



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 01.11.2017

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**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

C.M.A(MD)No.816 of 2016

1.M.Pandi
2.Tamilarsi
3.Saranya

: Appellants/Claimants

Vs.

1. M.A.Mohamad Ali Jinnah
2. The Divisional Manager,
The Oriental Insurance Company Ltd.,
West Veli Street, Madurai.

: Respondents/Respondent

Prayer : Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and judgment passed in MCOP No.749 of 2010 by the Motor Accident Claims Tribunal (VI Additional District Court), Madurai, dated 07.08.2013.

For Appellant : Mr.S.Ramesh Alias Ramiah
For 1st Respondent : Ex-parte.
For 2nd Respondent : Mr.K.Bhaskaran

JUDGMENT

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

Being dissatisfied with the award passed in MCOP No.749 of 2010, dated 07.08.2013 by the Motor Accident Claims Tribunal (VI Additional District Court), Madurai, the claimants have preferred this appeal.

2.The parents and sisters of the deceased Praveenkumar, who died in a motor vehicle accident on 11.12.2009, claimed compensation of Rs.25,00,000/- alleging that when the deceased was riding his motorcycle TN-58-J-8654 on Madurai-Theni main road, a bus TN-59-V-1758 proceeded on the same direction and hit against him. Due to the impact, he was under the wheel of the bus and died on the spot. A case in Crime No.170 of 2009 was registered against the driver of



the bus.

3. Before the tribunal, the claimants examined three witnesses and marked Exs.P1 to P16. On the side of the respondents, no one was examined and no document was produced.

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4. The tribunal, after analyzing the evidence adduced by the parties, held that the driver of the bus was negligent and caused the accident and awarded compensation of Rs.5,71,000/- along with interest @ 7.5% p.a.

5. Learned counsel for the appellants submitted that even though the deceased was pursuing MBA, he was assisting his father/ the first claimant in his business and thereby, he was earning Rs.25,000/- per month. But the tribunal has taken income of the deceased at Rs.6,500/-. It is also contended that the award passed under conventional damages are very low.

6. Per contra, learned counsel for the 2nd respondent argued in support of finding of the tribunal contending that the claimants have not proved the income through proper evidence and hence, they are not entitled for enhancement in this appeal.

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

8. It is not in dispute that the deceased was a MBA student and he died at the age of 22 years, which is evident from Exs.P11 and P13. While calculating the loss of dependency, the tribunal has rightly applied multiplier '14', based on the age of the mother of the deceased. Since the claimants have not established the alleged income, the tribunal fixed the notional income at Rs.6,500/- per month and after deducting 50%, awarded **Rs.5,46,000/-** (Rs.3,250/- x 12 x 14) towards loss of dependency.

9. In the recent decision of this court in **2017(1) TAN MAC 627 (DB)** (*National Insurance Company Limited vs. Rosi*), fixed the notional income as Rs.8,500/-, taking note of the fact that the deceased was aged 23 and he was a MBA student. The facts in that case is similar to the case on hand, so the income is fixed at Rs.8,500/- per month. After deducting 50% towards personal expenses, the loss of dependency is arrived at **Rs.7,14,000/-** (Rs.4,250/- x 12 x 14). The tribunal awarded Rs.20,000/- towards loss of love and affection and Rs.5,000/- for funeral expenses. This court is of the opinion, they have to be enhanced to **Rs.50,000/- and Rs.25,000/-** respectively.

10. In the result, the appeal is partly allowed and the award of the tribunal is modified. The claimants would be entitled for **Rs.7,89,000/-** along with interest @ 7.5% p.a. The 2nd respondent Insurance Company is 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 claimants are permitted to withdraw their share as per the ratio fixed by the Tribunal. No costs.

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Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar

To

1. The VI Additional District Judge,
Motor Accident Claims Tribunal
Madurai,
2. The Section Officer, V.R. Section,
Madurai Bench of Madras High court,
Madurai. (2 Copies)

+ 1 CC TO Mr.A.LIAKAT ALI, ADVOCATE IN SR No. 84725
+ 1 CC TO Mr.K.BHASKARAN, ADVOCATE IN SR No. 84711

SKN/ER

TE/GT/SAR-4 : 26/02/2018 : 3P/6C

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