



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANUC.M.A(MD)No.189 of 2017andC.M.P.(MD)No.2247 of 2017andC.M.A(MD)No.1177 of 2016andC.M.P.(MD)No.7697 of 2017C.M.A(MD)No.189 of 2017Royal Sundaram Alliance Insurance Company Limited,
Vilupuram,Represented by its Branch Manager. ... Appellant/2nd Respondent
Vs.

1.Gowri

2.Minor Agarika

3.Minor Arish

(Minor R2 and R3 rep by Mother and Guardian R1)

4.Panchavarnam

5.Ramaiyan ... Respondents 1 to 5/ Claimants

6.Kandasamy ... 6th Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 31.03.2015 made in M.C.O.P.No.81 of 2013 on the file of the Motor Accident Claims Tribunal Additional Sub-Judge, Kumbakonam.

For Appellant : Mr.M.E.Elango

For R1 to R5 : Mr.A.S.Mathialagan

For R6 : No appearance

C.M.A(MD)No.1177 of 2016

1.Gowri

2.Minor Ahareeha

3.Minor Arish

(Appellants 2 and 3 represented by Mother and
Natural Guardian the first appellant)

4.Panjavarnam

<https://hcservices.mca.gov.in/hcservices/>

... Appellants/Petitioners

Vs.



1.Kandhasamy

... 1st respondent/1st respondent

2.Royal Sundaram Alliance Company,
Villupuram through its
Branch Manager.

... 2nd Respondent/2nd respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 31.03.2015 made in MCOP.No.81 of 2013 on the file of the Motor Accident Claims Tribunal/ Additional Sub Judge, Kumbakonam.

For Appellant : Mr.A.S.Mathialagan
For 1st Respondent : No appearance

For 2nd Respondent : Mr.M.E.Elango

COMMON JUDGMENT

Since both the Civil Miscellaneous Appeals are arising out of the same accident, both the Civil Miscellaneous Appeals are disposed of by this Common judgment.

2. Both the Civil Miscellaneous Appeals have been filed against the award dated 31.03.2015 made in M.C.O.P.No.81 of 2013 on the file of the Motor Accident Claims Tribunal/Additional Sub-Judge, Kumbakonam.

3. It is a case of fatal accident, which took place on 10.08.2012 at about 7.00 p.m., at Kumbakonam to Chennai Main road.

4. It is the case of the claimants before the Tribunal that on the date of accident, when the deceased by name Sivakaumar was standing on edge of the road, the bus bearing registration No.TN 31 AX 1011, which came from south-north direction, was driven by its driver in a rash and negligent manner and dashed against the deceased and caused the accident and in the said accident, the deceased succumbed to the injuries.

5.The claimants filed an application in M.C.O.P.No.81 of 2013 on the file of the Motor Accident Claims Tribunal Additional/Sub-Judge, Kumbakonam, seeking compensation.

6. Before the Tribunal, the claimants examined two witnesses as P.Ws.1 and 2 and marked five documents as Exs.P1 to P5. The Insurance Company did not let in any oral or documentary evidences before the Tribunal.

7.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 bus, belonging to the first respondent/owner and insured with the second respondent/Insurance Company and therefore, directed the Insurance Company to pay compensation of Rs.12,60,880/-.

8.Against which, the appellant/Insurance Company has filed C.M.A(MD)No.189 of 2017 challenging the liability and the claimants have filed C.M.A(MD)No.1177 of 2017, seeking enhancement of compensation.

9.The learned counsel appearing for the appellant/Insurance Company in C.M.A(MD)No.189 of 2017 submitted that the Tribunal erred in fixing the notional monthly income of the deceased as Rs. 4500/- , when there is no proof filed to prove the income of the deceased and therefore, the compensation awarded by the Tribunal is on the higher side and the same requires interference at the hands of this Court.

10.Per contra, the learned counsel appearing for the appellants/Claimants in C.M.A(MD)No.1177 of 2016 submitted that the deceased was only 35 years at the time of the accident and was working as a Sub-Contractor and therefore, the notional income fixed by the Tribunal is very very low and therefore, the compensation arrived at by the Tribunal is to be enhanced.

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

12. With regard to quantum of compensation, at the time of accident, the deceased was stated to be working as a Sub-Contractor. To show that the deceased was earning about Rs.25,000/- per month, no document was filed. Therefore, the Tribunal took only Rs.4,500/- as notional monthly income. Considering the age and the number of the dependants, the notional income fixed by the Tribunal is very low, in my considered view and therefore, a sum of Rs.6,000/- is fixed as notional income of the deceased. Since the age of the deceased was found to be 35 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 '16' and 50% has to be added towards future prospects. If 50% is added towards future prospects, the monthly income would be Rs.6,000/- + 50% = Rs.9,000/-

13. Since the size of the family is five as per the judgement *Smt.Sarla Verma .vs. Delhi Transport Corporation* reported in 2009 (2) TN MAC 1(SC), $1/4^{th}$ has to be deducted. The loss of income after deduction would be Rs.6000 + 50% - $1/4$ = Rs.6,750/-.



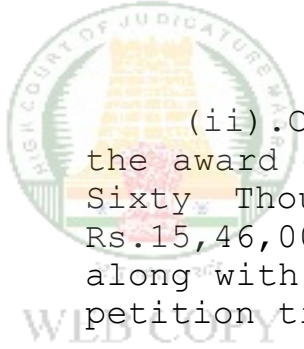
14. The age of the deceased as already stated was 35 years at the time of accident, the loss of income would be Rs.6000/- + 30% - $\frac{1}{4} \times 12 \times 16$ = Rs.12,96,000/- and the amount awarded under the other heads are confirmed.

15. 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	10,10,880	12,96,000	Enhanced
2.	For Consortium	1,00,000	1,00,000	confirmed
3.	For loss of love and affection (for claimants 2 and 3)	1,00,000	1,00,000	confirmed
4.	For loss of love and affection (for claimants 3 and 4)	30,000	30,000	confirmed
5.	For Funeral expenses	20,000	20,000	confirmed
	Total	Rs.12,60,880	Rs.15,46,000	By enhancing a sum of Rs.2,85,120/-

16. In the result,

(i) The Civil Miscellaneous Appeal (MD).No.189 of 2017, is dismissed. No Costs. Consequently connected Miscellaneous Petition is closed.



(ii).C.M.A(MD)No.1177 of 2016, is partly allowed, enhancing the award of the Tribunal from Rs.12,60,880/- (Rupees Twelve Lakhs Sixty Thousand Eight Hundred and Eighty only) to a sum of Rs.15,46,000 /- (Rupees Fifteen Lakhs and Forty Six 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;

(iii). The Insurance Company is directed to deposit the entire award amount of Rs.15,46,000 /- (Rupees Fifteen Lakhs and Forty Six 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;

(iv) On such deposit being made, the major claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The 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 minors. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To,
The Motor Accident Claims Tribunal,
Additional Subordinate Judge, Kumbakonam.

+One cc to Mr.T.S.Mathiyalagan, Advocate, SR.No.79378

pm
RL/3C/5P/MR/KKR/SAR2/13/10/2017

C.M.A(MD)Nos.189 of 2017 and 1177 of 2016

14.09.2017