

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 07.08.2017****CORAM****WEB COPY****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.A(MD)No. 810 of 2014**

1.Nagaraj
2.Gokila
3.Loganathan

... Appellant / Petitioners

Vs.

1.R.Krishnan

2.The Branch Manager,
M/s.Reliance General Insurance Co. Ltd,
having branch office at 15A, PLA Kanagu Towers,
11th Cross Main Road, Thillai Nagar, Trichy-18.
(1st respondent remained Ex parte before
the Tribunal hence Notice to the 1st respondent
be dispensed with)

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.08.2012 passed in M.A.C.O.P.No.927 of 2010 on the file of the Hon'ble Motor Accidents Claims Tribunal (Principal District Judge), Trichy.

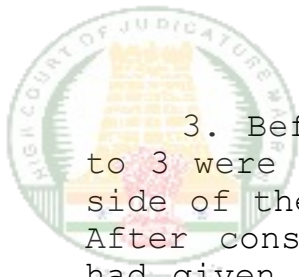
For Appellants	:Mr.R.Maheswaran
For R-1	:No Appearance
For R-2	:Mr.V.Sakthivel

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award made in M.A.C.O.P.No.927 of 2010, dated 31.08.2012 on the file of Motor Accidents Claims Tribunal (Principal District Judge), Trichy.

2. The brief facts arising out of this appeal are as under:-

On 04.10.2009, the deceased Arunkumar was working as cleaner in the MMV Cub Carrier bearing Registration No.TN-45/AC-2686 belongs to the first respondent. The vehicle was proceeding from Pepsi company from Punganur to Karur for unloading pepsi bottles and when the said vehicle was nearing T.Erdayapatti on the Thogamalai to Karur main road, the driver of the vehicle lost his control over the vehicle and the vehicle dashed against the road side tree on the left side. As a result of which, the deceased Arunkumar, who was sitting beside the driver sustained severe injuries and died on the spot. The accident happened only due to the rash and negligent driving of the driver of the vehicle. The claimants are parents and brother of the deceased. They claimed a compensation of Rs.5,00,000/- before the Tribunal.



3. Before the Tribunal, on the side of the petitioners, P.Ws.1 to 3 were examined and documents Ex.A1 to Ex.A5 were marked. On the side of the respondents, no oral or documentary evidence was marked. After considering the oral and documentary evidence, the Tribunal had given a finding that the accident had occurred only due to the rash and negligent driving of the driver of the vehicle and awarded a compensation of Rs.3,21,000/- with interest at 7.5% p.a. from the date of petition. Aggrieved by the award, the claimants have filed the present appeal.

4. So far as the negligence part is concerned, the Tribunal has held that the accident had occurred only due to the rash and negligent driving of the driver of the vehicle, which is not in dispute. Learned counsel appearing for the appellants / claimants disputed only the quantum of compensation awarded by the Tribunal.

5. The deceased Arunkumar was 20 years old at the time of accident which is evident from the copy of Post Mortem Certificate, Ex.P2. It was stated before the Tribunal that he was earning a sum of Rs.5,000/- p.m., but, since there was no evidence to substantiate the same, the Tribunal fixed his monthly income as Rs.3,300/- p.m. Though the claimants have not produced any documentary proof with regard to the income of the deceased, as per the Judgement of the Hon'ble Supreme Court in **M.SENGABAGAM v. V.VINOD KUMAR** reported in **2013 (2) TN MAC 450**, I am of the view that the notional income of the deceased shall be taken as Rs.6,000/- p.m. and after deducting 50% for his personal expenses, his monthly income is taken as Rs.3,000/- p.m. If 18 multiplier is adopted, it works out to Rs.3,000 x 12 x 18 = Rs.6,48,000/- for loss of income. Therefore the loss of income is modified from Rs.3,17,000/- to Rs.6,48,000/-.

6. So far as love and affection is concerned, the Tribunal has not awarded any amount under that head. The claimants are parents and brother of the deceased and hence, a sum of Rs.1,50,000/- is hereby awarded for love and affection. Out of Rs.1,50,000/-, the claimants are entitled to a sum of Rs.50,000/- each.

7. The Tribunal has also awarded a sum of Rs.4,000/- towards loss of estate and funeral expenses, which is not correct and hence, a sum of Rs.20,000/- is hereby awarded for loss of estate and a sum of Rs.20,000/- is hereby awarded for funeral expenses.

8. Accordingly, the award of the Tribunal is modified as follows:-

	Rs.
(i) For loss of income	6,48,000/-
(ii) For loss of love and affection	1,50,000/-
(iii) For loss of estate	20,000/-
(iv) For funeral expenses	20,000/-

Total 8,38,000/-



Therefore, the award of the Tribunal is enhanced to Rs.8,38,000/- from Rs.3,21,000/- along with interest at the rate of 7.5%.

9.The second respondent / Insurance Company is directed to deposit the entire award amount, less the amount already deposited, with accrued interest at the rate of 7.5% per annum, from the date of petition till the date of realization, within a period of six weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the claimants are entitled to withdraw their share amount with proportionate interest and costs, as apportioned by the Tribunal, without filing any formal petition before the Court below.

10.The appellants/claimants are directed to pay the additional Court fee, if any, within a period of two weeks from the date of receipt of a copy of this order.

11.The Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar(RECORD)

/True Copy/

Sub Assistant Registrar

To,

1.The Motor Accidents Claims Tribunal (Principal District Judge),
Trichy.

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

+1cc to Mr.R.MAHESWARAN Advocate in SR. No. 71225

+1cc to Mr.V.SAKTHIVEL Advocate in SR. No. 70848

RJ2

JS/MR.KKR/SAR.3/22.09.2017/ 3P-5C

C.M.A(MD)No. 810 of 2014

07.08.2017