

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

DATED: 17.07.2017

CORAM:

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU****C.M.A. (MD)No.524 of 2015****and****MP.P(MD).NO.1 OF 2015**

1. Papathi

2. Saroja

.. Appellants/Petitioners

Vs.

1.Radhakrishnan

2.The Manager,

New India Assurance Company Ltd.,

Gugai Branch Office-720407,

No.7, B.K.Building,

Ramalinga Madalaya Street,

Salem-636 006.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 13.09.2012 passed in M.A.C.O.P.No.483 of 2011 on the file of the Motor Accident Claims Tribunal, District Judge, Karur.

For Appellants : Mr.K.Sureshkumar

For R1 : No appearance

For R2 : Mr.J.S.Murali

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants/claimants against the judgment and decree dated 13.09.2012 made in M.A.C.O.P.No.483 of 2011 on the file of the Motor Accident Claims Tribunal, District Judge, Karur.

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

It is a case of fatal accident took place on 11.08.2011 at about 1.30 p.m., when the deceased was standing along with the second petitioner near Vedasandhur - Karukkamptti Pirivu Road on Dindigul - Karur National Highway 7 Road, the driver of the first respondent's car drove the vehicle in a rash and negligent manner



and dashed against the deceased Palanisamy. Due to the said impact, the deceased sustained serious head injuries and fracture all over the body and immediately, he was taken to Government Hospital, Karur, but on the way to hospital, he died at 4.45 p.m. The deceased was aged about 60 years at the time of accident and he was earning a sum of Rs.10,000/- per month by working agricultural operations in his own land. Therefore, the claimants, who are the daughters of the deceased, filed a petition in M.C.O.P.No.483 of 2011 on the file of the Motor Accident Claims Tribunal, District Judge, Karur claiming a sum of Rs.8,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimants, one witness viz., P.W.1 was examined and seven documents viz., Exs.P1 to P7 were marked and on the side of the respondents, no witness was examined and no 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 had occurred only due to the rash and negligent driving of the driver of the first respondent vehicle and directed the respondents to pay a sum of Rs.1,20,000/- as compensation with interest at the rate of 7.5%.

5. Against which, the appellants/claimants have filed the present appeal by questioning the quantum of compensation.

6. The learned counsel for the appellants would submit that the Tribunal had treated the deceased as non-earning member of the family and fixed the annual income of the deceased as Rs.15,000/- as per Schedule II of the Act. The learned counsel for the appellants/claimants relied on a judgment in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.** reported in **2014 (1) TNMAC 459 (SC)**, wherein the Honourable Apex Court determined the monthly income at Rs.6,500/- for a vegetable vendor, even in the absence of any definite material about the income. Hence, he seeks interference of this Court to the award passed by the Tribunal.

7. The learned counsel for the second respondent/New India Assurance Company Limited would submit that based on the available oral and documentary evidences, the Tribunal has rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving of the car belonging to the first respondent and arrived at correct 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. This Court is of the view that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent car and the deceased is an agriculturist is not disputed and in agricultural process, an agriculturist is capable of earning Rs.6,500/- per month. As per the **Sarala Verma Case (2009 ACJ 1298)**, for the persons died between the age 56 and 60, multiplier 9 has to be adopted. If 9 multiplier is adopted, it works out to Rs.6,500 x 12 x 9 = Rs.7,02,000/- for loss of income, but the claimants have restricted their claim at Rs.3,80,000/-. Accordingly, the Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.1,20,000/- to Rs.3,80,000/- with interest at the rate of 7.5% per annum.

10. The learned counsel for the second respondent/Insurance Company submitted that the award of the Tribunal has already been deposited. Hence, the second respondent / Insurance Company is directed to deposit the enhanced award amount with accrued interest and cost within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal with accrued interests and costs without filing any formal permission petition before the Tribunal. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

The District Judge,
Motor Accident Claims Tribunal,
Karur.

+1 cc to Mr.J.S.Murali , Advocate in SR.No. 65973

+1 cc to Mr.K.Suresh kumar , Advocate in SR.No. 65928

akv

AE/SV MMS/SAR3/20.09.2017/3P/4C

C.M.A. (MD) No.524 of 2015
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