



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.239 of 2014

Kathayee (died)

1.A.Parvathi

2.A.Rani

3.A.Maheswari

4.Minor. Sangeetha

5.Minor A.Manickam

6.Minor A.Kowsalya

Minor appellants Nos.4 to 6
are represented by their
guardian/mother-Parvathi

... Appellants 1 to 6/
Claimants 2 to 7

Vs

1.E.Anandraj

2.ICICI Lombard General Insurance Company Limited,
Thillai Nagar,
Trichy.

... Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 22.02.2013 in M.C.O.P.No.1211 of 2010 on the file of the Motor Accident Claims Tribunal / II Additional District Judge, Tiruchirappalli.

For Appellants : Mr.N.Sudhagar Nagaraj

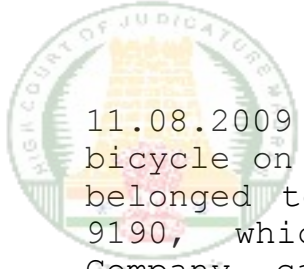
For Respondents : Mrs.KS.Shivashankari
for Mr.S.Srinivasa Raghavan
for R.1
: Mr.S.Karthik
for R.2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the judgment and decree dated 22.02.2013, in M.C.O.P.No.1211 of 2010, on the file of the Motor Accident Claims Tribunal / II Additional District Judge,

<https://hcservicesapp.in/hcservices/>

2. It is a case of fatal in which the accident took place on



11.08.2009 at about 06.30 hours. While the deceased was riding his bicycle on the Thogamalai-Trichy road near Pallakadu, a Tipper Lorry belonged to the first respondent bearing Registration No.T.N.32 T 9190, which was insured with the second respondent-Insurance Company, came in a rash and negligent manner and dashed against the deceased and the deceased was thrown out and sustained fatal injuries. At the time of accident, the deceased was aged about 55 years and was earning a sum of Rs.6,000/-p.m., as an agriculture coolie. Hence, the legal representatives of the deceased filed an application in M.C.O.P.No.1211 of 2010, on the Motor Accident Claims Tribunal / II Additional District Judge, Tiruchirappalli seeking compensation of Rs.8,00,000/-.

3.Before the Tribunal, on the side of the claimant, two witnesses viz., P.W.1 and P.W.2 were examined and two documents viz., Exs.P.1 and P.2 were marked and on the side of the respondents, two witnesses viz., R.W.1 and R.W.2 was examined and five documents viz., Exs.R.1 to R.5 were marked.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the offending vehicle and directed the second respondent Insurance Company to pay a sum of Rs.3,40,000/- as compensation to the claimants.

5. Against which, the appellants/claimants filed the present appeal for enhancement of compensation.

6. The learned counsel appearing for the appellants/ claimants would submit that the Tribunal has taken a meagre sum of Rs.4,500/- as monthly income of the deceased and arrived at loss of income. He further submitted that the Tribunal ought to have deducted 1/4 of the monthly income towards the personal expenses of the deceased by considering the number of dependency. He further submitted that the award amounts under other head are also very meagre. Hence, he prays for enhancement of compensation.

7. The learned Counsel for the second respondent Insurance Company would submit that based on the oral and documentary evidences, the Tribunal has correctly come to the conclusion and awarded just and reasonable compensation and hence, the award passed by the Tribunal deserves no interference and hence, this appeal has to be dismissed.

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

9. A perusal of the award passed by the Tribunal, it is seen that the Tribunal has taken a sum of Rs.4,500/- as monthly income

deceased which is very meagre in the considered opinion of this Court. The Honourable Apex Court in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.** reported in **2014 (1) TNMAC 459 (SC)**, determined the monthly income at Rs.6,500/- for a vegetable vendor, even in the absence of any definite material about the income. Hence, this Court is inclined to enhance the monthly income as Rs.6,000/- per month and deducted 1/4 towards personal expenses of the deceased and by applying the multiplier as per the decision in **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**, the loss of income would be arrived at as follows:

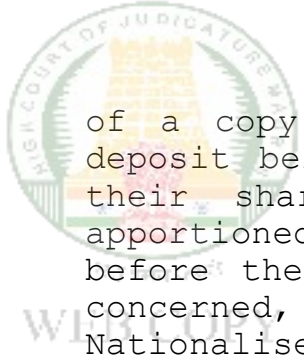
Rs.6,000/- x 3/4x12x11 = Rs.5,94,000/-

The amount awarded by the Tribunal under other heads are hereby confirmed, since they are just and proper.

10. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation as under:

S.No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	For annual dependency	2,88,000	5,94,000	enhanced
2	For love and affection	50,000	50,000	confirmed
3	For funeral expenses	2,000	2,000	confirmed
	Total	3,40,000	6,46,000 Rounded off to Rs.6,40,000/-, since the appellants restricted their claim for Appeal to Rs.3,00,000	By enhancing a sum of Rs.3,00,000

11. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.3,40,000/- to Rs.6,40,000/-, dated 22.02.2013, passed in M.C.O.P.No.1211 of 2010, by the Motor Accident Claims Tribunal / II Additional District Judge, Tirunelveli. The second respondent/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt



of a copy of this order, if not already deposited and on such deposit being made, the major claimants are permitted to withdraw their share amount with proportionate interest and costs as apportioned by the Tribunal without filing any formal petition before the Tribunal and insofar as the shares of the minors are concerned, the same shall be deposited in any one of the Nationalised Bank in renewable scheme till they attain majority and the guardian of the minors is permitted to withdraw the interest amount directly from the Bank once in three months for the welfare of the minors. No Costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The II Additional District Judge,
Tiruchirappalli.

+1cc to Mr.S.SRINIVASA RAGHAVAN Advocate in SR. No. 79741

+1cc to Mr.N.SUDHAGAR NAGARAJ Advocate in SR. No. 79457

SSL/VSG

JS/MR.KKR/SAR.1/10.10.2017/4P-4C

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