



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2017

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.431 of 2014

- 1.Sivabhagiyam
- 2.Thangavel (died)
- 3.Selvi.
- 4.Kanagavalli
- 5.Kesavan
- 6.Gopal
- 7.Suresh

(A3-A7 are brought on record
as Lrs of the deceased, A2,
vide order dated 16.08.2017,
in CMP(MD).No.7061 to 7063)

... Appellants/claimants

Vs.

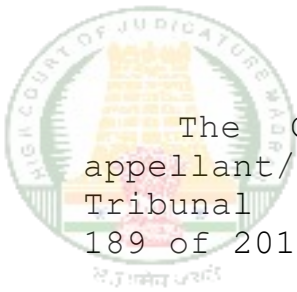
1. M/s.Bhagavathi Amman Blue Metal,
216/2, Kovilpalayam,
Periyathirumangalam Post,
Aravakurichi Taluk,
Karur District.
2. Rooyal Sundaram Alliance Insurance CO.Ltd,
Bus Palasa, 3rd floor,
5-G, Lawsons Road,
Cantonment, Tiruchirappalli.

...Respondents/Respondents

(1st Respondent set-exparte by the Tribunal
Hench notice may be given up against R1 herein)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal and modify the award passed in MCOP.No.189 of 2010, dated 28.09.2012 on the file of the Motor Accidents Claims Tribunal/Subordinate Court, Kulithalai.

For Appellants	: Mr.V.Sasi Kumar
For R-1	: given up
For R-2	: Mr.M.E.Elango



The Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award of the Motor Accident Claims Tribunal (Subordinate Judge), Kulithalai, passed in M.C.O.P.No. 189 of 2010, dated 28.09.2012.

2. It is the case of a fatal accident which took place on 06.03.2010 at about 17.30.30 hours on Trichy - Karur Main road at Veerarakiyam.

3. It is the case of the claimants before the Tribunal that on the date of accident, when the deceased Ramesh was riding his colleague's two wheeler bearing Registration No.TN 47 Z 9119 along with his friend one Kumaravel as pillion rider, the driver of the tipper lorry bearing Registration No. TN 47 X -9799, drove the vehicle in a rash and negligent manner and dashed against the two wheeler and due to which the deceased died on the spot.

4. The claimants filed application in M.C.O.P.No.189 of 2012 on the file of the Motor Accident Claims Tribunal/ Sub Judge, Kulithalai, seeking compensation.

5. Before the Tribunal, the appellants/claimants examined three witnesses as P.W.1 to P.W.3 and marked nine documents as Ex.P.1 to Ex.P.14. On the side of the respondents, one witness namely R.W.1 was examined and no document was marked.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the first respondent/ driver of the tipper lorry, and therefore directed the second respondent to pay a sum of Rs.2,50,000/-to the claimants as compensation.

7. Against which, the appellants/claimants filed the present appeal seeking enhancement of compensation.

8. This Court heard the submissions made on either side and perused the materials available on record.

9.The learned counsel for the appellants/claimants would submit that the Tribunal ought to have seen that the deceased was earning Rs.10,000/- per month prior to the accident. The Tribunal ought to have considered the age of the deceased at the time of the accident, instead of the age of parents. The Tribunal has not awarded any compensation towards future prospects. The amounts awarded by the Tribunal are on lower side. Therefore, the compensation awarded by the Tribunal has to be enhanced.

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

10.The learned counsel appearing for the second respondent/ Insurance Company submitted that the Tribunal awarded a just and



reasonable compensation and the same does not warrant interference.

11. As rightly pointed out by the learned counsel appearing for the appellants, while adopting the multiplier method, the Tribunal had wrongly taken the age of the parents instead of the age of the deceased and adopted 7 as multiplier. This is apparent error on the face of the record. In this connection, it is useful to refer the judgment of the Honourable Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation** reported in **2009(2) TNMAC 1 (SC)**, wherein, for arriving at loss of income, the multiplier has to be adopted by taking into account the age of the deceased. As per the claim petition the deceased was 26 years at the time of accident, the correct multiplier would be "17". The income of the deceased is fixed as Rs.5,000/- per month. However, the Tribunal has not added any amount towards future prospects and if 50%, towards future prospects, is added, it would be Rs.7,500/-. (Rs.5000+Rs.2500). Since the deceased was a bachelor, 50% of the same has to be deducted, towards personal expenses of the deceased. Hence, a sum of Rs.3750/- has to be taken as monthly income of the deceased and accordingly, the loss of income has to be arrived at Rs.7,65,000/-(Rs.3750x12X17). The Tribunal has awarded Rs.30,000/- towards loss of love affection and considering the age of the claimants, the same is enhanced to Rs.50,000/- and the compensation awarded under other heads by the Tribunal are confirmed.

12. This Court modifies the award of the Tribunal by enhancing the compensation as under:-

S. No	Description	By Tribunal (Rs)	By this Court (Rs)	Result
1	Loss of income	2,10,000	7,65,000	Enhanced
2	Love and affection	30,000	50,000	Enhanced
3	Transportation	5,000	5,000	Confirmed
4	Funeral expense	5,000	5,000	Confirmed
	Total	2,50,000	8,25,000	By enhancing Rs.5,75,000/-

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed, by enhancing the award of the Tribunal from Rs.2,50,000 (Rupees Two lakhs and fifty thousand only) to a sum of Rs.8,25,000/- (Rupees Eight lakhs and twenty five 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;



(ii) The second respondent/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs, without filing any formal application before the Tribunal. The appellants/claimants are directed to pay necessary additional Court fee, within a period of two weeks from the date of receipt of a copy of this order, if any. No Costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal/
Sub Court, Kulithalai.

Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.V.Sasi Kumar, Advocate Sr.No.79771
+1cc to Mr.M.E.Elango, Advocate Sr.No.80210

DSK

VB/KP/SAR1/26/10/2017/4P/5C

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