



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.07.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.609 of 2017

1.Marimuthu  
2.Ananthavalli

.. Appellants/Petitioners

**Vs.**

1.K.Karuppanan  
2.The New India Assurance Company Limited,  
Karur.

.. Respondents/Respondents

**PRAYER:-** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation award to Rs.15,00,000/- (Rupees Fifteen Lakhs) as claimed by the appellants/petitioners by modifying the order and decree in M.C.O.P.No.2045 of 2012 dated 07.03.2016 passed by Motor Accident Claim Tribunal, Principal District Judge, Trichy.

For Appellants : Mr.K.P.Narayanakumar

For Respondent No.2 : Mr.A.Ilango

**J U D G M E N T**

This Civil Miscellaneous Appeal is filed by the claimants as against the award passed in M.C.O.P.No.2045 of 2012 dated 07.03.2016 by the Motor Accident Claim Tribunal, Principal District Judge, Trichy.

2. It is a case of fatal accident that took place on 30.09.2012 at Trichy - Lalgudi road near Sempalani Road. The driver of the lorry bearing registration No. TN-47-Z-8044 drove the vehicle in a rash and negligent manner and dashed against the motor cycle bearing Registration No.TN-48-Q-7789, in which, the deceased Sivakumar was travelling as a pillion rider, which was driven by one Vigneswaran. Due to the accident, the deceased sustained grievous injuries and died on the spot. The deceased Sivakumar was only son in their family. Due to old age, the parents were depending upon the deceased for their livelihood. The first respondent is the owner of the lorry, which is insured with the second respondent.



Accident Claim Tribunal, Principal District Judge, Trichy, seeking compensation.

4. Before the Tribunal, the first claimant was examined himself as P.W.1 and one Ussankani was examined as P.W.2 and Exs. P.1 to P.5 were marked. On the side of the respondents, R.W.1 was examined and no documentary evidence was adduced.

5. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the claimants and the Insurance Company and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the lorry, which is insured with the second respondent Insurance Company and directed the Insurance Company to pay a sum of Rs.3,42,000/- (Rupees three lakhs and forty two thousand only) as compensation.

6. Against which, the appellants/claimants have filed this present appeal on the ground that the validity of the Income Certificate Ex.P.4 was not considered by the Tribunal and the monthly income of the deceased derived at Rs.3,000/- is not correct and in all the other aspects also, the Tribunal has awarded a very meagre amount.

7. Per contra, the learned counsel for the second respondent/Insurance Company contented that the Tribunal awarded a just and reasonable compensation and the same does not require interference and hence, this appeal is to be dismissed.

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

9. The learned Counsel for the appellants/claimants would draw attention of this Court to paragraph No.12 of the judgment of the Tribunal, which is extracted hereunder:

'12. Further, in respect of income of the deceased the petitioner's contention is that the deceased was working as Painter and was earning Rs.400/- per day. To prove the same, the petitioner was examined as P.W.1 and produced the document Ex.P.4. Now this Court is to decide that the evidence of P.W.1 and Ex.P.4 are sufficient or not. In this case, P.W.1 entered into witness box and deposed that the deceased is his son and at the time of accident he was doing painter work and he was earning Rs.400/- per day. To prove the oral evidence the petitioner produced certificate. ... The contents of Ex.P.4 cannot be taken into account for the deceased monthly income".

Pointing out the above, the learned counsel submitted that P.W.1, the mother of the deceased deposed that her son was working as Painter and he was earning Rs.400/- per day and to prove the same,

Ex.P.4 Income Certificate was produced. Further, the Tribunal ought to have considered the point that the respondent has not cross examined her to defeat the validity of Ex.P.4 Income Certificate and therefore, the same has become final.

**10.** The learned counsel highlighted the paragraph No.13 of the judgment, wherein the Tribunal has recorded its finding regarding multiplier as follows:

"Further this Court has gone through the case records, it shows that at the time of accident, the deceased was bachelor. Since the deceased is bachelor, the age of the mother can be taken into account".

**11.** In the considered opinion of this Court, the deposition of the mother of the deceased ought to be taken into consideration and normally, a Painter can get Rs.400/- per day and there should be no doubt in it and excluding 6 days holidays his salary can be fixed at Rs.9,000/- per month. After considering all these aspects and considering the fact that the deceased was 23 years old at the time of accident and on the basis of the evidence given by the mother of the deceased, the income of the deceased is fixed at Rs.9,000/- (Rupees nine thousand only) and after adding 50% towards future prospects, a sum of Rs.13,500/- (Rupees thirteen thousand and five hundred only) is arrived as the monthly income of the deceased and if 50% is deducted towards personal expenses, the monthly income of the deceased would be Rs.6,750/- (Rupees six thousand seven hundred and fifty only) and by applying the appropriate multiplier '17', the loss of income would be **Rs.13,77,000/-** (Rupees thirteen lakhs and seventy seven thousand only) [Rs.6750/- X 12 X 17]. The Tribunal awarded Rs.20,000/- (Rupees twenty thousand only) towards love and affection for the father and mother of the deceased and since the same is very low, this Court awards Rs.50,000/- (Rupees one lakh only) each towards love and affection.

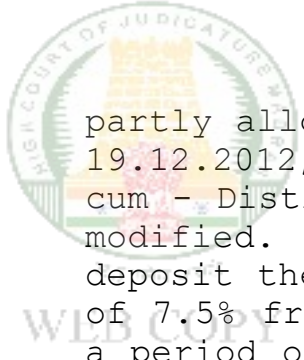
**12.** The Tribunal awarded a very meagre amount of Rs.10,000/- (Rupees ten thousand only) for funeral expenses and therefore, this Court awards Rs.25,000/- (Rupees twenty five thousand only) towards funeral expenses.

**13.** Total compensation is awarded in the following manner:

| Heads                                                  | Amount                                           |
|--------------------------------------------------------|--------------------------------------------------|
| Loss of income                                         | Rs. 13,77,000/-                                  |
| Loss of love and affection (Each 50,000/- for parents) | Rs. 1,00,000/ -                                  |
| Funeral Expenses                                       | Rs. 25,000/-                                     |
| <b>Total</b>                                           | Rs. 15,02,000/-<br>rounded off to Rs.15,00,000/- |

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**14.** In the result, this Civil Miscellaneous Appeal is



partly allowed and the award made in M.C.O.P.No.51 of 2011, dated 19.12.2012, on the file of the Motor Accident Claims Tribunal - cum - District Judge, Kanyakumari District at Nagercoil, is hereby modified. The third respondent/Insurance Company is directed to deposit the entire enhanced award amount with interest at the rate of 7.5% from the date of petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order. The claimants are not entitled to interest for the delayed period. On such deposit being made, the claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, with proportionate interests and costs without filing any formal petition before the Court below. No Costs.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To,

The Principal District Judge,  
The Motor Accident Claims Tribunal,  
Trichy.

+1 cc to Mr.K.P.Narayanakumar , Advocate in SR.No. 65470

CM

AE/SV MMS/SAR1/15.09.2017/4P/3C

**C.M.A. (MD) No.609 of 2017**  
**14.07.2017**