

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

DATED : 03.01.2017

CORAM:

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THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN**C.M.A. (MD) No.1468 of 2016****and****C.M.P (MD) No.12254 of 2016**

M/s.Future Generali India Insurance Co. Ltd.,
through its
Manager,
Sri Ram Centre, III Floor,
No.180, P.P.Chavadi,
Theni Main Road,
Madurai.

... Appellant/ 2nd Respondent

Vs.

1.K.Murugeswari
2.Minor K.Sathiya
3.Minor K.Saravanan
4.Minor K.Sakthivel

***(Minor respondents 2 to 4 are represented by
their mother and natural guardian, the first
respondent herein.)***

5.Alagammal

... Respondents 1 to 5/
Petitioners 1 to 5

6.Revathy

... 6th Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.10.2015, made in M.C.O.P.No.380 of 2013, by the Motor Accident Claims Tribunal - cum - V Additional District Court, Madurai.

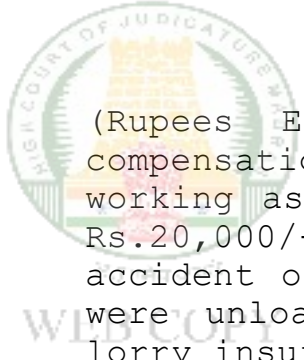
For Appellant

: Mrs.K.R.Shiva Sankari
for Mr.S.Srinivasa Raghavan

For Respondents

: Mr.N.V.Suresh Kumar
for R.1 to R.5

JUDGMENT



(Rupees Eighteen Lakhs and Thirty Three Thousand only) as compensation for the death of one K.Kannan, aged about 40 years, working as loadman and agriculturist, allegedly earning a sum of Rs.20,000/- (Rupees Twenty Thousand only) per month, in the accident occurred on 01.11.2012. When the deceased and two others were unloading the vegetables, they were dashed behind by the lorry insured with the appellant-Insurance Company.

2. Heard Mrs.K.R.Shiva Sankari, learned Counsel appearing on behalf of Mr.S.Srinivasa Raghavan, learned Counsel for the appellant-Insurance Company and Mr.N.V.Suresh Kumar, learned Counsel for the respondents 1 to 5/claimants.

3. Mrs.K.R.Shiva Sankari, learned Counsel for the appellant-Insurance Company would submit that the Tribunal in the absence of any material evidence to support the monthly income of the deceased, erroneously took a sum of Rs.12,000/- (Rupees Twelve Thousand only) on the ground that the deceased was working as a loadman and doing agricultural works.

4. On the other hand, Mr.N.V.Suresh Kumar, learned Counsel for the respondents 1 to 5/claimants would support the fixation of Rs.12,000/- (Rupees Twelve Thousand only) as monthly income of the deceased by the Tribunal.

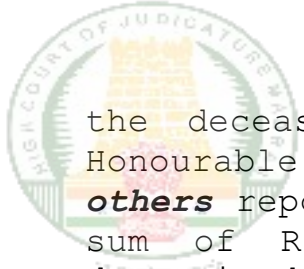
5. When the Tribunal fixed the monthly income, there should be a positive evidence, especially, when a sum of Rs.12,000/- (Rupees Twelve Thousand only) has been taken as the monthly income of the deceased. Admittedly, in this case, no such proof is available to come to the conclusion that a sum of Rs.12,000/- (Rupees Twelve Thousand only) was earned by the deceased.

6. A Division Bench of this Court in ***The Branch Manager, United India Insurance Co. Ltd. v. M.Ethirajulu*** reported in **2015 (2) TN MAC 454 (DB)**, fixed the monthly income of a coolie, aged 32 years, at about Rs.9,000/- (Rupees Nine Thousand only) including the future prospects.

7. The Honourable Supreme 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/- (Rupees Six Thousand and Five Hundred only) per month and added 50% towards future prospects, for a vegetable vendor, who sustained amputation of his right leg, in the accident occurred on 14.07.2008.

8. Therefore, this Court is inclined to follow the judgment of the Honourable Supreme Court in ***Syed Sadiq case*** and determines the monthly income of the deceased at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) and adds 30% towards future prospects as

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the deceased was aged 40 years, as per the judgment of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others** reported in **(2013) 9 Supreme Court Cases 54**. Accordingly, a sum of Rs.12,000/- (Rupees Twelve Thousand only) per month determined by the Tribunal is reduced to Rs.6,500/- (Rupees Six Thousand and Five Hundred only). However, this Court adds 30% towards future prospects and accordingly, the monthly income of the deceased would be **Rs.8,450/-** (Rupees Eight Thousand and Four Hundred and Fifty only) [Rs.6,500/- + Rs.1,950/-].

9. The size of the family is 5 and as per the judgment of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**, 1/4th amount has to be deducted towards personal expenses of the deceased and therefore, the loss of income after deduction, would be **Rs.6,337.50** (Rupees Six Thousand Three Hundred and Thirty Seven and Paise Fifty only) [Rs.8,450/- - Rs.2,112.50].

