



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.08.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.1023 of 2016
and
C.M.P. (MD) No.6558 of 2017

1.V.Kanniyammal

2.Minor.V.Sathiyakumar

3.Minor.V.Yuvaraj
(Minor petitioners 2&3 are rep.by
their mother and guardian
1st petitioner herein)

.. Appellants / Petitioners

Vs.

1.A.Perumal

2.The Branch Manager,
The New India Assurance Co.Ltd.,
No.66, W.B.Road,
Trichy-620 008.

.. Respondents/Respondents

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in M.C.O.P. No.168 of 2011 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge) Kulithalai, dated 17.12.2014.

For Appellant : Mr.T.Selvakumaran

For R1 : No Appearance

For R2 : Mr.J.S.Murali

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the judgment dated 17.12.2014 passed in M.C.O.P.No.168 of 2011 by the Motor Accident Claims Tribunal, (Subordinate Judge) Kulithalai.

2.Before the Tribunal, the appellants are the petitioners and the respondents are the respondents.



3. The case of the claimant in the petition is briefly as follows:

On the fateful day i.e. on 11.01.2011 at about 06.00 p.m., the deceased was travelling in a TATA AC bearing registration No.TN 47 Y 3355 as a loadman, from Panchappatti to Kulithalai main road, at that time, the driver of the said vehicle driven the same in a rash and negligent manner and capsized the vehicle, as a result of which, the deceased sustained grievous injuries and was taken to hospital for treatment. But he succumbed to his injuries and died on the same day. Hence, the legal heirs of the deceased filed a claim petition before the Tribunal claiming a sum of Rs.12,00,000/- as compensation.

4. Before the Tribunal on the side of the petitioners, P.Ws.1 & 2 were examined and Exs.P1 to P10 were marked. On the side of the respondents, R.W.1 was examined and Exs.R1 and R2 were marked.

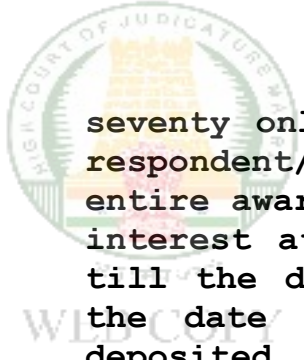
5. On consideration of the evidence available on record, the Tribunal has awarded a sum of Rs.6,86,270/- with interest at the rate of 7.5%. Aggrieved by the said award, the claimants are before this Court.

6.The learned counsel for the appellants/claimants by relying upon the Judgement of this Court in *SYED SADIQ v. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD.*, reported in 2014 (1) TN MAC 459, would submit that the Tribunal has not considered the future prospects of the deceased and has fixed his monthly income as Rs.3335/- only, after deducting his personal expenses, which is not correct and that the same may be enhanced.

7.Though the claimants have not produced any documentary proof with regard to the income of the deceased, considering the nature of his work that he was working as a loadman and as per the Judgement of the Hon'ble Supreme Court in *M.SENGABAGAM v. V.VINOD KUMAR* reported in 2013 (2) TN MAC 450, I am of the view that the notional income of the deceased shall be taken as Rs.6,000/- p.m. Based upon the Judgement of this Court reported in 2014 (1) TN MAC 459 (*stated supra*), 50% of the income is taken for future prospects, which comes to Rs.9,000/-. After deducting 1/3 for his personal expenses, his monthly income is taken as Rs.6,000/- p.m. If 18 multiplier is adopted, it works out to Rs.6,000 x 12 x 16 = Rs.11,52,000/- for loss of income.

8.The Tribunal has awarded a sum of Rs.10,000/- each for loss of love and affection; Rs.4,500/- for medical expenses; Rs.1,450/- towards transportation and Rs.10,000/- for funeral expenses, which are reasonable and hence, they are confirmed.

(*)"9. Though the claimants are entitled to the enhanced compensation of Rs.11,97,950/-, since they have restricted their claim in the appeal to 5 lakhs, the award amount is fixed at Rs.11,86,270/- (Rupees Eleven lakhs eighty six thousand two hundred



seventy only) along with interest at the rate of 7.5%. The second respondent/New India Assurance Company is directed to deposit the entire award amount, less the amount already deposited, with accrued interest at the rate of 7.5% per annum, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the claimants are entitled to withdraw their award amount as apportioned by the Tribunal, with proportionate interest and costs, without filing any formal petition before the Court below."

10. The compensation due to the minor claimants shall be deposited in any of the Nationalized Bank till they attained majority. The first appellant/claimant/mother, who is the guardian of the minor claimants is entitled to receive the interest once in six months.

11. The learned counsel for the second respondent/New India Assurance Company would submit that the award of the lower Court may be confirmed with regard to pay and recovery, and the mode of recovery shall be made, following the judgment in *ORIENTAL INSURANCE COMPANY LIMITED V. NANJAPPAN AND OTHERS* reported in 2004(2) CTC 464, wherein the mode of recovery has been clearly dealt in paragraph 8 of the judgment, which reads as follows:-

"Therefore, while setting aside the judgment of the High Court, we direct in terms of what has been stated in *Baljit Kaur's case* (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no orders as to costs.



Appeal disposed of accordingly."

12. Following the above Judgment, this Court is of the view that the pay and recovery awarded by the Tribunal shall be recovered by following the above Judgment.

WEB COPY

13. The appellants/claimants are directed to pay the additional Court fee, if any, within a period of two weeks from the date of receipt of a copy of this order.

14. In the result, the Civil Miscellaneous appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(C.O)

**(*) AMENDED AS PER ORDER OF THIS
HONOURABLE COURT DATED 13.10.2017**

/True Copy/

Sub-Assistant Registrar

**(*) TO BE SUBSTITUTED THE ORDER COPY ALREADY DESPATCHED ON
10.10.2017**

To

The Subordinate Judge,
The Motor Accident Claims Tribunal,
Kulithalai.

COPY TO:-

The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.T.Selvakumaran, Advocate, SR.No.69231
+One cc to Mr.J.S.Murali, Advocate, SR.No.69406
rj2
VB/6C/2P/SKN/RSK/SAR4/10/10/2017
RL/6C/2P/GT/SAR1/14/2/2018