



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)Nos.775 of 2017
and 369 of 2016
and

C.M.P. (MD)No.5295 of 2016

C.M.A(MD)Nos.775 of 2017

1.Shoba
2.MInor.Ashwanth
3.Minor.Sahana
4.Irudhayadasan
5.Gloriyal
(Minor Petitioners through
their mother and next
guardian 1st appellant herein)

... Appellants/Petitioners

Vs .

1.Belaventhiran
2.National Insurance Company Limited,
Through its Divisional Manager,
Anguvilas Building,
North Masi Street,
Nagercoil-629 001.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree made in M.C.O.P.No.334 of 2013 on the file of the Motor Accident Claims Tribunal, (1st Additional District Court) Tirunelveli, dated 26.10.2015.

For Appellants	: Mr.T.Selvakumaran
For 1 st Respondent	: Mr.G.Aravinthan
For 2 nd Respondent	: Mr.J.S.Murali

C.M.A(MD)Nos.369 of 2016

National Insurance Company Limited,
Through its Divisional Manager,
Anguvilas Building,
North Masi Street,
Nagercoil-629 001.

... Appellant/2nd Respondent

**Vs.**

1.Shoba

2.Minor.Ashwanth

3.Minor.Sahana

4.Irudhayadasan

5.Gloriyal

(Minor respondents 2 & 3 are
represented through their
mother and next guardian,
the 1st respondent herein)

... Respondents 1 to 5/Petitioners

6.Belaventhiran

... 6th Respondent/1st Respondent(6th Respondent exparte in Tribunal)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree in M.C.O.P.No.334 of 2013, dated 26.10.2015 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tirunelveli.

For Appellants	: Mr.J.S.Murali
For Respondents 1 to 3	: No appearance
For Respondents 4 & 5	: Mr.T.Selvakumaran
For 6 th Respondent	: Dispensed with

COMMON JUDGMENT

Since both the Civil Miscellaneous Appeals are arising out of the same accident, both the Civil Miscellaneous Appeals are disposed of by this Common judgment.

2. Both the Civil Miscellaneous Appeals have been filed against the Judgement and Decree in M.C.O.P.No.334 of 2013, dated 26.10.2015 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tirunelveli.

3. It is a case of fatal in which the accident took place on 17.12.2012 at about 07.00 p.m . When the deceased was riding in a two-wheeler bearing Registration No.72 E 0126 on the left side of the road towards North, a two-wheeler bearing Registration No. T.N.74 AC.5769, which was insured with the respondent-Insurance Company, came in a rash and negligent manner and dashed against the deceased and the deceased was sustained fatal injuries and he was admitted in Asaripallam Hospital. At the time of accident, the deceased was aged about 26 years and he was earning a sum of Rs.25,000/- p.m. as photographer. Hence, the legal representatives of the deceased filed an application in M.C.O.P.No.334 of 2013, dated 26.10.2015 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tirunelveli, seeking compensation of Rs.25,00,000/-.



4. Before the Tribunal, on the side of the claimants, two witnesses viz., P.W.1 and P.W.2 were examined and eleven documents viz., Exs.P.1 to P.11 were marked and neither any witness was examined nor any document was marked on the side of the respondents.

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5. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants 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 directed the respondent Insurance Company to pay a sum of Rs.19,42,000/- to the claimants.

6. Against which, the claimants filed the appeal in C.M.A.(MD) No.775 of 2017 for enhancement of compensation and the Insurance Company filed the appeal in C.M.A.(MD) No.369 of 2017 disputing the quantum.

7. The learned counsel appearing for the claimants would submit that the Tribunal had granted very meagre amount under various heads and hence, he prays for enhancement of compensation.

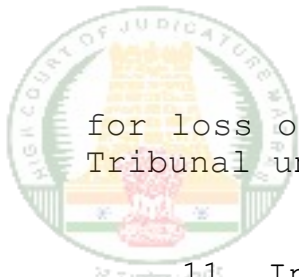
8. The learned Counsel for the Insurance Company would submit that the Tribunal had taken a larger sum as monthly income of the deceased without any proof and the amounts awarded under other heads are also very high. Hence, he prays for interference of this Court to the award passed by the Tribunal.

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

10. A perusal of the award passed by the Tribunal, it is seen that the notional income taken by the Tribunal is high. The Honourable Apex 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. Hence, this Court is inclined to take the monthly income as Rs.6,500/- per month and 50% of the income has been taken for future prospects and deducted 1/4 towards personal expenses of the deceased and by applying the multiplier as per the decision 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:

$(Rs.6500/- + 3250/-) \times 3/4 \times 12 \times 17 = Rs.14,91,70/-$

Considering the age of the minor children, this Court is of the view that the amount awarded by the Tribunal towards loss of love and affection is very meagre. Hence, this Court is inclined to enhance the same to a sum of Rs.1,50,000/- and this Court is also inclined to grant a sum of Rs.1,00,000/- for loss of love and affection to the parents of the deceased. Since the Tribunal has granted loss of love and affection, the amount awarded by the Tribunal under head



for loss of guidance is hereby set aside. The amount awarded by the Tribunal under others heads are hereby confirmed.

11. 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 income	16,32,000	14,91,750	reduced
2	For loss of consortium	1,00,000	1,00,000	Confirmed
3.	For love and affection to children	1,00,000	1,50,000	enhanced
4.	For loss of love and affection to parents	---	1,00,000	granted
5	For loss of guidance	75,000	--	Set aside
5.	For transport expenses	10,000	10,000	confirmed
6.	For funeral expenses	25,000	25,000	confirmed
	Total	Rs.19,42,000	Rs.18,76,750	By reducing a sum of Rs.65,250

12. In the result, the Civil Miscellaneous Appeal in C.M.A. (MD) No.369 of 2016 filed by the Insurance Company is partly allowed by reducing the compensation from Rs.19,42,000/- to Rs.18,76,750/-, dated 26.10.2015, passed in M.C.O.P.No.334 of 2013, by the Motor Accident Claims Tribunal, (1st Additional District Court) Tirunelveli and the Civil Miscellaneous Appeal in C.M.A.(MD) No.775 of 2017 filed by the claimants is modified and ordered accordingly to the extent indicated above. The 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 major claimants are permitted to withdraw their share amount along with proportionate interest and costs as apportioned by the Tribunal, without filing any formal petition before the Tribunal. Insofar as the shares of minors are concerned, the same shall be deposited in any one of the Nationalised Bank till they attain majority and the guardian of minor is permitted to withdraw the interest amount directly from the Bank once in three



months for the welfare of the minors. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/True Copy/

Sub Assistant Registrar=

To

1. The 1st Additional District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

- + 2 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 80165, 80166
- + 1 CC TO Mr.G.ARAVINDHAN, ADVOCATE IN SR No. 80185
- + 1 CC TO Mr.T.SELVAKUMARAN, ADVOCATE IN SR No. 80110

SSL

TE/SKN/SAR-IV : 26/10/2017 : 5P/7C

C.M.A(MD)Nos.775 of 2017 & 369/2016 &
C.M.P.(MD)No.5295 of 2016
19.09.2017