10. According to the age of the deceased, viz., 40 years, as per Ex.P.2 - post-mortem certificate, the appropriate multiplier to be adopted is '15' and therefore, the multiplier '16' adopted by the Tribunal is reduced to '15' and hence, the loss of income would be **Rs.11,40,750/-** (Rupees Eleven Lakhs Forty Thousand Seven Hundred and Fifty only) [Rs.6,337.50 X 12 X 15].

11. The Tribunal awarded only a sum of Rs.20,000/- (Rupees Twenty Thousand only) towards loss of consortium to the first respondent/wife and the same is enhanced to a sum of **Rs.1,50,000/-** (Rupees One Lakh and Fifty Thousand only) as per the judgment of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others** reported in **(2013) 9 Supreme Court Cases 54**.

12. As per the above said judgment, a sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) awarded towards funeral expenses and a sum of Rs.2,000/- awarded towards transportation charges are increased to a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only) and **Rs.15,000/-** (Rupees Fifteen Thousand only) respectively.

13. The children of the deceased, namely, the respondents 2 to 4 were minors at the time of the accident, who lost the love and affection of their father and therefore, they are entitled to more amount as a sum of Rs.40,000/- (Rupees Forty Thousand only) is low and therefore, each of the minor children, viz, the respondents 2 to 4 are entitled to a sum of Rs.50,000/- (Rupees Fifty Thousand only) **each**, totalling a sum of **Rs.1,50,000/-** (Rupees One Lakh and Fifty Thousand only). Similarly, the mother of the deceased is also entitled to a sum of **Rs.50,000/-** (Rupees Fifty Thousand only).



14. No amount was awarded under the head 'loss of estate' and therefore, a sum of **Rs.50,000/-** (Rupees Fifty Thousand only) is awarded under the said head.

15. Moreover, the deceased did not die immediately and he suffered pain and sufferings because of the injuries sustained by him and by seeing the deceased suffering, the respondents 1 to 5/claimants also suffered untold pain and sufferings and therefore, a sum of **Rs.50,000/-** (Rupees Fifty Thousand only) is awarded for the mental agony.

16. Accordingly, the respondents 1 to 5/claimants are entitled to get the following compensation:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount reduced/enhanced by this Court (Rs.)	Total (Rs.)
1.	Loss of Income	17,28,000.00	(-) 5,87,250.00	11,40,750.00
2.	Loss of Consortium to the first respondent/wife	20,000.00	(+) 1,30,000.00	1,50,000.00
3.	Loss of Love and Affection to the respondents 2 to 4/minor children	40,000.00	(+) 1,10,000.00	1,50,000.00
4.	Loss of Love and Affection to the fifth respondent/mother	Nil	(+) 50,000.00	50,000.00
5.	Loss of Estate	Nil	(+) 50,000.00	50,000.00
6.	For Mental Agony	Nil	(+) 50,000.00	50,000.00
7.	Funeral Expenses	2,500.00	(+) 22,500.00	25,000.00
8.	Transportation Charges	2,000.00	(+) 13,000.00	15,000.00
Grand Total				16,30,750.00

The rate of interest awarded by the Tribunal at **7.5%** per annum is confirmed.

17. Therefore, the respondents 1 to 5/claimants are entitled to a sum of **Rs.16,30,750/-** (Rupees Sixteen Lakhs Thirty Thousand Seven Hundred and Fifty only) along with interest at 7.5% per annum from the date of petition till date of realisation and proportionate costs and the apportionment of the compensation is as follows:

Sl. No.	Claimants	Amount(s) Rs.
1.	1 st Respondent/1 st Claimant/ Wife of the deceased	5,25,750.00
2.	2 nd Respondent/2 nd Claimant/ Daughter of the deceased	3,60,000.00
3.	3 rd Respondent/3 rd Claimant/ Son of the deceased	3,10,000.00
4.	4 th Respondent/4 th Claimant/ Son of the deceased	3,10,000.00
5.	5 th Respondent/5 th Claimant/ Mother of the deceased	1,25,000.00
Total		16,30,750.00

18. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed;

(ii) The respondents 1 to 5/claimants are entitled to the total compensation of **Rs.16,30,750/-** (Rupees Sixteen Lakhs Thirty Thousand Seven Hundred and Fifty only) with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(iii) Each of the appellants/claimants is entitled to get their respective share amount as per the apportionment made by this Court;

(iv) The respondents 1 to 5/claimants are directed to furnish their Personal Savings Bank Account Numbers to the appellant-Insurance Company **forthwith**, who, on receipt of the same, is directed to transfer the entire compensation amount along with accrued interest and proportionate costs, to the respective Personal Savings Bank Account Numbers of the appellants/claimants through RTGS/NEFT, within a period of **six weeks thereafter**; and

(v) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)



To

1.The V Additional District Judge,
Motor Accident Claims Tribunal,
Madurai.

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

+1 cc to MR.S.SRINIVASA RAGHAVAN, Advocate SR.No.651

+1 cc to MR.N.V.SURESHKUMAR, Advocate SR.No.303

C.M.A. (MD) No.1468 of 2016

and

C.M.P (MD) No.12254 of 2016

03.01.2017

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