

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

DATED: 20.09.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.M.A. (MD)No.1240 of 2015

1.M.Pappayee @ Palaniyammal
2.G.Kalaiyarasi
3.C.Vijayalakshmi
4.M.Tamil Selvi
5.Minor.M.Ramesh Kumar
(Minor. represented through his
mother Pappayee @ Palaniyammal) ... Appellants/Petitioners

Vs.

1. M.Kumaran
2. The Manager,
National Insurance Co.Ltd.,
No.63, West Prathakchanam Road,
Karur. ... Respondents/Respondents

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.196 of 2011 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Karur, dated 05.11.2014.

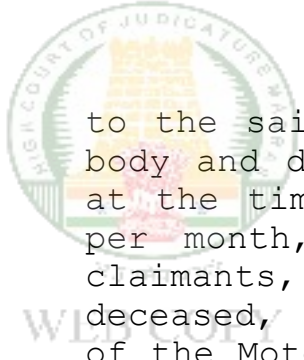
For Appellants	: Mr.T.Selvakumaran
For R1	: No appearance
For R2	: Mrs.Shivashankari for Mr.S.Srinivasa Ragavan

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants/claimants against the judgment and decree in M.C.O.P.No.196 of 2011 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Karur, dated 05.11.2014.

2. The brief facts of the case is as follows:

It is a case of fatal accident took place on 05.04.2011 at about 2.30 p.m., when the deceased Murugesan was riding his T.V.S.XL Super motorcycle bearing Registration No.T.N.47-U-8121 on Karur - Trichy Main Road, near Puliur Kalipalayam Junction, the driver of the lorry bearing Registration No.T.N.45-Y-2430 belonging to the first respondent drove the vehicle in a rash and negligent manner and dashed against the deceased Murugesan. Due



to the said impact, the deceased sustained injuries all over the body and died on the spot. The deceased was aged about 54 years at the time of accident and he was earning a sum of Rs.10,000/- per month, by running a tea stall at Puliyur. Therefore, the claimants, who are the wife, three daughters and son of the deceased, filed a petition in M.C.O.P.No.196 of 2011 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Karur, claiming a sum of Rs.12,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimants, two witnesses viz., P.Ws.1 and 2 were examined and 11 documents viz., Exs.P1 to P11 were marked and on the side of the respondents, one witness viz., R.W.1 was examined and Ex.R1 was marked.

4. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing on either side and also appreciating the evidence on record, held that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent vehicle and directed the respondents to pay a sum of Rs.4,56,000/- as compensation with interest at the rate of 7.5%.

5. Against which, the appellants/claimants have filed the present appeal by questioning the quantum of compensation.

6. The learned counsel for the appellants would submit that at the time of accident, the deceased was running a tea stall and also a Member of Pasuvai Handloom Weavers Association, Karur District and to prove the same, the claimants also produced Exs.P7 & P8. But the Tribunal without considering the same, fixed the income of the deceased as Rs.4,500/- and after deducting 1/3rd for his personal expenses, taken a sum of Rs.3,000/- per month. The learned counsel for the appellants/claimants relied on a judgment in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.** reported in **2014 (1) TNMAC 459 (SC)**, wherein the Honourable Apex Court determined the monthly income at Rs.6,500/- for a vegetable vendor, even in the absence of any definite material about the income. Hence, he seeks interference of this Court to the award passed by the Tribunal.

7. The learned counsel for the second respondent/National Insurance Company Limited would submit that based on the available oral and documentary evidences, the Tribunal has rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving of the lorry belonging to the first respondent and arrived at correct compensation under various heads. Hence, he prays for dismissal of this appeal.

<https://hcservices.courts.gov.in/hcservices/>
8. The learned counsel appearing on both sides and perused the materials available on record.



9. This Court is of the view that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent lorry and the deceased was running a tea stall and also a Member of Pasuvai Handloom Weavers Association, Karur District and hence, he is capable of earning Rs.6,000/- per month and after deducting 1/4th for personal expenses, his monthly income comes to Rs.4,500/-. As per **Sarala Verma Case (2009 ACJ 1298)**, for the persons died between the age 51 to 55, multiplier 11 has to be adopted. If 11 multiplier is adopted, it works out to Rs.4500 x 12 x 11 = Rs.5,94,000/- for loss of income.

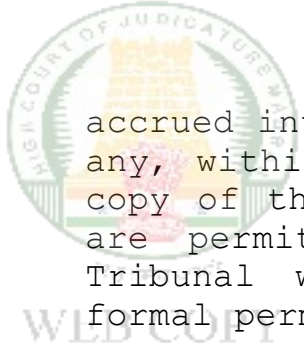
10. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of dependency	3,96,000	5,94,000	enhanced
2.	For Loss of love and affection for the appellants 2 to 5	40,000	1,00,000	enhanced
3.	For loss of consortium for the first appellant	10,000	50,000	enhanced
4.	For funeral expenses	10,000	10,000	confirmed
	Total	4,56,000	7,54,000	By enhancing a sum of Rs.2,98,000/-

11. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.4,56,000/- (Rupees Four Lakhs Fifty Six thousand only) to a sum of **Rs.7,54,000/-** (Rupees Seven Lakhs and Fifty Four 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 second respondent/National Insurance Company is directed to deposit the entire award amount **Rs.7,54,000/-** (Rupees Seven Lakhs and Fifty Four 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 this judgment. 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.

12. The Tribunal is directed to deposit the share of the minor claimant/ fifth appellant herein, in any one of the Nationalised Bank in a fixed deposit scheme, till they attain majority. The first appellant herein, who is the mother and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the Bank only for the welfare of the minors. No Costs.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
(Principal District Judge),
Karur.

2. The Record Keeper (Two copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.T.Selvakumaran, Advocate Sr.No.80619

+1cc to Mr.S.Srinivasa Ragavan, Advocate Sr.No.80323

AKV

VB/SV/MMS/SAR2/01.02.2018/4P/6C

C.M.A. (MD) No.1240 of 2015
20.09.2017