



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.09.2017
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

C.M.A (MD) No.1289 of 2015

1.Karmegam

2.K.Pitchaiammal

3.K.Ramkumari

4.K.Agilarani

... Appellants/Petitioners

Vs.

1.Kathiravan

2. The New India Assurance CO.Ltd,
No.248 -B, Kamarajar Salai,
Madurai -1,
Through its Divisional Manager.

(1st respondent remained

Ex-parte before the Trial Court,
hence, notice is dispensed with)

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P No.1644 of 2008, on the file of the Motor Accident Claims Tribunal/District and Sessions Judge/Communal Clashes Court, Madurai, dated 24.07.2012.

For Appellants : Mr.K.Kumaravel
For R-1 : No appearance
For R-2 : Mr.D.Sivaraman

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants/claimants against the award passed by the Motor Accident Claims Tribunal (District and Sessions Judge/Communal Clashes Court), Madurai, dated 24.07.2012.

2. It is the case of fatal accident, which took place on 28.03.2003 at about 20.15 hours on Sivagangai - Manamadurai Main road near Periyakottai Vilakku.

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

3. It is the case of the claimants before the Tribunal that on



the date of accident, when the deceased Santhanakumar was riding his two wheeler near, Periyakottai Vilakku on Sivagangai - Manamadurai main road, since the first respondent's driver parked the mini lorry bearing Registration No.TN-63 B-4125, in a dangerous manner without observing traffic rules, for loading firewood, he dashed behind the first respondent's mini lorry and as a result, the deceased sustained multiple injuries and died on 27.08.2003 at Hospital.

4.The claimants filed an application in M.C.O.P.No.1644 of 2008, on the file of the Motor Accidents Claims Tribunal (District and Sessions Judge/Communal Clashes Court), Madurai, seeking compensation.

5.Before the Tribunal, the claimants examined six witnesses as P.W.1 to P.W.6 and marked fourteen documents as Ex.P.1 to Ex.P.14 and Ex.X.1 and Ex.X.2. On the side of the respondents, one witness namely R.W.1 was examined and marked two documents namely Ex.R.1 and Ex.R.2.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on appreciating the evidence on record, held that the accident occurred only due to the negligent act of the driver of the first respondent therefore directed the second respondent/Insurance Company to pay a sum of Rs.11,68,299/- to the claimants as compensation.

7. Against which, the appellants/claimants filed the present appeal seeking enhancement of compensation.

8.The learned counsel appearing for the second respondent / Insurance Company submitted that the Tribunal awarded a just and reasonable compensation and the same does not warrant interference.

9.This Court heard the submissions made on either side and perused the materials available on record.

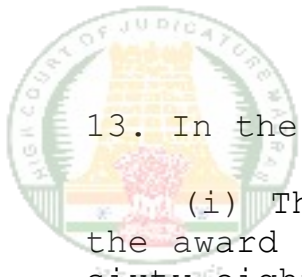
10.The learned counsel for the appellants/claimants submitted that the Tribunal ought to have taken the age of the deceased for applying the multiplier method in stead of his parents' age and ought to have considered the gross salary, instead of net salary for calculating loss of income. The Tribunal has not awarded future prospects and since the deceased was 24 years at the time of accident, the Tribunal ought to have added 50% of the income towards future prospects and therefore, the compensation awarded by the Tribunal is on the lower side and the same has to be

11.As rightly pointed out by the learned counsel appearing for

the appellants, the Tribunal has erred in fixing the income as Rs.5885/- as monthly income of the deceased, when the income of the deceased is Rs.7,031/- Further, while adopting the multiplier method, the tribunal had wrongly taken the age of the parents instead of the age of the deceased and adopted 13 as multiplier. This is apparent error on the face of the record. In this connection, it is useful to refer the judgment of the Honourable Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation** reported in **2009(2) TNMAC 1 (SC)**, wherein, for arriving at loss of income, the multiplier has to be adopted by taking into account the age of the deceased. As per the claim petition as the deceased was 24 years at the time of accident, the correct multiplier would be "17". The Tribunal has not added any amount towards future prospects and if 50% is added towards future prospects, it would be Rs.10,546/-. (Rs.7,031+Rs.3,515). Since the deceased was a bachelor, 50% of the income has to be deducted towards personal expenses of the deceased. Hence, a sum of Rs.5,273/- has to be taken as monthly income of the deceased and accordingly, the loss of income has to be arrived at $\text{Rs.}5273 \times 12 \times 17 = \text{Rs.}10,75,692/-$. The Tribunal has awarded Rs.40,000/- towards loss of love affection and considering the number claimants and their age, the same is enhanced to Rs.70,000/-. The compensation awarded under various other heads by the Tribunal are confirmed.

12. This Court modifies the award of the Tribunal by enhancing the compensation as under:-

S. No	Description	By Tribunal (Rs)	By this Court (Rs)	Result
1	Loss of income	6,11,988	10,75,692	Enhanced
2	Love and affection	40,000	70,000	Enhanced
3	Medical expenses	4,61,311	4,61,311	Confirmed
4	Attendant charges	30,000	30,000	Confirmed
5	Transportation	15,000	15,000	Confirmed
6	Funeral expenses	10,000	10,000	Confirmed
	Total	11,68,299	16,62,003	By enhancing Rs.4,93,704



13. In the result,

(i) The Civil Miscellaneous Appeal is allowed, by enhancing the award of the Tribunal from Rs.11,68,299/- (Rupees Eleven Lakhs sixty eight thousand two hundred and ninety nine only) to a sum of Rs.16,62,003/- (Rupees Sixteen lakhs sixty two thousand and three 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/Insurance Company is directed to deposit the entire award amount 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 appellants/claimants are permitted to withdraw the respective shares with accrued interests and costs as apportioned by the Tribunal, without filing any formal application before the Tribunal. No Costs.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The district and Sessions Judge,
Communal Clashes Court/
The Motor Accident Claims Tribunal,
Madurai.

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

+ 1 CC TO MR.D.Sivaraman, ADVOCATE IN SR No.79944

+ 1 CC TO MR.K.Kumaravel, ADVOCATE IN SR No.80229

dsk/rmk

MK/KK/SAR-1/13.11.2017/4P/5C

C.M.A(MD)No.1289 of 2015

19.09.2017