



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.746 of 2017

1.Sakthikumari
2.Minor Arjun
(represented by the first respondent
mother of minor child) ... Appellants /Petitioners

Vs.

1. M/s.Karthikeya Transport,
No.154, Alagar Kovil Road,
Madurai - 2.

2. The Divisional Manager,
New India Assurance Company Ltd.,
No.92, East Coast Chamber 1st Floor,
G.N.Chetti Road, T.Nagar,
Chennai.

3.Narayanan
4.Kothainachiyar ... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 14.09.2012 in M.C.O.P No.1554 of 2008, on the file of the District and Sessions Judge cum Motor Accidents Claims Tribunal, Madurai.

For Appellants : Mr.R.Venkatesan

For Respondents : Mr.Lakshmanan
for R.2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against order dated 14.09.2012 in M.C.O.P No.1554 of 2008 on the file of the District and Sessions Judge cum Motor Accidents Claims Tribunal, Madurai, seeking enhancement of compensation.



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

It is a case of fatal in the accident took place on 18.04.2007 at about 23.00 p.m., in Tallakulam Main road. While the deceased viz., Iruthayaraj was riding his motorcycle bearing registration No.TN-74 -F-0541 near Amma mess Thirumukulam Junction, a lorry bearing registration No.TN-59-E-1278 owned by the first respondent, which was insured with the second respondent Insurance Company came in a rash and negligent manner and dashed against the deceased. As a result of which, the deceased sustained grievous injuries all over the body including head injury. Immediately, he was taken to Government Rajaji Hospital, Madurai, however he succumbed to the injuries on the same day. At the time of accident, the deceased was aged about 30 years and he was earning a sum of Rs.7,000/- per month by working as a partner in Clexsy Colour Lab. Hence, the petitioners, who are the legal heirs of the deceased viz., the wife and minor son filed a claim petition in M.C.O.P.No.1554 of 2008, on the file of the Motor Accident Claims Tribunal, Madurai, claiming a sum of Rs.8,00,000/- as compensation. The parents of the deceased also filed M.C.O.P.No.1323 of 2008 claiming a sum of Rs.4,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimants, three witnesses viz., P.Ws.1 to 3 were examined and 8 documents viz., Exs.P.1 to P.8 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 appearing on either side and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the offending vehicle and since the claims in both petitions were made in respect of the same accident by the members of same family, the Tribunal conducted the trial jointly and awards compensation of Rs.4,92,000/- and apportioned the same to the claimants as follows:

First petitioner in M.C.O.P.No.1554 of 2008/wife of the deceased	Rs.1,62,000
Second petitioner in M.C.O.P.No.1554 of 2008/minor son of the deceased	Rs.1,60,000
First petitioner in M.C.O.P.No.1323 of 2008/father of the deceased	Rs.90,000
Second petitioner in M.C.O.P.No.1323 of 2008/Mother of the deceased	Rs.80,000



5. Against which, the appellants/claimants in M.C.O.P.No.1554 of 2008 have filed this present appeal seeking enhancement of compensation.

6. The learned Counsel for the appellants would submit that while arriving loss of income, the Tribunal has not taken 50% of the income towards future prospects while arriving at compensation for loss of income. The Tribunal also, without taking into consideration the monthly income of the deceased Rs.7,000/- by working as a partner in Clexsy Colour Lab, had taken a meager sum of Rs.3,000/- per month and hence, the amount awarded under the head of loss of income should be modified. He further submitted that the amount awarded by the Tribunal under the various heads also very meagre. Hence, he prays this Court for enhancing the compensation.

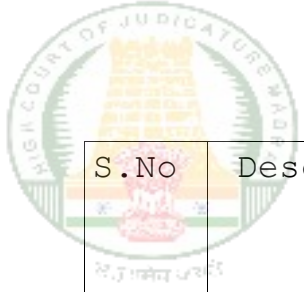
7. The learned counsel for the respondents would submit that based on the available oral and documentary evidences, the Tribunal has arrived at just and proper compensation under various heads. Hence, he prays for dismissal of this appeal.

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

9. As contended by the learned Counsel for the appellants/claimants, since the Tribunal has taken the meagre amount for arriving loss of income, this Court is inclined to modify the same. This Court is compelled to take a sum of Rs.6,000/- (Rupees Seven Thousand only) as the monthly income of the deceased, as the Honourable Supreme Court in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.** reported in **2014 (1) TNMAC 459 (SC)**, determined the monthly income at Rs.6,500/- for a vegetable vendor, even in the absence of any definite material about the income. Since the accident is of the year 2008, a sum of Rs.4,500/- can be taken as notional income and after adding 50% of the monthly income as future prospectus (Rs.4,500/- + Rs.2,250/-) and after deducting 1/3rd towards his personal expenses by considering the number of dependents and adopting multiplier "16" as per the decision of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**, the loss of income would be arrived at as follows:

$$(Rs.4500/- + Rs.2250/-) \times 12 \times 16 \times 2/3 = Rs.8,64,000$$

The amount awarded by the Tribunal under the head of loss of consortium is very low, as she is a young widow and this Court is inclined to enhance the same to Rs.1,00,000/-. The amount awarded by the Tribunal under others heads are hereby confirmed. In view of the above, this Court modifies the award passed by the Tribunal as follows:



S.No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	For transportation expenses	5,000	5,000	confirmed
2	For funeral expenses	5,000	5,000	confirmed
3	For loss of love and affection	30,000	30,000	confirmed
4	For loss of consortium	20,000	1,00,000	enhanced
5	For loss of income	4,32,000	8,64,000	enhanced
	Total	4,92,000	10,04,000	By enhancing a sum of Rs.5,12,000

Since the claimants in M.C.O.P.No.1554 of 2008 have filed this Civil Miscellaneous Appeal, after deducting the amount payable to the claimants in M.C.O.P.No.1323 of 2008, the award amount for the appellants herein would be arrived at (Rs.10,04,000-Rs.1,70,000)=Rs.8,34,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation awarded by the Tribunal in M.C.O.P.No.1554 of 2008 and M.C.O.P.No.1323 of 2008, dated 14.09.2012, on the file of the Motor Accident Claims Tribunal, District and Sessions Court, Madurai from Rs.4,92,000/- to Rs.10,04,000/- (Rupees Ten Lakhs and Four thousand only) with 7.5% interest per annum. The second 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 less the amount already deposited if any. On such deposit being made, the third and fourth respondents are entitled to a sum of Rs.90,000/- and Rs.80,000/- respectively along with proportionate interest and costs and the first appellant and the minor second appellant are entitled to a sum of Rs.4,34,000/- and Rs.4,00,000/- respectively along with proportionate interest and costs. The first appellant and the respondents 3 and 4 are permitted to withdraw their entire share amount along with proportionate interest and costs, without filing any formal petition before the Tribunal. Insofar as the share of minor claimant is concerned, the same shall be deposited in any one of the Nationalised Bank in renewable scheme till he attains majority and the mother and the natural guardian of the minor is permitted to withdraw interest directly from the Bank once three months for



the welfare of the minor. No costs. The appellants are directed to pay necessary additional court fee, if any.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
District and Sessions Court,
Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.R.Venkatesan , Advocate in SR No. 76403
+ 1 cc TO Mr.S.Lakshmanan , Advocate in SR No. 75832

ssl/gsp

AE/GT/SAR2/06.11.2017/5P/5C

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