



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1242 of 2015

and

C.M.P. (MD) No.3 of 2015

M/s.National Insurance Company Limited,
1st Floor, TS No.4132,
Keela Main Veethi,
Pudukottai.

.. Appellant/2nd Respondent

Vs.

1.S.Amali Annamal

2.Minor Richard

3.Minor Rubi

(Minors 2 and 3 represented through their
Mother & next friend Amali Annamal, the
1st Respondent herein)

4.Mariya Sanjivi @ Durairaj

5.Jesumarry

6.R.Karthikeyan

... Respondents/Petitioners and
1st Respondent

Prayer: Appeal filed under Section 173 of M.V. Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, III Additional Sub Court, Tiruchirappalli, made in M.C.O.P.No.1277 of 2008 dated 07.11.2012.

For Appellant : Mr.D.Sivaraman

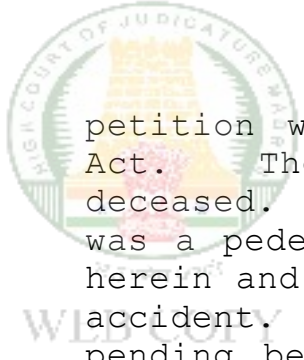
For Respondents : Mr.N.Sudhagar Nagaraj
For R.1 to R.5
No Appearance for R.6

JUDGMENT

National Insurance Company Limited has filed this Civil Miscellaneous Appeal questioning the award dated 07.11.2012 made in M.C.O.P.No.1277 of 2008 on the file of the Motor Accident Claims Tribunal, III Additional Sub Court, Tiruchirappalli.

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

2.The respondents 1 to 5 herein are the claimants. The Claim



petition was filed under Section 163 (A) of the Motor Vehicles Act. The claimants are the wife, children and parents of the deceased. The accident took place on 18.02.2008. The deceased was a pedestrian. A Mahendra van belonging to the 6th respondent herein and insured with the appellant Insurance Company caused the accident. Crime No.34 of 2008 was registered and the same is pending before the Judicial Magistrate Court No.V Trichirappalli for Trial. The deceased was working as an Electrician and was earning Rs.3250/- per month. The Tribunal awarded a sum of Rs.11,64,200/- with interest. Due apportionment was also made. Aggrieved by the quantum of compensation, this appeal has been filed by the Insurance Company.

3.The principal contention urged by the learned counsel for the appellant is that the monthly income of the deceased was fixed at Rs.6,000/-. If that be so, the annual income would come to Rs.72,000/-. As already noted, the petition has been filed under Section 163(A) of the Motor Vehicles Act. Only if the annual income is Rs.40,000/- or less, a claim petition can be maintained under the said provision.

4.Therefore, the learned counsel for the appellant contended that the award passed by the Trial court has to be interfered with. This contention raised by the learned counsel for the appellant was resisted by the learned counsel appearing for the respondent by placing reliance on the observation of the Hon'ble Supreme court reported in **2009 (2) TN MAC 1 (SC) (Smt.Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr)**.

5.I am not able to accept the said contention of the counsel for the respondent for more than one reason. The second schedule is clear. It states that to maintain an application under Section 163(A) of the Motor Vehicles Act, the maximum annual income can be Rs.40,000/-. Though this figure was fixed several years ago and directions have been given for having a re-look at the ceiling, the Government is yet to act in the matter. Even recently the Hon'ble Supreme Court in the decision reported in (2013) 15 SCC 45..... reiterated its anguish. But, so long as the statute remains un-amended. this Court will have to go by the express terms found therein.

6.Therefore, I am inclined to partly allow this appeal. The annual income of the deceased will be taken as Rs.40,000/-. One third deduction will have to be made. It means he would given a sum of Rs.26,700/- to the family per annum. Adopting the multiplier of 15, the pecuniary loss would come to Rs.26,700x15=Rs.4,00,500/-. The wife had lost her husband. Therefore, she is entitled to Rs.1,00,000/- towards loss of consortium. The children and parents are entitled to Rs.20,000/- towards loss of love and affection. A sum of Rs,25,000/- can be



awarded towards funeral expenses.

7. Therefore, the compensation payable to the claimants can be reworked as under:-

Sl.No	Heads	Amount in Rupees
1.	Loss of Income	Rs.4,00,500/-
2.	Loss of Consortium	Rs.1,00,000/-
3.	Loss of Love and Affection	Rs. 20,000/-
4.	Funeral Expenses	Rs. 25,000/-
	Total	Rs.5,45,500/-

8. The compensation amount awarded by the Tribunal vide award dated 07.11.2012 made in M.C.O.P.No.1277 of 2008 passed by the Motor Accident Claims Tribunal, III Additional Sub Court, Tiruchirappalli is modified accordingly. The other aspects shall remain. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The III Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli.

2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.D.Sivaraman , Advocate in SR No. 83163

+ 1 cc TO Mr.N.Sudhagar Nagaraj , Advocate in SR No. 83196

tsg

AE/MR KKR/SAR1/20.11.2017/3P/5C

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