

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

DATED : 07.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

WEB COPY

C.M.A. (MD) No.112 of 2017

1.Vijayaraja

2.Sitrarasan

3.Vasanthapandi

... Appellants/Claimants

(Cause title accepted vide**order of this Court dated****28.11.2016 made in****C.M.P (MD) No.10889 of 2016 in****C.M.A (MD) SR.No.43840 of 2016.)**

Vs.

1.P.Sekar

2.New India Assurance Company Limited,

Divisional Office,

Jerome Building,

Fort Station Road,

Trichy.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.08.2010, made in M.C.O.P.No.772 of 2006, by the Motor Accident Claims Tribunal - cum - III Additional Subordinate Judge, Trichy.

For Appellants : Mr.P.Pethu Rajesh

For Respondents : Mr.A.Elango for R.2

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellants/claimants against the award of Rs.3,20,000/- (Rupees Three Lakhs and Twenty Thousand only) for the death of one Selvarani, the wife of the first appellant/first claimant, aged about 33 years, stated to be earning about Rs.6,000/- (Rupees Six Thousand only), viz., a sum of Rs.200/- (Rupees Two Hundred only) per day, in the accident occurred on 09.12.2005, when she was about to get down from the mini bus belonging to the first respondent and insured with the second respondent-Insurance Company, which was started speedily resulting in falling of the deceased and sustaining fatal injuries.

2. Heard Mr.P.Pethu Rajesh, learned Counsel for the appellants/claimants and Mr.A.Elango, learned Counsel for the second respondent-Insurance Company.



3. The Tribunal, based on the evidence of P.W.2 - eyewitness and filing of the F.I.R - Ex.P.1 against the driver of the mini bus, rightly came to the conclusion that the accident occurred because of the rash and negligent driving of the driver of the mini bus and fastened the liability on the second respondent-Insurance Company.

4. With regard to the compensation, the Tribunal took only the notional income of Rs.15,000/- (Rupees Fifteen Thousand only) per annum as per the Second Schedule to the Motor Vehicles Act, 1988, stating that there was no proof regarding the income. The procedure adopted by the Tribunal is erroneous, especially, when it relied upon the amount given in the Second Schedule to the Motor Vehicles Act, 1988, which was framed in the year 1988. About 25 years ago, the Second Schedule was framed taking note of the value of the money, inflation and spending power at that time. Much water has flown under the bridge and everything got changed and therefore, it may not be appropriate to rely upon the values given in the Second Schedule to the Motor Vehicles Act, 1988.

5. The Honourable Supreme Court in **New India Assurance Company Limited v. Smt. Kalpana** reported in **I (2007) ACC 356 (SC) : (2007) 3 SCC 538**, determined the monthly income of a person, who died in the accident on 07.06.1999, at Rs.4,500/- (Rupees Four Thousand and Five Hundred only) and after deducting 1/3rd amount towards personal expenses, took a sum of Rs.3,000/- (Rupees Three Thousand only) as his monthly contribution to the family. Whereas in the case on hand, the accident occurred on 09.12.2005 and therefore, this Court, instead of Rs.4,500/- (Rupees Four Thousand and Five Hundred only), is inclined to determine the monthly income at Rs.5,000/- (Rupees Five Thousand only).

6. The age of the deceased was 33 years as per Ex.P.2 - post-mortem report. When she was hardly 33 years old, there is every likelihood of getting more amount if time passes. Therefore, some amount towards future prospects has to be added and accordingly, 50% is added towards future prospects as per the judgment of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others** reported in **(2013) 9 Supreme Court Cases 54**. Accordingly, the monthly income of the deceased would be Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) [Rs.5,000/- + Rs.2,500/-].

7. The size of the family is 3 and therefore, 1/3rd amount has to be deducted as per the judgment of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**. After deducting 1/3rd amount, the monthly contribution of the deceased would be Rs.5,000/- (Rupees Five Thousand only) [Rs.7,500/- - Rs.2,500/-].



8. As already observed, the age of the deceased was 33 years and the appropriate multiplier is 16 as per the judgment of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**.

9. Accordingly, the loss of income would be **Rs.9,60,000/-** (Rupees Nine Lakhs and Sixty Thousand only) [Rs.5,000/- X 12 X 16].

10. The first appellant/husband lost his wife and depriving of companionship and love and affection of his wife could not be compensated in terms of money. Therefore, a sum of Rs.10,000/- (Rupees Ten Thousand only) awarded by the Tribunal is too meagre and the same is enhanced to a sum of **Rs.1,00,000/-** (Rupees One Lakh only) towards loss of consortium as per the judgment of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others** reported in **(2013) 9 Supreme Court Cases 54**. Further, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) awarded by the Tribunal to the first appellant/husband towards loss of love and affection is deleted.

11. Similarly, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) each awarded by the Tribunal towards loss of love and affection to the minor claimants, is negligible and therefore, a sum of Rs.50,000/- (Rupees Fifty Thousand only) each is awarded by this Court towards loss of love and affection to the minor appellants 2 and 3/claimants 2 and 3, totalling a sum of **Rs.1,00,000/-** (Rupees One Lakh only).

12. A sum of Rs.5,000/- (Rupees Five Thousand only) each awarded under the heads 'funeral expenses' and 'transportation charges' is very negligible and therefore, the same is enhanced to a sum of **Rs.15,000/-** (Rupees Fifteen Thousand only) and a sum of **Rs.10,000/-** (Rupees Ten Thousand only) respectively.

13. No amount was awarded by the Tribunal under the head 'loss of estate' and hence, a sum of **Rs.15,000/-** (Rupees Fifteen Thousand only) is awarded under the head 'loss of estate'.

14. The rate of interest at 7.5% per annum awarded by the Tribunal is confirmed.

15. Accordingly, the appellants/claimants are entitled to a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

16. In the result,

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(i) This Civil Miscellaneous Appeal is partly allowed;

(ii) The appellants/claimants are entitled to a sum of

Rs.12,00,000/- (Rupees Twelve Lakhs only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(iii) The first appellant/first claimant is entitled to a sum of **Rs.5,00,000/-** (Rupees Five Lakhs only) and the appellants 2 and 3/claimants 2 and 3 are entitled to a sum of **Rs.3,50,000/-** (Rupees Three Lakhs and Fifty Thousand only) **each**.

(iv) The appellants/claimants are directed to submit their Account Details along with the copies of their passbooks to the Tribunal **forthwith**;

(v) The second respondent-Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.772 of 2006, on the file of the Motor Accident Claims Tribunal - cum - III Additional Sub Court, Trichy, within a period of **four weeks** from the date of receipt of a copy of this judgment;

(vi) On such deposit, the Tribunal is directed to transfer the respective share amounts of the appellants/claimants directly to their Personal Savings Bank Account Numbers, through RTGS/NEFT system, after getting their Account Details, within a period of **two weeks thereafter**;

(vii) Since this appeal has been filed with a delay of 2179 days, the appellants/claimants are not entitled to any interest for the aforesaid period of delay;

(viii) The appellants/claimants are directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment; and

(ix) In the facts and circumstances of the case, there shall be no order as to costs.

sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal - cum -
III Additional Sub Court, Trichy.

2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to M/s.P.Pethu Rajesh, Advocate in SR.No. 6728

rsb

CSL/PM-PN/15.03.2017 : 4P/4C

C.M.A. (MD) No.112 of 2017

07.02.2017