



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A(MD)No.62 of 2017

and

C.M.P(MD)No.542 of 2017

The Oriental Insurance Company Limited,
rep. by its Branch Manager,
216-A, Nethaji Road,
Madurai.

... Appellant/2nd Respondent

Vs.

1.M.Padmini
M.Gokilavani (died)
2.Minor M.Divya
3.Minor M.Deepa
4.Minor M.Sabarirajan
5.P.Manthatchiammal

(Respondent 2 to 4 are minors
represented by their mother
and guardian Respondent-1).

.. Respondent 1 to 5/ Petitioners

6.P.Celiya

... Respondent No 6/Respondent 1

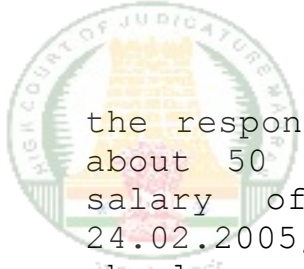
PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 21.08.2009, made in M.C.O.P.No.3308 of 2002, on the file of the Motor Accidents Claims Tribunal - III Additional District and Sessions Judge, Madurai.

For Appellant : Mr.K.Athimoolapandian
for Mr. A.K.Baskarapandian

For Respondents 1 to 5 : Mr.K. Manoharan

Respondent No.6 dispensed with vide Court order
dated 24.01.2017

JUDGMENT



the respondents / claimants, on the death of one Mariappan aged about 50 years, working as Phone Mechanic in BSNL drawing a salary of Rs.9,323/-, in the accident which occurred on 24.02.2005, when he was travelling along with his brother in a two wheeler on Madurai to Natham Main Road and the said Motor cycle was hit by Suzuki motorcycle, belonging to 6th respondent insured with the appellant / Insurance Company, driven rashly and negligently, resulting in death of the said Mariappan. Therefore, the claim petition.

2. The Tribunal, after enquiry, found that the two wheeler insured with the appellant / Insurance company was driven rashly and negligently and fixed the liability on the Insurance Company and awarded a sum of Rs.8,48,400/-. The said award is being challenged before this Court.

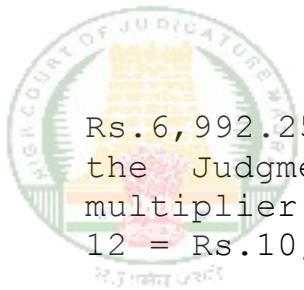
3. Heard Mr. Aathimoolapandian, learned counsel appearing for the appellant and Mr.K.Manoharan, learned counsel appearing for Respondents 1 to 5. Notice to the 6th respondent is dispensed with as the sixth respondent/owner did not appear before the trial Court itself.

4. The questions that have to be decided in this appeal are both negligence and quantum.

5. From the records, it is revealed that the two wheeler Suzuki insured with the appellant / Insurance Company alone was driven rashly and negligently, as confirmed by evidence of PW2. Based on the categorical evidence given by the claimants, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the two wheeler Suzuki insured with the appellant, Insurance Company. Further, there is no evidence adorned by the appellant to contradict the evidence of PW.1 eye witness. Therefore, the Tribunal was right in concluding that the accident occurred because of negligent driving of Suzuki, two wheeler insured with the appellant / Insurance Company.

6. The deceased was a BSNL employee as proved by Ex.P8/Salary Certificate which shows the monthly income as Rs.9,323/-; the age of the deceased was proved by Ex.P7/Post Mortem Certificate. Therefore, determination of age of the deceased as 50 years and Rs.9,323/- as monthly income are according to law.

7. The Tribunal deducted 1/3rd towards personal expenses whereas the size of the family is 5. In that event, as per the Judgment of the Honourable Supreme Court reported in **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**, <https://hccv.myservices.gov.in/hccservices/> the deduction towards "personal expenses". After deduction of 1/4th, loss of income would be [9323 - 1/4(9323)] =



Rs.6,992.25/-. The appropriate multiplier to be adopted as per the Judgment in **Sarala Verma's** case is 13 and by applying multiplier 13, the "loss of income" would be Rs.6,992.25/- x 13 x 12 = Rs.10,90,791/-.

8. It is disheartening to note that the Tribunal committed an error in not awarding any amount towards "loss of consortium". Therefore, as per the Judgment of the Hon'ble Supreme Court reported in **Rajesh and others v. Rajbir Singh and others** reported in (2013) 9 Supreme Court Cases 54, a sum of **Rs.1,00,000/- is awarded towards "loss of consortium"**.

