

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

DATED: 20.09.2017

CORAM:

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU****C.M.A. (MD) No.1165 of 2016****and****C.M.P. (MD) .No.10415 of 2016**

National Insurance Company,
represented by its Branch Manager,
Divisional Office,
Angu Vilas Building,
North Car Street,
Nagercoil, Agastheeswaram Taluk,
Kanyakumari District.

... Appellant / Respondent No.3

Vs.

1.Anitha Bai	... Respondent No.1/Petitioner No.1
2.Minor. Jincy	... Respondent No.2/Petitioner No.2
3.Minor. Ancy	... Respondent No.3/Petitioner No.3
4.Yovel	... Respondent No.4/Petitioner No.4
5.Ramani Gnana Let	... Respondent No.5/Petitioner No.5

(Minors 2 & 3 represented through their
mother & natural guardian Anitha Bai, the
1st respondent herein)

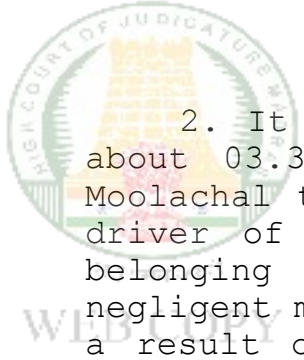
6.Sasi	... Respondent No.6/Respondent No.1
7.Ravi Kumar	... Respondent No.7/Respondent No.2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree in M.C.O.P.No.41 of 2013, dated 28.11.2014 on the file of Motor Accidents Claims Tribunal, Sub Court, Padmanabhapuram.

For Appellant	: Mr.D.Sivaraman
For R1 to R5	: Mr.K.P.Narayanakuru
For R6 & R7	: Mr.T.Wins

J U D G M E N T

The Civil Miscellaneous Appeal has been filed against the judgment and decree in M.C.O.P.No.41 of 2013, dated 28.11.2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Padmanabhapuram.



2. It is a case of fatal accident took place on 13.01.2013 at about 03.30 p.m., when the deceased Mohan Raj was walking from Moolachal to Mekkamandapam Road, near Gospal Penticosta Church, the driver of the Van bearing Registration No.TN - 74 - T - 3926 belonging to the second respondent, drove the Van in a rash and negligent manner and dashed against the backside of the deceased. As a result of which, Mohan Raj was thrown out and pushed into the Electric Post and the electricity pole fell down and he sustained multiple injuries throughout the body. Subsequently, he was admitted in Thuckalay Government Hospital and thereafter, the Doctor declared that Mohanraj died on the same day. The deceased is the only breadwinner of the family. Hence, the claimants filed an application in M.C.O.P.No.41 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Padmanabhapuram, seeking compensation.

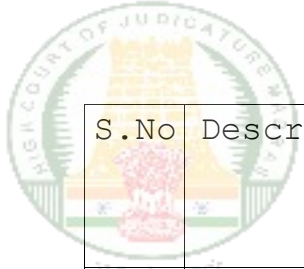
3. The Tribunal, after considering the facts and circumstances of the case, granted a sum of Rs.18,94,000/- towards total compensation. Challenging the same, the appellant/National Insurance Company Limited filed the present appeal only questioning the quantum of compensation.

4. The learned counsel for the appellant would submit that without any income proof, the Tribunal has taken a sum of Rs.7,000/- as income. He would further submit that since the age of the deceased is 39, the correct multiplier is '15' as per **Smt.Sarala Varma and other vs. Delhi Transport Corporation and another** reported in **2009 (2) TNMAC 1 (SC)**, and the Tribunal has taken a multiplier '16' and awarded a sum of Rs.15,12,000/- for loss of income, which is on the higher side as per **Sarala Varma** Case.

5. The learned counsel for the respondents/claimants opposed the contention of the learned counsel for the appellant by stating that at the time of accident, the deceased was heavy motor driver and getting salary of Rs.21,000/- per month. He would further submit that the Tribunal, after considering the age of the deceased, added 50% of the income for loss of future income.

6. As far as the income is concerned, since the deceased Mohan Raj was having a heavy licence, this Court is not inclined to interfere with the same. After deducting 1/4th from Rs.10,500/- for his personal expenses, the loss of income comes to Rs.7875/-. As per the **Sarala Varma Case (2009 ACJ 1298)**, for the persons died at the age of 39, multiplier '15' has to be adopted. If '15' multiplier is adopted, it works out to Rs.7,875/- x 12 x 15 = Rs.14,17,500/- for loss of income and the other heads are confirmed.

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

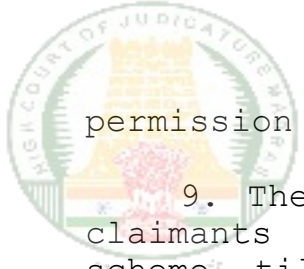


S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	15,12,000	14,17,500	reduced
2.	For funeral expenses	25,000	25,000	confirmed
3.	For loss of love and affection for 2 nd and 3 rd claimants	2,00,000	2,00,000	confirmed
4.	For loss of love and affection for 4th and 5th claimants	50,000	50,000	confirmed
5.	For loss of consortium for 1 st claimant	1,00,000	100,000	confirmed
6.	Ambulance and Transport expenses	5,000	5,000	confirmed
7.	Damages for cloths	2,000	2,000	Confirmed
	Total	18,94,000	17,19,500	By reducing a sum of Rs.94,500/-

8. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from Rs.18,94,00/- (Rupees Eighteen Lakhs and Ninety four thousand only) to a sum of **Rs.17,19,500/-** (Rupees Seventeen Lakhs and Nineteen Thousand and Five Hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The appellant/National Insurance Company is directed to deposit the entire award amount **Rs.17,19,500/-** (Rupees Seventeen Lakhs and Nineteen Thousand and Five Hundred only) with accrued interests and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of the order. On such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal with accrued interests and costs without filing any formal



permission petition before the Tribunal.

9. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Bank in a fixed deposit scheme, till they attain majority. The first respondent herein, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the Bank only for the welfare of the minors. No Costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CRL.SIDE)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Padmanabhapuram.

+1cc to M/s. D.SIVARAMAN Advocate in SR. No. 79942
+1cc to M/s. K.P.NARAYANAKUMAR Advocate in SR. No. 80193
AKV/IS
JS/JC/SAR.2/31.10.2017/4P-4C

C.M.A. (MD)No.1165 of 2016
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