



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.251 of 2015

1.Nishad Charles

2.Abeline Sanjana Moses

3.Kevin Samuel Charles

... Appellants

(3rd Appellant declared as major
and guardianship discharged
vide court order dated 25.11.2016
made in CMP(MD)No.3639 of 2016)

Vs.

1.A.Kaja Mohaitheen

2.T.Muthu Krishnan

3.The Manager,
United India Insurance Company Ltd,
Branch Office, S.N.High Road,
Tirunelveli District.

4.The Manager,
National Insurance Company Ltd,
Branch Office, Angu Vilas Building,
Ramavarmapuram, North Car Street,
Nagercoil, Kanyakumari District.

5.Jankipushpam Moses

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree dated 31.08.2012 made in MCOP No.218 of 2009 on the file of the Motor Accident Claims Tribunal at Nagercoil.



For respondents : Mrs.K.R.Shivasankari for
Mr.S.Srinivasa Raghavan
for R4

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RR2 and 5 - No appearance
Mr.G.Prabhu Rajadurai for R3

JUDGMENT

(Judgment of the Court was delivered by
G.R.SWAMINATHAN, J.)

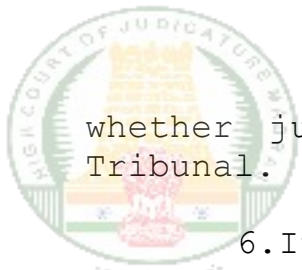
The appellants before us are the claimants in MCOP.No.218 of 2009 on the file of the Motor Accident Claims Tribunal/District Judge, Kanyakumari at Nagercoil. They are the legal representatives of the deceased Dr.Charles Vaseekaran. He was driving the car bearing Registration No. TN 74 K 9247 from Nagercoil to Neyyoor on 16.05.2008 at about 01.00 a.m when the accident in question occurred.

2.The case of the claimants is that the Mahindra van bearing Registration No.TN 72 0731 driven by the first respondent in a rash and negligent manner came on the wrong side and hit the car in which the deceased was travelling. The deceased was working as a Doctor and was earning more than a sum of Rs.75,000/- per month. He was aged 49 years at the time of accident. The offending vehicle belonged to the second respondent and was insured with the third respondent. Claiming compensation of a sum of Rs.75.00 lakhs as compensation, MCOP.No.218 of 2009 came to be filed before the Motor Accident Claims Tribunal, Nagercoil.

3.Counter affidavits were filed on behalf of the respondents. The wife of the deceased namely, the first appellant examined herself as P.W 1. P.W 1 to 4 were also examined to speak about the occurrence and also the salary of the deceased. Exs.P1 to P18 were marked. On the side of the respondents, no evidence was adduced. The Tribunal by award dated 31.08.2012 awarded a sum of Rs.20,18,219/- as compensation to the claimants. Contending that the award is inadequate, this appeal has been filed.

4.Heard the learned Senior counsel for the appellants/claimants and also the learned counsel for the respondents.

5.The Tribunal had given a specific finding that the accident had happened due to rash and negligent driving of the first respondent. It has also found that the third respondent as the offending vehicle will have to be fastened with the liability. The said finding has not been challenged and it has become final. The only question that is to be gone into is



whether just compensation was awarded to the claimants by the Tribunal.

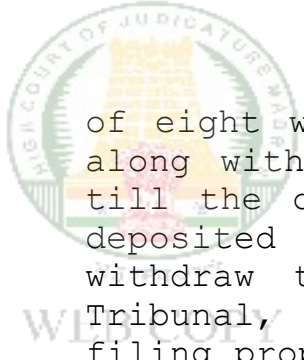
6. It is not in dispute that the deceased was a practicing Doctor. After completing his M.B.B.S., he had obtained D.C.H and also M.D., degrees. It is claimed that he was running his private clinic in Nagercoil. He was working as a Paediatric Doctor in the Kanyakumari Medical Mission (C.S.I), Neyyoor Hospital. The hospital management has issued Ex.P.17 dated 08.10.2008 certifying that his last drawn monthly salary inclusive of all allowances was Rs.30,881/-. However, Ex.P.14, certificate issued by the very same hospital management that the revised salary would be Rs.41,356/- cannot be taken into account. In any event, the claimants would not be put to prejudice, because, future prospects will have to be added to what was shown to have been earned by the deceased. Since the deceased was a highly qualified professional who was also having a permanent job, this Court would be justified in adding 30% towards future prospects. He was aged little less than 50 years at the time of his demise. He was survived by his mother, wife and two children. Hence, only one fourth deduction could have been made. The relevant multiplier will be 13. The compensation payable to the claimants will have to be reworked as under :

Sl.No.	Heads	Amount (in Rs.)
1.	Monthly Salary	Rs.30,881/-
2.	30% Future Prospects	Rs.9264/-
3.	Total	Rs.40,145/-
4.	After one fourth deduction	Rs.30,109/-
5.	Pecuniary loss 30,109X12X13	Rs.46,97,004/-
6.	Loss of consortium for the wife and loss of love and affection for the children	Rs.1,20,000/-
7.	For funeral expenditure and for loss of estate	Rs.30,000/-
	Total	Rs.48,47,004/-

7. The compensation payable to the claimants is therefore enhanced from a sum of Rs.20,18,219/- to Rs.48,47,004/-. Accordingly, the award dated 31.08.2012 in MCOP.No.218 of 2009 on the file of the learned District Judge/Motor Accidents Claims Tribunal, Kanyakumari at Nagercoil is modified accordingly.

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

8. The respondents 1 to 3 are directed to deposit the entire compensation amount jointly and severally within a period



of eight weeks from the date of receipt of a copy of this order along with interest @ 7.5.% per annum from the date of petition till the date of realization and costs, less the amount already deposited if any. The claimants/appellants are entitled to withdraw their share in the same proportion as fixed by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application.

9.This Civil Miscellaneous Appeal is allowed in part. No costs.

Sd/
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

- 1.The District Judge/
Motor Accidents Claims Tribunal,
Kanyakumari @ Nagercoil.
- 2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1cc to Mr.XAVIER RAJINI, Advocate, SR.No.73022
+1cc to Mr.S.SRINIVASA RAGHAVAN, Advocate, SR.No.73147
+1cc to Mr.G.PRABHU RAJADURAI, Advocate, SR.No.72958

C.M.A. (MD) No.251 of 2015
17.08.2017

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KK/SV MMS/SAR-4/25.06.2018/4P-7C/