



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

and

WEB COPY THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

C.M.A (MD) No. 829 of 2014

and

M.P (MD) Nos. 3 & 4 of 2014

1. The Director,
Agriculture Department,
Government of Tamil Nadu,
Chepauk, Chennai.

2. The District Collector,
Collectorate, Thanjavur.

... Appellants/Respondents
vs.

1. Renukadevi

2. Shanmuganathan

3. Shanmugapiriyam

... Respondents/Claimants

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the judgment and decree, dated 24.08.2012 passed in M.C.O.P.No.1100 of 2011 by the Motor Accident Claims Tribunal, (Additional District & Sessions Court/Spl. Court for EC Act Cases), Thanjavur.

For Appellants : Mr.D.Muruganantham
Additional Government Pleader

For Respondents : Mr.D.Senthil

JUDGMENT

[Judgment of the Court was made by K.KALYANASUNDARAM, J.]

This appeal is directed against the award passed by the Motor Accident Claims Tribunal (Additional District & Sessions Court/Spl. Court for EC Act Cases), Thanjavur, in M.C.O.P.No.1100 of 2011, dated 24.08.2012.

2. The original petition was filed by the legal-heirs of the deceased Thirugnanasambantha Moorthi, claiming compensation of Rs.30,00,000/- on the ground that on 04.08.2011 when the deceased was riding his two-wheeler TN-49-B-1030 along with his wife/first claimant, a Mahindra Van TN-07-G-1207 owned by the first appellant came in a high speed and dashed against the deceased. In the impact, the deceased died on the spot.



3.The claimants have further stated that the deceased was working as a driver in the Tamil Nadu Transport Corporation, Kumbakonam Division and was earning Rs.18,469/- per month and since, they lost their only bread-winner, they are entitled for compensation.

4.The appellants opposed the claim by filing counter contending that the accident occurred due to the negligence of the deceased. They also disputed the age, income and occupation of the deceased.

5.Before the tribunal, the claimants in order to prove their case, examined two witnesses and marked Exs.P1 to Ex.P10. On the side of the appellants, two witnesses were examined as R.W.1 and R.W.2 and marked one document as Ex.R1. The tribunal, after analyzing the evidence both oral and documentary, awarded compensation of Rs.16,41,000/- along with interest @ 7.5% p.a. Challenging the award, the present appeal has been filed.

6.Mr.D.Muruganantham, learned Additional Government Pleader appearing for the appellants submitted that admittedly, the deceased was working as a driver in the Transport Corporation and he died at the age of 55 years, but the tribunal applied multiplier '11', instead of applying split multiplier theory.

7.Per contra, the learned counsel for the respondents/claimants, by placing reliance on the decision reported in **2014(1) TN MAC 481 (SC)** [*Puttamma vs. K.L.Narayana Reddy*], contended that theory of split multiplier was not approved by the Hon'ble Apex Court.

8.We have heard the rival submissions made on either side and perused the materials available on record.

9.In the instant case, it is not in dispute that the claimants are the legal-heirs of the deceased, which was proved by production of legal-heirship certificate (Ex.P5). P.W.2 Kaliyaperumal, Assistant Manager of Tamil Nadu Transport Corporation, Kumbakonam Division has stated in his evidence that on the date of accident, the salary of the deceased was Rs.18,469/- and he produced Ex.P9 salary certificate and Ex.P10 service book. Based on the evidence of P.W.2 and Exs.P9 and P10, the tribunal has rightly fixed the monthly salary of the deceased at Rs.18,469/- and after deducting $1/3^{\text{rd}}$ towards his personal and living expenses there from, calculated the contribution to the family at Rs.12,000/-.

<https://hcservices.courts.gov.in/hcservices/> It is not in dispute that the employees in the Government undertaking Transport Corporation would retire from service at the age of 58 and after his retirement, they will get 50% of the

salary as pension. In the instant case, the deceased was having three years of service before his retirement. In the decision reported in **2014(1) TN MAC 481 (SC)** relied on by the learned counsel for the respondents/claimants, the Hon'ble Apex Court observed that without assigning any reason, the Court shall not apply split multiplier in routine course. This Court, in the cases arising out of fatal accident, wherein the deceased was an employee (Government Servant/Government undertaking Corporation) and after retirement, he will not get the same income and he is entitled for pensionary benefits, applied multiplier theory and accordingly, calculated the loss of dependency. The Hon'ble Apex Court in the judgment referred supra, has held that the courts without assigning any reason cannot apply split multiplier, so this court is of the opinion that the above decision cited does not support the case of the claimants. The tribunal, in the case on hand, ought to have applied split multiplier to arrive at the loss of dependency.

11.As already discussed above, the deceased had three years left over service. Hence, the loss of dependency before his retirement is Rs.4,32,000/- (Rs.12,000 x 12 x 3) and after his retirement would be Rs.5,76,000/- (Rs.6,000 x 12 x 8). The total loss of dependency comes to **Rs.10,08,000/-**. The amount awarded under conventional damages requires modification as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	15,84,000	10,08,000	reduced
2.	Funeral and Transportation expenses	7,000	20,000	Enhanced
3.	Loss of Estate	10,000	12,000	Enhanced
4.	Loss of Consortium	20,000	40,000	Enhanced
5.	Loss of love and affection	20,000	20,000	Enhanced
	Total	16,41,000/-	11,00,000/-	

12.In the result, the appeal is partly allowed and the claimants are entitled to Rs.11,00,000/- as against Rs.16,41,000/- together with interest @ 7.5% p.a. The Appellants are directed to deposit the modified award amount, less already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the first claimant is permitted to



withdraw Rs.7,00,000/- and the claimants 2 and 3 are permitted to withdraw Rs.2,00,000/- each with interest and costs. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

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/True Copy/

Sub Assistant Registrar

To

- 1.The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Additional District and Sessions Court
and Special Court for EC Act cases, Thanjavur.
2. The Director,
Agriculture Department,
Government of Tamil Nadu,
Chepauk, Chennai.
3. The District Collector,
Collectorate, Thanjavur.

Copy to

The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High court,
Madurai.

+1cc to Mr.D.Senthil, Advocate Sr.No.87519
+1cc to Spl.Government Pleader Sr.No. 87491

AM

VB/SKN/RSK/SAR1/23.03.2018/4P/8C

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