



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.788 of 2016
and
C.M.P. (MD) No.7965 of 2017

1.N.Thangamani

2.Minor Rohith

(2nd Appellant is represented by his mother
and natural guardian the 1st Appellant)

3.V.Nallammal

... Appellants/Petitioners

Vs

1.R.Loganathan

2. The Branch Manager,
National Insurance Company Ltd.,
West Pradhatchanam Road,
Karur.

... Respondents/Respondents

(1st Respondent set ex-parte before
Tribunal. Hence, 1st Respondent
may be dispensed with)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 17.08.2015 in M.C.O.P.No.355 of 2012 on the file of Motor Accident Claims Tribunal/Principal District Judge, Karur.

For Appellants : Mr.N.Sudhagar Nagaraj
For Respondents : R.1-Exparte
: Mr.J.S.Murali for R.2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants against the judgment and decree dated 17.08.2015 in M.C.O.P.No.355 of 2012 on the file of Motor Accident Claims Tribunal/Principal District Judge, Karur.



2. It is a case of fatal accident took place on 10.07.2012 at about 01.30 p.m. When the deceased was riding his motorcycle bearing Registration No. TN 47 J 3190 from South to North along with his wife as a pillian rider and when he was nearing at Pallath Thottam, at that time, a TATA Ace Minidor bearing Registration No.T.N.42 Y 0820, which was insured with the second respondent-Insurance Company, came in a rash and negligent manner and dashed against the two wheeler and due to the said impact and the deceased and his wife sustained multiple grievous injuries and both were admitted in the Government Hospital, Karur. After taking treatment, both of them were taken to Coimbatore for further treatment, but the deceased succumbed to the injuries. At the time of accident, the deceased was aged about 40 years and was earning a sum of Rs.15,000/-p.m., by doing agriculture work. Hence, the legal heirs of the deceased filed an application in M.C.O.P.No.355 of 2012, on the file of Motor Accident Claims Tribunal / Principal District Judge, Karur, seeking compensation of Rs.15,00,000/-.

3.Before the Tribunal, on the side of the claimants, three witnesses viz., P.W.1 to P.W.3 were examined and sixteen documents viz., Exs.P.1 to P.16 were marked and on the side of the respondents, one witness viz., R.W.1 was examined and three documents viz., Exs.R.1 to R.3 were marked.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the offending vehicle and directed the second respondent Insurance Company to pay a sum of Rs.7,85,000/- to the claimant and then recover the same from the first respondent/owner of the offending vehicle.

5. Against which, the appellants/claimants filed the present appeal for enhancement of compensation.

6. The learned counsel appearing for the appellants/ claimants would submit that the Tribunal has not taken 50% of the income towards future prospects, while calculating the loss of income and the award amounts under other heads are also very meagre. Hence, he prays for enhancement of compensation.

7. The learned Counsel for the second respondent Insurance Company would submit that based on the oral and documentary evidences, the Tribunal has correctly come to the conclusion and awarded just and reasonable compensation and hence, the award passed by the Tribunal deserves no interference and hence, this appeal has to be dismissed.

8. heard the learned counsel appearing on both sides and perused the materials available on record.



9. A perusal of the award passed by the Tribunal, it is seen that while calculating the amount for loss of income, the Tribunal has not taken 50% of the income as future prospects. As per the latest judgment of Three Judges Bench of the Honourable Supreme Court in **Rajesh v. Rajbir Singh** reported in **(2013) 9 Supreme Court Cases 54 : 2013 (3) CTC 883**, 50% of the monthly income has to be taken towards future prospects while arriving the amount for loss of income and after deducting 1/3rd towards personal expenses, the loss of income would be arrived as follows:

$$(Rs.6000/-+Rs.3000) \times 2/3 \times 15 \times 12 = Rs.10,80,000.$$

Considering the age of the wife of the deceased and also the sufferings due to the loss of her husband, this Court is of the considered view that the amount awarded by the Tribunal for consortium is also very meagre. Hence, this Court is inclined to enhance the same from Rs.20,000/- to Rs.1,00,000/-. In all other heads, the amounts awarded by the Tribunal shall stand unaltered.

10. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation as under:

S.No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	For loss of dependency	7,20,000	10,80,000	enhanced
2	For consortium for the first petitioner	20000	1,00,000	enhanced
3	For loss of love and affection for the petitioners 2 and 3	30,000	30,000	confirmed
4	For funeral expenses	15,000	15,000	confirmed
	Total	7,85,000	12,25,000	By enhancing a sum of Rs.4,40,000

11. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.7,85,000/- to Rs.12,25,000/-, dated 17.08.2015, passed in M.C.O.P.No.355 of 2012, by the Motor Accident Claims Tribunal/Principal District Judge, Karur. The Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the major claimants are permitted to withdraw the entire award amount, with accrued interests and costs as apportioned by the Tribunal, without filing any formal petition before the Tribunal. Insofar as the share of the minor claimant is concerned, the same shall be deposited in any one of the Nationalised Banks in renewable scheme till he



attains majority and the interest amount shall be withdrawn by the guardian of the minor once in three months directly from the Bank. No Costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Motor Accident Claims Tribunal,
Karur.

Copy To:-

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.N.SUDHAGAR NAGARAJ, ADVOCATE IN SR No. 76760
+ 1 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 76732

SSL
TE/KP/SAR-II : 26/10/2017 : 4P/5C

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C.M.P. (MD)No.7965 of 2017
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