



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2017

Coram:

WEB COPY

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A(MD)No.86 of 2017

and

C.M.P(MD)No.760 of 2017

The Divisional Manger,
United India Insurance Company Limited,
No.61/2695, First Floor(Indian Bank Upstairs),
South Street,
Thanajvur District.

..Appellant/2nd Respondents

.vs.

1.Suseela Mary	..1 st Respondent/Petitioner
2.Alphone Mary	..2 nd Respondent/Petitioner
3.Marthal Juli	..3 rd Respondent/Petitioner
4.Helen Darathy	..4 th Respondent/Petitioner
5.S.Kannan	..5 th Respondent/Petitioner

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the decree and judgement made in M.C.O.P.No.675 of 2015, dated 21.12.2015, on the file of the II Additional District Judge, Thanjavur District.

For Appellant	: M/s.A.Ilango
For Respondent-2	: No appearance
Nos.1 & 5	
For Respondents	: Mr.S.Rajaprabhu
2 to 4	

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award of Rs.11,56,000/- for the death of one Gnanamuthu, aged about 58 years, allegedly working in a Hotel in Malaysia and also doing cultivation in India, earning Rs.50,000/-p.m., in the accident occurred on 24.5.2015, when he was walking on the road and hit by Hero Honda driven by <https://hcservices.ecourts.gov.in/hcservices/> and negligently, belonging to the fifth respondent, insured with the appellant/Insurance Company.



2. Heard Mr.A.Ilango, learned counsel for the appellant/Insurance Company and Mr.S.Raja Prabhu learned counsel appearing for the respondents 2 to 4/claimants 2 to 4.

3. The only question which is canvassed in this appeal is with regard to the quantum of compensation awarded by the Tribunal.

4. Mr.A.Ilango, learned counsel for the appellant would submit that though the claimants sought that the deceased was earning Rs.50,000/-p.m stating that the deceased was working in a Hotel in Malaysia, the Tribunal did not believe the said contention, in the absence of any proof and went wrong in fixing the monthly income at Rs.10,000/-p.m without any proof.

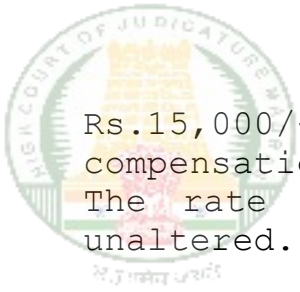
5. The learned counsel for the claimants would submit that the passport of the deceased was marked as Ex.A9 to show that he travel to Malaysia and therefore the Tribunal was right in fixing the monthly income at Rs.10,000/- As rightly pointed out by the learned counsel for the appellant, there is no positive proof regarding neither income of Rs.50,000/- nor income of Rs.10,000/- as determined by the Tribunal. Therefore the said determination has to be set aside and accordingly set aside. Even in the absence of any positive evidence regarding income, the Honourable Supreme Court determined the monthly income of a Vegetable Vendor at Rs.6,500/- in the case of **Syed Sadiq .vs. The Divisional Manager, United India Insurance Company Limited reported in 2014(1) TN MAC 459(SC)**. Therefore this Court is inclined to follow the said determination of Rs.6500/- as monthly income of the deceased.

6. Future prospects has to be calculated as per the judgement in **Rajesh and others .vs. Rajbir Singh and others reported in 2013 (3) CTC 883**. In this case, the deceased was aged about 56 years old and 15% has to be added towards future prospects. If 15% is added the monthly income is Rs.6500/-+15%= Rs.7,475/-.

7. The size of the family is four and one fourth has to be deducted towards personal expenses of the deceased. After deduction of $1/4^{th}$, the income would be Rs.5605.50/-

8. The age of the deceased was 56 years and the appropriate multiplier would be '9' and the loss of income is Rs.6500+15%- $1/4^{th} \times 12 \times 9$ = Rs.6,05,448.

9. The Tribunal rightly awarded a sum of Rs.1 lakh towards loss of consortium to the first respondent and the same is confirmed. Rs.25,000/- is awarded towards funeral expenses and a sum of Rs.1 lakh is awarded towards loss of love and affection and the above said awards seems to be just and reasonable and they stand confirmed. However, no amount was awarded towards transport expenses and towards loss of estate and therefore a sum of



Rs.15,000/- is awarded under each heads and the total amount of compensation is arrived at Rs.8,55,000/- rounded to Rs.8,50,000/-. The rate of interest at 7.5% awarded by the Tribunal remains unaltered.

10. In view of the above findings, the Civil Miscellaneous Appeal is partly allowed and the the total compensation is reduced from Rs.11,56,000/- to Rs.8,50,000/- with interest at 7.5% from the date of claim petition till the date of deposit. Out of the above said award amount, first respondent/Widowed wife is entitled to Rs.4 lakhs and respondents 2 to 4 are each entitled to Rs.1,50,000/-. The appellant is directed to deposit the entire award amount after deducting the amount already deposited, if any, with proportionate interest and costs within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the compensation amount of the claimants as per the above apportionment made along with proportionate accrued interest and costs within a period of two weeks by RTGS after getting their bank accounts. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar

To

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

+1 cc to MR.S.Rajaprabu, ADVOCATE, SR NO: 5888

+1 cc to MR.A.Ilango, ADVOCATE, SR NO:5869

AAM-RSK/21.2.2017/3p-5c

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