



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2017

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1097 of 2015

1.Abdulkhan
2.Suraiya Banu

... Appellants / Petitioners

Vs.

1.Vannamuthirai

2.M/s.National Insurance Company Limited,
Represented by its Divisional Manager,
D.No.3, North Veli Street,
Madurai-625 001.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and Judgment dated 26.06.2012 made in M.C.O.P.No.1134 of 2010 on the file of the Motor Accidents Claims Tribunal / III Additional Sub-Court, Madurai.

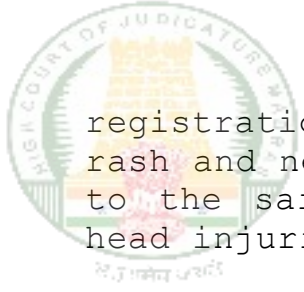
For Appellants	: Mr.A.Liaket Ali for M/s.S.Ramesh Alias Ramiah
For R-1	: No Appearance
For R-2	: Mrs.K.R.Shivashankari for Mr.S.Srinivasa Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the award, dated 26.06.2012 made in M.C.O.P.No.1134 of 2010 by Motor Accidents Claims Tribunal/III Additional Sub-Court, Madurai.

2. It is a case of fatal accident, which took place on 28.03.2008 at about 5.00 p.m., at Thelungam Coconut Thoppu, north of Vadipatti, Dindigul District.

3. It is the case of the claimants before the Tribunal that on the date of accident, when the deceased by name Ajamardeen was riding the motorcycle bearing registration No.TN 59 T 0847 from Natham to Madurai, near Thelungam Coconut Thoppu, the Van bearing



registration No.TN 63 A 2264 came from the opposite direction in a rash and negligent manner and dashed against the motorcycle. Due to the said impact, the deceased fell down and sustained heavy head injuries and therefore, he succumbed to the injuries.

4.The claimants filed an application in M.C.O.P.No.1134 of 2010, on the file of the Motor Accidents Claims Tribunal/ III Additional Sub-Court, Madurai, seeking compensation.

5. Before the Tribunal, the claimants examined four witnesses as P.Ws.1 to 4 and marked twenty one documents as Ex.P.1 to Ex.P.21. The respondents did not let in any oral or documentary evidences before the Tribunal.

6.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidences on record, held that the accident occurred only due to the rash and negligent driving of the driver of the Van, belonging to the first respondent and insured with the second respondent and therefore, held that the first and second respondents are jointly and severally liable to pay compensation of Rs.4,23,000/-.

7. Against which, the appellants/claimants filed this present appeal seeking enhancement of compensation.

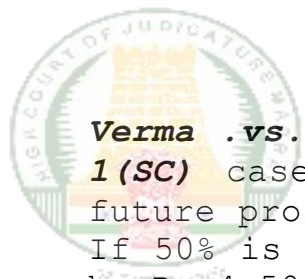
8. The learned counsel for the appellants/claimants submitted that without considering the age and avocation and dependency of the claimants over the deceased, the Tribunal awarded only a meagre sum in all heads and therefore, the compensation awarded by the Tribunal is to be enhanced.

9. The learned counsel for the second respondent/Insurance Company submitted that based on the evidence, the Tribunal awarded a just and reasonable compensation and therefore, the same does not warrants interference.

10. Heard the submissions made on either side and perused the materials available on record.

11. With regard to quantum of compensation, at the time of accident, the deceased was stated to be running Textile business and was earning a sum of Rs.10,000/- per month. To show that the deceased was earning about Rs.10,000/- per month, no document was filed. Therefore, the Tribunal took only Rs.4,500/- as monthly income, which is reasonable, in my considered view. Further, no future prospects has been awarded as per the ratio laid down in **Rajesh and others .vs. Rajbir Singh and others reported in 2013(3)**

Since the age of the deceased was found to be 25 years, the appropriate multiplier to be applied as per the **Smt.Sarla**



Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC) case, is '18'. Therefore, 50% has to be added towards future prospects as the age of the deceased was found to be as 25. If 50% is added towards future prospects, the monthly income would be Rs.4,500/- + 50 % = Rs.6750/-.

WEB COPY

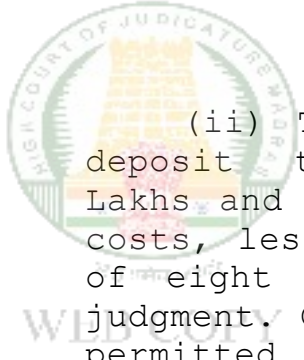
12. Since deceased was a bachelor at the time of accident, $\frac{1}{2}$ amount has to be deducted towards future prospects. The loss of income after deduction would be Rs.4500 + 50% - $\frac{1}{2}$ = Rs.3,375/- and therefore, the loss of income would be Rs.4500/- + 50% - $\frac{1}{2}$ X 12 X 18 = Rs.7,29,000/ and therefore, the compensation awarded for loss of income is enhanced to Rs.7,29,000/- and the other heads are confirmed.

13. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	3,78,000	7,29,000	Enhanced
2.	For Transportation	5,000	5,000	confirmed
3.	For Funeral Expenses	10,000	10,000	confirmed
4.	For loss of love and affection	30,000	30,000	confirmed
	Total	Rs.4,23,000	Rs.7,74,000	By enhancing a sum of Rs.3,51,000/-

14. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from **Rs.4,23,000/-** (Rupees Four Lakhs and Twenty Three Thousand only) to a sum of **Rs.7,74,000/-** (Rupees Seven Lakhs and Seventy Four Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs; The appellants are directed to pay the additional Court Fees within a period of **two weeks** from the date of receipt of a copy of this judgment;



(ii) The second respondent/Insurance Company is directed to deposit the entire award amount of Rs.7,74,000/- (Rupees Seven Lakhs and Seventy Four Thousand Only) with accrued interests and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are permitted to withdraw the entire award amount, with accrued interests and costs, without filing any formal application before the Tribunal. No Costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To,

1. The III Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Madurai.

+1cc to Mr.S. Srinivasa Raghavan, Advocate Sr.No.75890

PM

VB/JC/SAR1/06/11/2017/4P/3C

C.M.A(MD)No.1097 of 2015

01.09.2017