

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 15.03.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI**C.M.A. (MD) No.428 of 2016****and****C.M.P (MD) Nos.5738 of 2016 and 2101 of 2017**

The Divisional Manager,
United India Insurance Co. Ltd.,
43/1, Sri Renga Complex,
Renganathapuram Office Colony,
Trichy - 620 017.

... Appellant/2nd Respondent

Vs.

1.K.Vennila
2.Minor V.Naveen
3.Minor V.Vimalesh
4.Minor V.Kanica
5.K.Velayutham

... Respondents 1 to 5/
Petitioners 1 to 5

***(Minor respondents 2 to 4 are represented by
their mother and natural guardian, the first
respondent herein.)***

6.The Proprietor,
M/s.Bharathi Diesels,
2, Trichy - Chennai Bypass Road,
Near Amatha Petrol Bunk,
Thiruvannikaval,
Trichy - 620 005.

... 6th Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 14.12.2015 made in M.C.O.P.No.163 of 2014 by the Motor Accident Claims Tribunal - cum - Subordinate Court, Virudhunagar.

For Appellant : Mrs.K.R.Shiva Shankari
for Mr.V.R.Subramaniam

For Respondents : Mr.P.Arun Jayatram
for Mr.D.Sakkaravarthi for R.1 to R.5
R.6 - Notice Dispensed with.



JUDGMENT

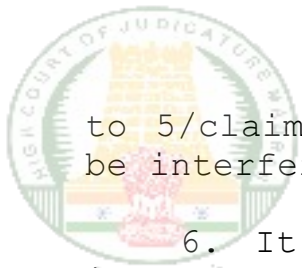
This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award of Rs.43,03,768/- (Rupees Forty Three Lakhs Three Thousand Seven Hundred and Sixty Eight only) for the death of Velmurugan, aged 47 years, working as Service Manager in M/s.Bharath Diesels, Trichy, allegedly earning a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) per month, in the accident occurred on 16.07.2014, when he was travelling as a pillion rider from Trichy to Pudukottai, in a two wheeler bearing Registration No.TN-45-AM-1125 driven by one Anand in a rash and negligent manner, due to which, the two wheeler got skipped and the deceased was thrown away and he sustained grievous injuries on his head and multiple injuries all over his body, and, he succumbed to the injuries. Therefore, the claim petition was filed.

2. On contest, the Tribunal, based on the evidence of P.W.3 and filing of Exs.P.1 - F.I.R and Ex.P.2 - Alteration Report against the rider of the offending two wheeler, found that the accident occurred only due to the rash and negligent driving of the rider of the offending two wheeler belonging to the sixth respondent and insured with the appellant-Insurance Company and fastened the liability on both of them and awarded a sum of Rs.43,03,768/- (Rupees Forty Three Lakhs Three Thousand Seven Hundred and Sixty Eight only) to the respondents 1 to 5/claimants. Aggrieved over the same, the appellant-Insurance Company filed the present appeal.

3. Heard Mrs.K.R.Shiva Shankari, learned Counsel for the appellant-Insurance Company and Mr.P.Arun Jayatram, learned Counsel appearing for the respondents 1 to 5.

4. The sixth respondent/owner of the offending vehicle remained exparte before the Tribunal and hence, notice to the sixth respondent is dispensed with, in view of the Full Bench judgment of Madhya Pradesh High Court in **Mrs.Jamunabai v. Chhote Singh** reported in **I (2004) ACC 190 (FB)**.

5. The Tribunal, based on the evidence of P.W.3 and filing of Exs.P.1 - F.I.R and Ex.P.2 - Alteration Report against the rider of the offending two wheeler and in the absence of any contra evidence to disprove the claim of the respondents 1 to 5/claimants, found that the accident occurred only due to the rash and negligent driving of the rider of the offending two wheeler belonging to the sixth respondent and insured with the appellant-Insurance Company and fastened the liability on both of them and awarded a sum of Rs.43,03,768/- (Rupees Forty Three Lakhs Three Thousand Seven Hundred and Sixty Eight only) to the respondents 1



to 5/claimants. Hence, the said finding based on evidence cannot be interfered with.

6. It is seen that the Tribunal rightly fixed the monthly income of the deceased at Rs.25,000/- (Rupees Twenty Five Thousand only) and deducted 10% towards Income Tax and arrived at a sum of Rs.22,500/- (Rupees Twenty Two Thousand and Five Hundred only), however, added 50% amount towards future prospects, which in the considered opinion of this Court, is not correct. Taking into consideration the age of the deceased, viz., 47 years, only 30% has to be added towards future prospects as per the judgment of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others** reported in **(2013) 9 Supreme Court Cases 54**. Accordingly, the monthly income of the deceased would be Rs.29,250/- (Rupees Twenty Nine Thousand Two Hundred and Fifty only) [Rs.22,500/- + Rs.6,750/-]. The size of the family is 5 and therefore, 1/4th amount has to be deducted and accordingly, the loss of monthly contribution to the family of the deceased would be **Rs.21,937.50** (Rupees Twenty One Thousand Nine Hundred and Thirty Seven and Paise Fifty only) [Rs.29,250/- - Rs.7,312.50]. The Tribunal rightly applied the appropriate multiplier '13' and therefore, the loss of dependency would come to **Rs.34,22,250/-** (Rupees Thirty Four Lakhs Twenty Two Thousand Two Hundred and Fifty only) [Rs.21,937.50 X 12 X 13].

7. The amounts awarded by the Tribunal under the other heads, viz., a sum of **Rs.1,55,018/-** (Rupees One Lakh Fifty Five Thousand and Eighteen only) towards medical expenditure; a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only) towards funeral expenses; a sum of **Rs.50,000/-** (Rupees Fifty Thousand only) towards loss of consortium to the first respondent/wife of the deceased and a sum of **Rs.1,25,000/-** (Rupees One Lakh and Twenty Five Thousand only) towards loss of love and affection to the respondents 1 to 5/claimants, are very reasonable and they are confirmed.

8. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

9. In the result,

(i) This Civil Miscellaneous Appeal is allowed to the extent indicated above;

(ii) The respondents 1 to 5/claimants are entitled to a sum of **Rs.37,77,268/-** (Rupees Thirty Seven Lakhs Seventy Seven Thousand Two Hundred and Sixty Eight only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

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(iii) The respondents 1 to 5/claimants are entitled to the above compensation along with accrued interest and costs, as per

the apportionment made by the Tribunal;

(iv) The appellant-Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.163 of 2014 on the file of the Motor Accident Claims Tribunal - cum - Subordinate Court, Virudhunagar, within a period of **eight weeks** from the date of receipt of a copy of this judgment;

(v) On such deposit, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the Personal Savings Bank Account Numbers of the respondents 1 and 5, through RTGS/ NEFT system, after getting their Account Details, within a period of **two weeks thereafter**;

(vi) The Tribunal shall invest the respective shares of the minor respondents 2 to 4 in Fixed Deposits in any one of the nationalised banks under the renewable scheme, till they attain majority and the first respondent/mother of the minor claimants is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minor claimants; and

(vii) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To

1.The Subordinate Judge ,
Motor Accident Claims Tribunal - cum -
Subordinate Court,
Virudhunagar.

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

+1 cc to Mr.V.R.Subramaniam , Advocate in SR.No. 15162
+1 cc to Mr.D.Sakkaravarthi , Advocate in SR.No. 14919

rsb

AE/RR/SAR3/24.04.2017/4P/5C

**C.M.A. (MD) No.428 of 2016
and**