



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2017

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.21 of 2015

1.K.Lakshmi
2.Selvi.K.Tamilselvi ... Appellants / Petitioners

Vs

1.Rathna Prakash

2.The Oriental Insurance Company Limited,
Through its Branch Manager,
Kovilpatti.

3.M.Chinnadurai

4.The United India Insurance Company Limited,
Through its Branch Manager,
Sankarankovil.

... Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.1119 of 2008 on the file of Motor Accident Claims Tribunal Authority (II Additional District Judge), Tirunelveli dated 23.03.2010.

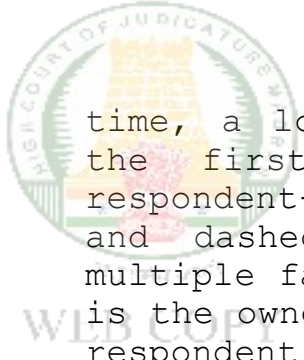
For Appellant	: Mr.T.Selvakumaran
For Respondents	: Mr.K.Bhaskaran for R.2
	: Mr.N.Sivakumar for R.4
	: No appearance for R.1 and R.3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants against the judgment and decree in M.C.O.P.No.1119 of 2008 on the file of Motor Accident Claims Tribunal Authority (II Additional District Judge), Tirunelveli, dated 23.03.2010.

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

It is a case of fatal in which the accident took place on 14.06.2008 at about 08.30 p.m. When the deceased was riding a motorcycle bearing Registration No.TN-76-X-0079 nearing Shanmuganallur when proceeding Sankarankovil to Ayalpatti, at that



time, a lorry bearing Registration No.T.N.69 W 0270 belonged to the first respondent, which was insured with the second respondent-Insurance Company, came in a rash and negligent manner and dashed against the deceased and the deceased sustained multiple fatal injuries and died on the spot. The third respondent is the owner of the two wheeler, which was insured with the fourth respondent Insurance Company. The accident was caused due to the rash and negligent driving of the first respondent's driver alone. The deceased was aged about 24 years at the time of accident and he was doing L.L.B., and also was earning a sum of Rs.6,000/-p.m by doing Diary Farm business. Hence, the legal representatives of the deceased viz., his mother and his sister filed an application in M.C.O.P.No.1119 of 2008, on the file of the Motor Accident Claims Tribunal cum II Additional District Court for M.C.O.P. Cases, Tirunelveli, seeking a sum of Rs.15,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimants, two witnesses viz., P.W.1 and P.W.2 were examined and nine documents viz., Exs.P.1 to P.9 were marked and on the side of the respondents, neither any witness was examined nor any document was marked.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellants and respondents and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the two wheeler and directed the fourth respondent Insurance Company to pay a sum of Rs.1,62,500/- to the claimants as compensation.

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

6. The learned counsel appearing for the appellant/ claimants would submit that the Tribunal awarded very meagre amount under various heads towards compensation. Hence, he prays for enhancement of compensation.

7. The learned Counsel for the second and fourth respondents 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.

<https://hcservices.ecourts.gov.in/hcservices/>

9. The main application has been filed under Section 163-A of Motor Vehicles Act. Since the annual income of the deceased would

be Rs.72,000/- per annum and the petition is not maintainable as per the law laid down by the Honourable Supreme Court, the learned Counsel for the claimants would restrict the annual income of the deceased as Rs.25,000/- per year. If that being so, by taking into consideration the age of the deceased as 24 years, the proper multiplier would be taken as "18" as per the decision of the Honourable Supreme Court in Sarla Verma Vs. Delhi Transport Corporation reported in 2009(2) TNMAC 1 (SC), and taking the annual income as Rs.25,000/- as restricted by the learned Counsel for the appellant and after deducting 1/3rd amount towards his personal expenses, the loss of income would be arrived at as follows:

$$\text{Rs.25,000/-} \times 18 \times 2/3 = \text{Rs.3,00,000/-}$$

Insofar as the award amount awarded under the head of funeral expenses, this Court feels that it is very meagre. Hence, this Court is inclined to enhance the same to a sum of Rs.10,000/-. Further the Tribunal has not awarded any amount towards loss of love and affection and for transportation expenses. Hence, this Court is inclined to award a sum of Rs.50,000/- towards loss of love and affection and a sum of Rs.10,000/- towards transportation charges. The amounts awarded by the Tribunal under other heads are concerned, they are hereby confirmed.

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 loss of dependency	1,30,000	3,00,000	enhanced
2	For funeral expenses	5,000	10,000	enhanced
3	Loss of better future prospects	25,000	25,000	confirmed
4	Loss of estate	2,500	2,500	confirmed
5	Loss of love and affection	--	50,000	granted
6	Transportation charges	--	10,000	granted
	Total	1,62,500	3,97,500	By enhancing a sum of Rs.2,35,000

11. As far as the liability fixed on the fourth respondent <https://hcservices.courts.gov.in/hcservices/> is concerned, the Tribunal has elaborately discussed and fixed the liability on the fourth respondent



Insurance Company to pay compensation to the claimants, which does not require any interference in the hands of this Court and hence, the same is confirmed.

12. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.1,62,500/- to Rs.3,97,500/-, passed in M.C.O.P.No.1119 of 2008, on the file of the Motor Accident Claims Tribunal - II Additional District Court for M.C.O.P. Cases, Tirunelveli. The fourth 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 appellants - claimants are permitted to withdraw the entire award amount, with accrued interests and costs as apportioned by the Tribunal without filing any formal petition before the Tribunal. No Costs. The appellants/claimants are directed to pay necessary additional Court fee, if any.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The II Additional District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

+1cc to M/S.N.Sivakumar, Advocate SR.No. 79236
+1cc to M/S.T.Selvakumaran, Advocate SR.No. 79143
+1cc to M/S.K.Bhaskaran, Advocate SR.No. 78865

C.M.A (MD) No.21 of 2015
14.09.2017

SSL/VSG
JM/MR KKR/SAR 1/09.11.2017/4P/5C