

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

DATED: 20.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.M.A. (MD) No.424 of 2017**

1.N.Ramathilagam
2.N.Nagarajan
3.M.Andal
4.N.Srinivasan
5.N.Arumugam

... Appellants/Petitioners

Vs.

1.T.Saravanan
2.M/s.ICICI Iompard General Insurance Co.Ltd
represented by its Branch Manager,
No.7, A.A.Road, First Floor,
Gnanaolivupuram, Madurai.

... Respondents/Respondents

(1st Respondent set ex-parte before
the Tribunal)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to enhance the compensation award passed in M.C.O.P.No.525 of 2013 on the file of the Special District Judge for MCOP cases, Madurai, dated 18.12.2015.

For Appellants : Mr.S.Sukumar

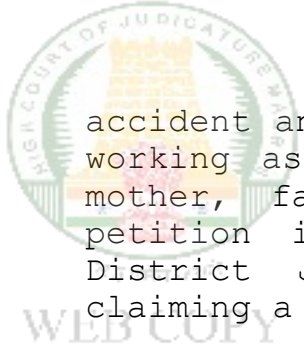
For R2 : Mr.K.K.Ramakrishnan

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants/claimants to enhance the compensation awarded in M.C.O.P.No.525 of 2013 on the file of the learned Special District Judge for M.C.O.P. cases, Madurai, dated 18.12.2015.

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

It is a case of fatal accident took place on 23.07.2011 at about 07.15 a.m., when the deceased was riding a bicycle in order to go to work place at Madakkulam on Dindigul By-pass Road, near Guru Theatre keeping left side of the road, the driver of the lorry drove the vehicle bearing Registration No.T.C.G. 6906 belonging to the first respondent in a rash and negligent manner and hit from behind the deceased N. Arumugam and caused the accident. Due to the said impact, the deceased sustained injuries all over the body and died on the spot. The deceased was aged about 31 years at the time of



accident and he was earning a sum of Rs.7,000/- per month by way of working as Press Operator. Therefore, the claimants, who are the mother, father, brothers and sister of the deceased, filed a petition in M.C.O.P.No.525 of 2013 before the learned Special District Judge for M.C.O.P. Cases, Madurai dated 18.12.2015, claiming a sum of Rs.20,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimants, two witnesses viz., P.Ws.1 and 2 were examined and nine documents viz., Exs.P1 to P9 were marked and on the side of the respondents, no witness was examined and no document 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 and directed the respondents to pay a sum of Rs.5,85,000/- as compensation with interest at the rate of 7.5%. Against which, the appellants/claimants have filed the present appeal by questioning the quantum of compensation.

5. The learned counsel for the appellants would submit that the Tribunal has fixed the monthly income of the deceased as Rs.5,000/- p.m. and after deducting 50% for personal expenses, taken a sum of Rs.2,500/- for calculating the loss of income. The learned counsel for the appellants also 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.

6. The learned counsel for the second respondent/ICICI Lombard General 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.

7. Heard the learned counsel appearing for both sides and perused the materials available on record.

8. 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 at the time of accident, the deceased was a Press Operator, a press operator is capable of earning Rs.6,500/- per month and after deducting 1/4th for personal expenses, taken a sum of Rs.4,875/- for calculating the loss of income. As per the **Sarala Verma Case (2009 ACJ 1298)**, for the persons died at the age of 31, multiplier 16 has to be adopted. If 16 multiplier is adopted, it works out to Rs.4,875 x 12 x 16 = Rs.9,36,000/-.



9. Further, the sum of Rs.75,000/- (Rupees Seventy Five Thousand only) awarded by the Tribunal towards loss of love and affection is on the lower side and therefore, the same is enhanced to a sum of **Rs.1,00,000/-** (Rupees One lakh only).

10. Similarly, the sum of Rs.5,000/- (Rupees Five Thousand only) awarded by the Tribunal towards loss of estate is on the lower side and therefore, the same is enhanced to a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only) and the other head towards funeral expenses is confirmed.

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

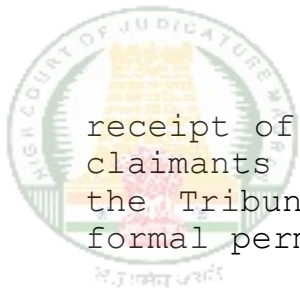
S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	4,80,000	9,36,000	enhanced
2.	For love and affection	75,000	1,00,000	enhanced
3.	For loss of estate	5,000	25,000	enhanced
4.	For funeral expenses	25,000	25,000	enhanced
	Total	5,85,000	10,86,000	By enhancing a sum of Rs.5,01,000

12. Since the appellants are restricted their claim to the tune of Rs.5,00,000/- in the Civil Miscellaneous Appeal, the enhance award amount granted by this Court is restricted from Rs.5,01,000/- to Rs.5,00,000/-.

13. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.5,85,000/- (Rupees Five Lakhs and Eighty Five thousand only) to a sum of **Rs.10,86,000/-** (Rupees Ten Lakhs and Eighty 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;

(ii) The respondents are directed to deposit the entire award amount of **Rs.10,86,000/-** (Rupees Ten Lakhs and Eighty Six Thousand 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. No Costs.

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Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Special District Judge for MCOP cases,
Madurai.
2. The Record Keeper,
VR Section, Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.S.Sukumar , Advocate in SR No. 80796
+ 1 cc TO Mr.K.K.Ramakrishnan , Advocate in SR No. 79962

akv/Ls

SDS/SV MMS/SAR1/02.01.2017/4P/5C

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