

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 05.09.2017****CORAM:****WEB COPY****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.A. (MD) No.82 of 2014**

Thulasiammal

... Appellant/Petitioner

Vs.

1.C.Ganesan

2.The Divisional Manager,
The Oriental Insurance Company Limited,
Divisional Office,
PLA Building 1st Floor,
No.12A, Kovai Road,
Karur.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree made in M.C.O.P.No.401 of 2011 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Karur, dated 19.12.2013.

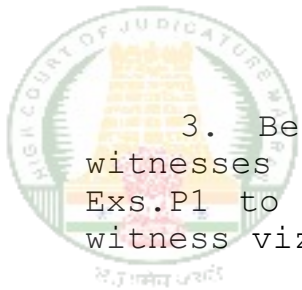
For Appellant	: Mr.T.Selvakumaran
For R1	: No appearance
For R2	: Mr.K.Bhaskaran

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/claimant against the judgment and decree dated 19.12.2013 in M.C.O.P.No.401 of 2011 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Karur.

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

It is a case of fatal accident took place on 29.07.2011 at about 2.00 p.m., when the deceased Suresh was walking from South to North keeping left side of the road, the driver of the first respondent's car had driven the car in a rash and negligent manner on the same direction and dashed behind the deceased Suresh. As a result of which, Suresh sustained grievous injuries on his head and all over the body. Immediately, he was admitted in Amaravathi Hospital, Karur and died on 30.07.2011 at 10.45 a.m. At the time of accident, the deceased was aged 30 years and worked as Textile worker in Om Sakthi Textiles, Karur and earned a sum of Rs.6,000/- per month. Therefore, the claimant, who is the mother of the deceased, filed a petition in M.C.O.P.No.401 of 2011 before the Motor Accident Claims Tribunal, (Principal District Judge), Karur, claiming a sum of Rs.7,00,000/- as compensation.



3. Before the Tribunal, on the side of the claimant, two witnesses viz., P.Ws.1 and 2 were examined and 6 documents viz., Exs.P1 to P6 were marked and on the side of the respondents, one witness viz., R.W.1 was examined and Exs.R1 to R5 were 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.2,84,000/- as compensation with interest at the rate of 7.5%. Against which, the appellant/claimant has filed the present appeal by questioning the quantum of compensation.

5. The learned counsel for the appellant would submit that at the time of accident, the deceased was working as a Textile worker in Om Sakthi Textiles, Karur and was earning a sum of Rs.6,000/- per month. But the Tribunal without considering the same, fixed the income of the deceased as Rs.4,000/-, stating that the claimant has not produced any document to prove his income and after deducting 50% of the amount for his personal expenses, taken a sum of Rs.2,000/- per month. He would further submit that the monthly income fixed by the Tribunal is on the lower side and also relied on a judgment in M.Sengabagam v. V.Vinod Kumar reported in 2013(2) TN MAC 450 (DB), wherein the Division Bench of this Court fixed the monthly income of the deceased as Rs.6,000/- in the absence of any proof. Hence, he seeks interference of this Court to the award passed by the Tribunal.

6. The learned counsel for the second respondent/Oriental Insurance 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 driver of the first respondent and arrived at correct compensation under various heads. Hence, he prays for dismissal of this appeal.

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

8. 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 was working as a Textile worker in Om Sakthi Textiles, Karur and was earning a sum of Rs.6,000/-. Therefore, by applying the judgment reported in 2013(2) TN MAC 450 (DB), this Court fix the monthly income of the deceased as Rs.6,000/- and after deducting 50% for his personal expenses, his monthly income comes to Rs.3,000/-. As per the Sarala Verma Case (2009 ACJ 1298), for the persons died at the age of 30, multiplier 17 has to be adopted. If '17' multiplier is adopted, it works out to Rs.3000 x 12 x 17 = Rs.6,12,000/- for loss of income.



9. Further, the sum of Rs.10,000/- (Rupees Ten Thousand only) awarded by the Tribunal towards loss of love and affection is on the lower side and therefore, the same is enhanced to a sum of Rs.50,000/- (Rupees Fifty Thousand only).

10. Similarly, the sum of Rs.10,000/- (Rupees Ten Thousand only) awarded by the Tribunal towards funeral expenses is on the lower side and therefore, the same is enhanced to a sum of Rs.25,000/- (Rupees Twenty Five Thousand only).

11. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	2,64,000	6,12,000	enhanced
2.	For Loss of love and affection	10,000	50,000	enhanced
3.	For Funeral Expenses	10,000	25,000	enhanced
	Total	2,84,000	6,87,000	By enhancing a sum of Rs.4,03,000/-

12. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.2,84,000/- (Rupees Two Lakhs and Eighty Four thousand only) to a sum of Rs.6,87,000/- (Rupees Six Lakhs and Eighty Seven Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The respondents are directed to deposit the entire award amount of Rs.6,87,000/- (Rupees Six Lakhs and Eighty Seven Thousand only) with accrued interests and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the award amount with accrued interests and costs without filing any formal permission petition before the Tribunal. No Costs.

Sd/-

Assistant Registrar (W)

/True Copy/



To

1.The Motor Accident Claims Tribunal,
(Principal District Judge),
Karur.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to M/S.T.SELVAKUMARAN, Advocate SR.No.76789.

+1cc to M/S.K.BHASKARAN, Advocate SR.No.76728.

C.M.A. (MD) No.82 of 2014
05.09.2017

akv

SDS/SV:MMS/SAR 1/24.01.2018/4P/6C