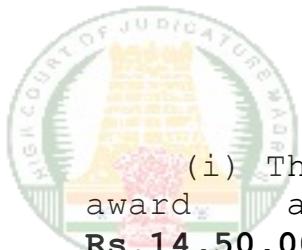
9. The Respondents 2 to 4 are children of the deceased and they have lost their father's love, affection and guidance and therefore, a sum of Rs.75,000/- is awarded to each one of them towards "loss of love and affection". The respondents 2 to 4 are each entitled to **Rs.75,000/-** and the mother/5th respondent is entitled to **Rs.25,000/-**. Rs.3,000/- awarded towards funeral expenses is low and the same is enhanced to **Rs.10,000/-**. Rs.2,000/- awarded towards transportation is confirmed.

10. During the pendency of the MCOP, one of the daughters passed away.

11. When the Tribunal applied wrong multiplier and wrongly deducted 1/3rd towards "personal expenses" and failed to award any amount towards "loss of consortium" and appropriate amount towards "loss of love and affection", this Court is duty bound to enhance the compensation.

12. Accordingly, the respondents 1 to 5/claimants 1 to 5 are entitled to a sum of Rs.14,52,791/- rounded off to **Rs.14,50,000/-** (Rupees Fourteen Lakhs and Fifty Thousand only) along with interest at the rate of **7.5%** per annum from the date of petition till date of realisation and proportionate costs.

13. Even though this appeal has been preferred by the appellant-Insurance Company against the award of Rs.8,48,400/- awarded by the Tribunal, this Court, on re-appreciating the evidence and applying the correct proposition of law has *suo motu* enhanced the compensation to **Rs.14,50,000/-** (Rupees Fourteen Lakhs and Fifty Thousand only) even in the absence of appeal/cross appeal invoking Order 41 Rule 33 and Section 151 of the Code of Civil Procedure, for which, this Court has got power and jurisdiction as declared by the Honourable Supreme Court in **Nagappa v. Gurudayal Singh and others** reported in **2004 (2) TNMAC 398 (SC) : 2003 (2) SCC 274**.



(i) This Civil Miscellaneous Appeal is dismissed, however, the award amount is enhanced from Rs.8,48,400/- to **Rs.14,50,000/-** (Rupees Fourteen Lakhs and Fifty Thousand only) along with interest at the rate of **7.5%** per annum from the date of petition till date of realization and proportionate costs;

(ii) Out of the said sum, the first respondent/wife is entitled to a sum of Rs.5,00,000/- (Rupees Five Lakhs only) along with proportionate interest and costs;

(iii) Respondents 2 to 4 are entitled to a sum of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) each, along with proportionate interest and costs;

(iv) The fifth respondent is entitled to a sum of Rs.1,00,000/- (Rupees One Lakh only) along with proportionate interest and costs;

(v) Respondents 1 to 5/claimants 1 to 5 are directed to pay the additional Court fee, if any, within a period of two weeks from the date of receipt of a copy of this judgment;

(vi) The appellant-Insurance Company is directed to deposit the entire award amount to the credit of M.C.O.P.No.3308 of 2002, by the Motor Accident Claims Tribunal - cum - III Additional District and Sessions Court, Madurai, along with accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment;

(vii) On such deposit, the Tribunal is directed to transfer the respective share amounts of the respondents 1 and 5/claimants 1 and 5 directly to their Personal Savings Bank Account Numbers, through RTGS/NEFT system, after getting their Account Details within a period of **two weeks thereafter**;

(viii) Insofar as the respective shares of the minor respondents 2 to 4 /claimants 2 to 4 are concerned, the Tribunal shall deposit the same in an interest bearing Fixed Deposit in any one of the nationalized banks under the renewable scheme, till they attain majority and the first respondent/first claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants 2 to 4;

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

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

<https://hcservices.courts.gov.in/hcservices/>
1.11 Additional District and Sessions Judge,
Madurai.



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

+1cc to Mr.K. Manoharan, Advocate Sr.No.3835
+1cc to Mr.A.K.Baskarapandian, Advocate Sr.No.3873

TRP

VB/KP/SAR1/26/09/2017/5P/5C

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