

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of reservation	06.11.2017
Date of Judgment	22.12.2017

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DATED: 22.12.2017

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**AND****THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**C.M.A (MD) No.739 of 2015&CMP (MD) No.3560 of 2016andMP (MD) No.1 of 2015

The New India Assurance Company Limited,
Rep. by through its Divisional Manager,
No.242-b, Kamarajar Salai,
Madurai District.

: Appellant/2nd Respondent

Vs.

1.Thangapappa
2.Minor R.Sangeetha
3.Minor R.Sangeeth Kannan
4.Minor R.Vishwasuriyan
5.P.Virumayee
[R2 to 4 minors are represented through
their mother and natural guardian of the
1st respondent]
6.Tmt.Sarojini
7.Dhanapandian
8.National Insurance Company Limited,
through its Divisional Manager,
North Veli Street,
Madurai.

: R1 to R5/Petitioners

: R6 to R8/R1, R3 and R4

Prayer : Appeal filed under Section 173 of Motor Vehicle Act,
1988, against the award and decree made in MCOP No.1435 of 2010,
dated 27.08.2014 on the file of the Motor Accident Claims Tribunal
(V Additional District Judge), Madurai.

For Appellant
For R1 to R4

: Mr.B.Vijay Karthikeyan
: Mr.K.Murugesan

<https://hcservices.ecourts.gov.in/hcservices/>
For 5th Respondent

: Expired



For 6th Respondent : No appearance

For 7th Respondent : Mr.S.Manoharan

For 8th Respondent : Mr.S.Srinivasa Raghavan

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J U D G M E N T

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

Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (V Additional District Court), Madurai, in MCOP No.1435 of 2010, dated 27.08.2014, the New India Assurance Company has preferred this appeal.

2.The legal-heirs of the deceased Raman approached the tribunal seeking compensation of Rs.20,00,000/-. The case of the claimants is that on 29.05.2009, when the husband of the first claimant was driving his two wheeler TN-59-U-0901 on Sadayan Patti-Vadipatti road, near Kuppukalai Tottam, the driver of the lorry TN-37-BA-1404 belonging to the first respondent, parked the vehicle in front of the two wheeler and started the vehicle on the reverse direction without noting the deceased and thereby hit against him. Due to the injuries sustained in the accident, he died on the spot.

3.The specific case of the claimants is that the accident occurred only due to the negligent act of the driver of the lorry.

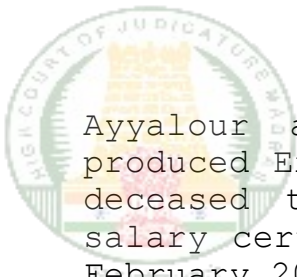
4.The case of the appellant before the tribunal was that the deceased was driving his two wheeler in a rash and negligent manner and attempted to over-take the tipper lorry and the deceased alone was negligent in travelling and parking his vehicle and hence, the appellant Insurance Company is not liable to pay any compensation and prayed for dismissal of the claim petition.

5.After analyzing the evidence adduced by the parties, the tribunal held that the driver of the lorry was responsible for the accident and awarded compensation of Rs.34,92,884/- along with interest @ 7.5% p.a. Challenging the award, the present appeal.

6.Since, this appeal is restricted to the quantum of compensation, there is no necessity to elaborate on the other issues like manner of accident and negligence.

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

8.As regards quantum, the claimants have examined PW3 Tmt.Thenmozhi, who is working as Administrative Superintendent in TNEB, Dindigul South Division and in her evidence, she has deposed that the deceased Raman was working as a Line Inspector in TNEB at



Ayyalour and he was receiving Rs.16,557/- per month. PW3 has produced Ex.P7 Service Register and Ex.P8 salary certificate of the deceased to corroborate his evidence. It is evident from Ex.P8 salary certificate that the deceased was receiving Rs.16,557/- from February 2009, which is rounded off to Rs.16,500/- .

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9.The deceased died at the age of 43 is not in dispute. The tribunal has rightly taken multiplier 14 as per Sarla Verma's case but added bonus and gratuity to determine the income of the deceased. It is settled law that the salary last drawn by the deceased less tax is to be taken into consideration to ascertain the loss of contribution to his family. In this case, the claimants are entitled for addition of 30% towards future prospects and by adding so, the income of the deceased is arrived at Rs.21,450/- (Rs.16,500/- + Rs.4950/- (Rs.16,500 x 30%). Since the claimants are 5 in numbers, 1/4th is deducted for personal expenses. Hence, the loss of contribution is arrived at Rs.16,088/-, which is rounded off to Rs.16,100/-. By applying multiplier 14, the loss of income to the family comes to Rs.27,04,800/- (Rs.16,100/- x 14 x 12). The tribunal has awarded Rs.20,000/- towards funeral expense; Rs.1,00,000/- towards loss of love and affection; Rs.50,000/- for loss of consortium; Rs.50,000/- towards loss of estate; Rs.50,000/- towards loss of expectation of life. Following the decision in the case of Pranay Sethi, this court awards Rs.40,000/- for loss consortium, Rs.15,000/- towards funeral expense and Rs.15,000/- towards loss of estate. Taking into consideration the facts of this case, the award of Rs.1,00,000/- for loss of love and affection is confirmed. and Rs.50,000/- awarded towards loss of expectation of live is set aside. The award of the tribunal is modified as under:-

Head	Award of this court
Loss of earning capacity	Rs.27,04,800/-
Loss of consortium	40,000/-
Loss of love and affection	1,00,000/-
Funeral expenses	15,000/-
Loss of Estate	15,000/-
Total	28,74,800/-

	(R/O) to Rs.28,75,000

10.In the result, the Civil Miscellaneous Appeal is partly allowed. The award of the tribunal is modified to Rs.28,75,000/- as against Rs.34,92,884/- together with interest @ 7.5% p.a. Out of the services amount of Rs.28,75,000/- awarded amount, the first claimant, who is the wife of the deceased is entitled to Rs.15,00,000/- and the minor claimants 2 to 4 are entitled to Rs.4,00,000/- each and the 5th claimant, being



the mother of the deceased is entitled to Rs.1,75,000/-. The appellant Insurance Company is directed to deposit the modified award amount, less already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such compliance, the major claimants are permitted to withdraw their share and the share of the minor claimants shall be deposited in a nationalized Bank in a fixed deposit scheme, till they attain majority. The first claimant is permitted to withdraw the interest accrued on the deposit, once in three months for the welfare of the minors. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1. V Additional District Judge,
The Motor Accident Claims Tribunal/
Madurai.
- 2.The Section Officer, V.R. Section (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.B.Vijay Karthikeyan, Advocate, SR.No.94895
+One cc to Mr.S.Srinivasa Raghavan, Advocate, SR.No.94959

er
RL/6C/4P/RSK/SAR1/22/2/2018

Judgment in
C.M.A(MD) No.739 of 2015

22.12.2017