

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 03.02.2017****CORAM****THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN****C.M.A. (MD) .No.43 of 2017**

1. K.Shanthi
2. K.Krishnaveni
3. K.Vignesh
4. K.Akilandeswari ... Appellants/Petitioners 1 to 4

Vs.

1. S.Rajagopal
2. Royal Sundaram Alias General Insurance Company Ltd.,
Vishranthi Melaram Towers,
Rajivgandhi Salai, Karappakkam,
Chennai - 600 097. ... Respondents/Respondents 1 & 2

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to call for the records and set aside the order and decretal order, dated 17.08.2016 passed by the Motor Accidents Tribunal, Kulithalai, in M.C.O.P.No.264 of 2015 and set aside the same and allow this Appeal with cost throughout.

For Appellants : Mr.R.M.Sivakumar

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimants as against the award of compensation of Rs.6,74,000/- for the death of one Krishnamoorthy, aged about 53 years.

2. Heard the learned counsel appearing for the appellants.

3. The deceased was an auto rickshaw driver. At the time of the accident which occurred on 13.05.2015, the deceased was riding his Auto rickshaw along with a passenger from east to west in Trichy-Karur National Highways main road and it was hit by Maruti Zen car which was driven from west to east rashly and negligently.

4. Since the first respondent/owner remained ex-parte before the trial Court, this Court by order, dated 20.01.2017, dispensed with notice to the 1st respondent and notice has been served to the second respondent/Insurance Company. However, there is no representation for the second respondent. Therefore, this Court, based on the available records, proceeded to decide the Appeal.



5. The learned counsel for the appellants would submit that the deceased was earning Rs.30,000/- per month as an Auto driver. However, the Tribunal, in the absence of any income proof, determined the monthly income at Rs.6,000/- which is on the lower side. He would rely upon the Judgment of Hon'ble Supreme Court **in 2015 (1) TNMAC 161 (SC), in the case of Neeta and others V. Divisional Manager, MSRTC, Kolapur**, wherein, the Hon'ble Supreme Court determined the monthly income of a Carpenter who died in the accident which occurred on 22.03.2011, at Rs.12,000/-. Further, he would rely upon Tamil Nadu Government Order in G.O.Ms.No.2(D) No.3 Labour and Employment, dated 27.01.2014, wherein, the minimum rate of basic wages of auto drivers was fixed as Rs.288/- per day and Rs.7,479/- per month. However, Dearness Allowance for the Auto drivers was also determined by the Tamil Nadu Government at Rs.3,737/-. Therefore, combining both amounts, he would submit that Rs.11,216/- has to be taken as monthly income. Further, the other amounts given by the Tribunal are on the lower side. Hence, he seeks enhancement.

6. There is no appeal by Insurance Company as against the award. Moreover, the Tribunal, in the absence of the valid driving licence possessed by the driver of Maruti Zen car, as proved by the Insurance Company by examining R.W.1 and the Insurance Officer as R.W.2, the official from R.T.O. Office, rightly fastened the liability on the owner of the car and directed the second respondent/Insurance Company to pay the compensation. The said liability is based on evidence and also following the correct principles of law.

7. Though the learned counsel tried to convince this Court to fix Rs.11,216/- being the total of minimum wages of auto drivers and the Dearness Allowance given to auto drivers as per Tamil Nadu Government Order and there is no dispute with regard to the payment of Dearness Allowance, however, this Court is not inclined to grant Dearness Allowance. In the light of judgment of the Hon'ble Supreme Court in **2015 (1) TNMAC 161 (SC), Neeta and others V. Divisional Manager, MSRTC, Kolapur** wherein the Hon'ble Apex Court determined the monthly income of the Carpenter at Rs.12,000/-, in the absence of any material evidence, this Court, instead of determining the monthly income at Rs.12,000/-, determines the monthly income of the deceased with future prospects at Rs.12,000/-. The size of the family is 4 and therefore, following the dictum laid down in **Sarla Verma and others Vs. Delhi Transport Corporation**, reported in **2009 (2) TNMAC P.1**, $1/4^{\text{th}}$ has to be deducted. After deduction of $1/4^{\text{th}}$ income, the "loss of income" would be Rs.12,000/- - Rs.3,000/- = Rs.9,000/-. The age of the deceased as per the driving licence in Ex.P.6 is 53. The Tribunal rightly followed Ex.P.6 and determined the age of the deceased as 53 years and rightly adopted the multiplier as "11". Therefore,



loss of income would be as follows:-

Rs.9,000 x 12 x 11 = 11,88,000/- .

8. The Tribunal awarded only Rs.25,000/- towards "loss of consortium" which is very low and therefore, it is enhanced to Rs.1,00,000/- following the Judgment in **Rajesh and others Vs. Rajbir Singh and others, reported in 2013 (3) CTC 883.**

9. Respondents 2 to 4, children of the deceased were given only Rs.10,000/- each which is very low and therefore, the same is enhanced to Rs.1,00,000/-. Rs.25,000/- awarded towards "funeral expenses" is confirmed, which is inclusive of Rs.10,000/- towards "transportation". The rate of interest at 7.5% p.a., remains unaltered. This Civil Miscellaneous Appeal is partly allowed, enhancing the compensation from Rs.6,74,000/- to Rs.14,13,000/-.

10. Out of the total compensation amount, the first appellant is entitled to Rs.6.73 Lakhs and the appellants 2 to 4 are entitled to Rs.2.5 Lakhs each. The second respondent/Insurance Company is directed to deposit the entire amount along with interest and costs, after deducting the amount already deposited, if any as per the modified award passed by this Court within six weeks from the date of receipt of a copy of this order. On such deposit, the respective share of the claimants should be transferred to the account of the respective appellants/claimants, through R.T.G.S., after getting the details of Bank accounts of the appellant. The appellants shall pay additional Court fee for the enhanced amount.

11. Even though notice was served to the second respondent/Insurance Company and their name is printed in the cause list, the second respondent has neither appeared in person nor has been represented through counsel. The Insurance Company is performing public service by ensuring the coverage of Insurance. If the second respondent is not responding to the Court's notice, this Court cannot accept the same like ordinary citizens do in respect of the Court's orders. Therefore, a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards cost shall be paid by the second respondent/Insurance Company, to the trust of Arulmighu Sri Subramaniyar Swamy Devasthanam, Thiruparankundram, within a period of four weeks from the date of receipt of a copy of this order and file a proof before this Court.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

1. The Motor Accidents Claims Tribunal Judge,
Kulithalai.

WEB COPY

2. Royal Sundaram Alias General Insurance Company Ltd.,
Vishranthi Melaram Towers,
Rajivgandhi Salai, Karappakkam,
Chennai - 600 097.

Copy to

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

+1cc to Mr.R.M.Sivakumar, Advocate Sr.No.6687

PMU/PGP

VB/KK/SAR4/18/08/2017/4P/5C

**JUDGMENT MADE IN
C.M.A. (MD) .No.43 of 2017
03.02.2017**