



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1208 of 2015
and
M.P(MD)No.2 of 2015

The Branch Manager,
National Insurance Company Limited,
Manojiappa Street,
Thanjavur Town & Munsif.

: Appellant/2nd Respondent

Vs.

1.Vijaya
2.Subashini
3.Minor S.Praveenkumar
4.Minor S.Priyadharsini : R1 to R4/Petitioners 1 to 4
(Minors 3 & 4 are represented through
their mother and natural guardian
Subashini the 2nd respondent herein)
5.M.Kulam Thasthakeer : R5/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.201 of 2012, dated 01.12.2012, on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Court (E.C. Act Special Court), Thanjavur.

For Appellant : Mr.D.Sivaraman
For R1 to R4 : Mr.G.Karnan
For R5 : No appearance

JUDGMENT

[Judgment of the Court was made by K.KALYANASUNDARAM,J.]

Challenging the award passed by the Motor Accident Claims Tribunal (Additional District & Sessions Court/E.C. Act Special Court), Thanjavur, in MCOP No.201 of 2012, dated 01.12.2012, the

appellant/Insurance Company has preferred this appeal.

2.The respondents 1 to 4 herein are the mother, wife and minor children of the deceased Sasikumar. They filed MCOP No.201 of 2012 claiming compensation of Rs.50,00,000/- alleging that on 30.10.2011 at about 05.45 hours, when the deceased was proceeding from Thanjavur New Bus Stand to Kantharvakottai from North to South direction in a Two Wheeler bearing Registration No.TN-55-U-8999, a Car bearing Registration No.TN-68-B-3409 driven by its driver, owned by the 4th respondent and insured with the appellant, came in a high speed and hit against the two wheeler. In the impact, the deceased Sasikumar sustained grievous injuries. Immediately, he was admitted in the Government Medical College Hospital, Thanjavur, but he succumbed to the injuries on 01.11.2011.

3.Resisting the claim petition, the appellant/Insurance Company filed a counter disputing the manner of the accident, age, income and also their liability to pay compensation.

4.Before the Tribunal, the 2nd claimant examined herself as P.W.1 and also examined two other witnesses as P.W2 and PW3 and marked Exs.P1 to P14. On the side of the respondents, one Thiagaraj was examined as RW1, but no document was produced.

5.Upon consideration of the oral and documentary evidence, the tribunal came to the conclusion that the driver of the Car was responsible for the accident and awarded compensation of Rs.36,23,432/-.

6.Mr.D.Sivaraman, learned counsel for the appellant would submit that the award passed by the Tribunal is exorbitant and excessive and by placing reliance on the decision reported in **(2009) 4 MLJ 997 (SARLA VERMA AND OTHERS Vs. TRANSPORT CORPORATION AND ANOTHER)**, it is further submitted that the proper multiplier is '15', but the tribunal has wrongly adopted the multiplier '16'.

7.The learned counsel for the respondents 1 to 4/claimants would submit that the deceased died at the age of 35 years and the tribunal, based on the evidence, has awarded compensation, which does not warrant interference of this Court.

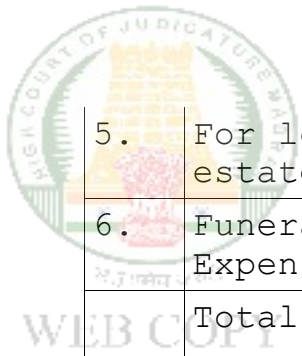
8.The present appeal has been filed only challenging the quantum. Therefore, the findings on the manner of the accident and negligence need not be gone into.

9.PW1, the wife of the deceased has deposed that her husband was working as a Junior Bailiff and he was 35 years on the date of the accident. Exs.P5 the driving licence, Ex.P13 Salary certificate and Ex.P15 Service Register of the deceased were

produced by PW1. The tribunal, based on the above evidence, fixed the age of the deceased as 35 years and his income at Rs.16,419/- per month. By adding 50% for future prospects, the income was arrived at Rs.24,628/-. After deducting 1/4th towards personal expenses there from, the contribution was taken at Rs.18,471/- and by adopting multiplier '16', the tribunal has awarded Rs.35,46,432/- towards loss of income. Further, a sum of Rs.10,000/- was awarded towards love and affection to the first claimant and Rs.30,000/- for the claimants 2 and 3; Rs.20,000/- towards loss of consortium to the second claimant; Rs.10,000/- towards loss of estate; Rs.7,000/- towards loss of funeral expenses and transportation. Altogether, the tribunal has awarded compensation of **Rs.36,23,432/-** with interest @ 7.5% p.a.

10. In the instant case, it is not in dispute that the deceased was 35 years old on the date of the accident. So, the proper multiplier is 15 as per the decision cited above. Applying multiplier '15', the loss of dependency is calculated as **Rs.33,24,780/-**. (Rs.24,628 x $\frac{3}{4}$ x 12 x 15). Taking note of the facts of this case, the award is modified as under:'-

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	35,46,432	33,24,780 (Rs.24,628/- x $\frac{3}{4}$ x 12 x 15)	reduced
2.	For Loss of consortium to the second claimant	20,000	1,00,000	enhanced
3.	For Loss of love and affection to children (Each 50,000)	30,000	1,00,000	enhanced
4.	For Loss of Love and affection to the first claimant	10,000	20,000	enhanced



5.	For loss of estate	10,000	10,000	confirmed
6.	Funeral Expenses	7,000	25,000	enhanced
	Total	Rs.36,23,432	Rs.35,79,780	By reducing a sum of Rs.43,652/-

11.In the result, the Civil Miscellaneous Appeal is partly allowed, reducing the award of the tribunal from Rs.36,23,432/- to **Rs.35,79,780/-**. The interested awarded by the tribunal is maintained.

12.It is submitted that the entire award amount has already been deposited before the tribunal. Hence, the major claimants are permitted to withdraw the modified awarded amount along with interest, less already withdrawn. The tribunal is directed to return the balance amount to the appellant. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

The Additional District & Sessions Judge,
Motor Accidents Claims Tribunal,
E.C. Act Special Court, Thanjavur.

Copy To:-

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

+ 1 CC TO Mr.D.SIVARAMAN, ADVOCATE IN SR No. 82356
+ 1 CC TO Mr.G.KARNAN, ADVOCATE IN SR No. 82359

AM

TE/MR-KKR/SAR-3 : 28/12/2017 : 4P/5C