapani was walking on the Udumalai - Pollachi Main Road, the van bearing registration No.TN 31 H 4207, driven by its Driver in a rash and negligent manner hit against the deceased due to which the deceased sustained injuries and, thereafter, succumbed to the said injuries. The deceased was an agriculturist and coconut merchant, aged 50 years and earning a sum of Rs.15,000/- per month. The legal heirs of the deceased have filed the claim petition, claiming a sum of Rs.10,00,000/- as compensation.

3. The Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs.6,21,000/- as compensation under the following heads:-

Loss of income		
(Rs.6,000 x 12 x 8)	:	Rs.5,76,000/-
Loss of Consortium	:	15,000/-
Loss of love and affection to		
2 nd and 3 rd petitioners		
(Rs.10,000/- each)	:	20,000/-
Funeral expenses	:	10,000/-

Total		Rs.6,21,000/-

4. The appellant / insurance company has filed the present appeal on the ground that the deceased was guilty of contributory negligence and the award passed by the Tribunal is disproportionate and highly excessive. Challenging the quantum of the compensation as well as the finding on negligence, the insurance company has filed this appeal.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the claimants and perused the materials available on record as also the order passed by the Tribunal.

6. The Tribunal, on the basis of Ex.P-4, post-mortem certificate, fixed the age of the deceased at 56 years. Taking note of the deposition of the claimants to the effect that the deceased was doing agricultural work and also doing coconut business and was also contributing a sum of Rs.15,000/- to the family, the Tribunal, in the absence of any documentary evidence, fixed the monthly of the deceased at Rs.9,000/= and deducting 1/3rd towards the personal expenses, and adopting the appropriate multiplier of 8, arrived at the loss of income at Rs.5,76,000/- (Rs.6,000 X 12 X 8).

7. The main contention of the learned counsel for the appellant that in the absence of any documentary evidence to substantiate the monthly income, fixation of income at Rs.9,000/= and contribution of Rs.6,000/- to

the family is wholly unjustified. This contention of the learned counsel deserves acceptance.

8. The Supreme Court, in the case of Syed Sadiq - Vs - Divisional Manager, United India Insurance Co. (2014 (2) SCC 735), while dealing with the persons employed in unorganised sector, more particularly, in the said case relating to a vegetable vendor, notionally fixed the monthly salary at Rs.6,500/-. In the case on hand, the deceased was alleged to be an agricultural worker and doing business in coconut. However, no documentary evidence having been produced to substantiate his income, this Court is of the considered view that based on the

ratio laid down by the Supreme Court in Syed Sadiq's case (supra), it would be safe to fix the notional income of the deceased at Rs.6,500/- per month.

9. Further, as per the ratio laid down by the Supreme Court in Rajesh - Vs - Rajbir Singh (2013 (9) SCC 54), the Tribunal has not considered the future prospective increase in income of the deceased. Based on the ratio laid down in Rajesh case (supra), 30% has to be added to the income towards future prospective increase.

10. Accordingly, following the ratio laid down by the Supreme Court in the above cited decisions, while fixing the monthly income of the deceased at Rs.6,500/=-, adding 30% towards the future prospective increase in income of the deceased, the total income of the deceased per month is quantified at Rs.8,450/=-. Deducting 1/3rd towards the personal expenses of the deceased, the contribution of the deceased to the family per month is fixed at Rs.5,634/=-. Adopting multiplier of 8, as laid down by the Supreme Court in Sarla Verma - Vs - Delhi Transport Corporation (2009 (6) SCC 121), the loss of dependency is quantified at Rs.5,40,864/=- (Rs.5634 X 12 X 8).

11. Insofar as the compensation awarded under the heads loss of consortium, loss of love and affection and funeral expenses are concerned, the compensation awarded are nominal, conservative and neither excessive nor disproportionate. Accordingly, the said compensation awarded are confirmed.

12. For the reasons aforesaid, the civil miscellaneous appeal is allowed in part reducing the compensation from Rs.6,21,000/=- to Rs.5,85,864/=- with interest at 7.5% p.a. from the date of petition till date of deposit. No costs.

13. The appellant/Insurance company is directed to deposit the amount as quantified by this Court above, along with interest and costs as ordered by the Tribunal, less the amount, if any, already deposited, to the credit of the claim petition, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimants, as per the ratio of apportionment fixed by the Tribunal, through RTGS within a period of two weeks thereafter.

Sd/-

Assistant Registrar (CS-ii)

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Sub Assistant Registrar

vsi2

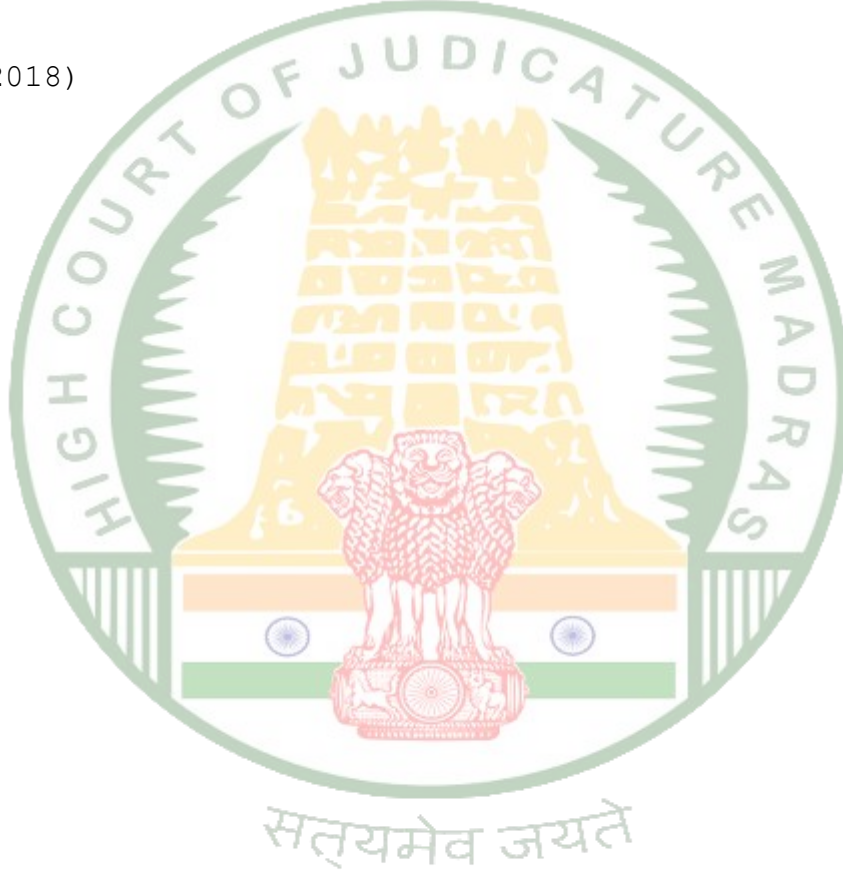
To

1. The Motor Accidents Claims Tribunal Sub Court at Udumalpet.
2. The Section Officer, VR Section,
High Court, Madras.(2 copies)

+1cc to Mr.R.SREEVIDHYA Advocate, S.R.No. 90443

C.M.A.No.3771 of 2010

RK(CO)
TR(16/04/2018)



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