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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.12.2017
CORAM
THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**
AND
THE HONOURABLE MRS.JUSTICE **T.KRISHNAVALLI**

C.M.A(MD)No.991 of 2016
and
C.M.P(MD)No.8879 of 2016
and
Cross Objection (MD)No.21 of 2017

C.M.A(MD)No.991 of 2016

The Divisional Manager,
New India Assurance Company Limited,
Divisional Office, Morathbad
Uttarpradesh.

: Appellant/2nd Respondent

Vs.

1.T.M.Krishnan
2.Tamilarasi
3.Arulmega Ponratha
4.Ponshakila
5.Mohammed Shajid

: R1 to R4/Petitioners

: R5/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and decree in MCOP No.432 of 2014, dated 17.11.2015 on the file of the Motor Accident Claims Tribunal (II Additional District Court), Tirunelveli.

For Appellant	: Mr.J.S.Murali
For R1 to R4	: Mr.K.Rajeswaran
For 5 th Respondent	: Dispensed with

Cross Objection (MD)No.21 of 2017

1.T.M.Krishnan
2.Tamilarasi
3.Arulmega Ponratha
4.Ponshakila

: Cross Appellants/ Respondents 1 to 4

Vs.

1. The Divisional Manager,
New India Assurance Company Limited,
Divisional Office, Morathbad
Uttarpradesh.

: 1st Respondent/Appellant

<https://hcservices.ecourts.gov.in/hcservices/>

2. Mohammed Shajid

: 2nd Respondent / 5th Respondent



Prayer : Cross Objection filed under Order 41 Rule 22 of C.P.C to enhance the award, dated 17.11.2015 made in MCOP No.432 of 2014 on the file of the Motor Accident Claims Tribunal (II Additional District Court), Tirunelveli.

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For Appellants : Mr.K.Rajeswaran
For 1st Respondent : Mr.J.S.Murali
For 2nd Respondent : Dispensed with

COMMON JUDGMENT

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

The Insurance Company has preferred this appeal challenging the award passed by the Motor Accident Claims Tribunal (II Additional District Court), Tirunelveli, in MCOP No.432 of 2014, dated 17.11.2015, whereas the claimants have filed Cross Objection, seeking enhancement of compensation.

2.The brief facts of the case are that on 30.08.2013 at about 4.50 pm, when the deceased Kumara Ponselvan was travelling in a motorcycle TN-49-Q-3831 as pillion rider from Sriperumbudur to Thambaram, a lorry UP-21-AN-8686 came in a rash and negligent manner and hit against the deceased. In the impact, the deceased had sustained multiple injuries. He was taken into Sriperumpudur Government Hospital, where he was declared to be brought dead. The Sriperumpudur Police have registered a case against the driver of the lorry in Crime No.718 of 2013 under Sections 279, 337 and 304 (A) IPC. The parents and sister of the deceased filed a claim petition claiming compensation of Rs.1,00,00,000/-.

3.The appellant, who is the insurer of the lorry, had contested the claim petition by filing counter stating that the accident occurred due to the negligence of the rider of the two wheeler and the age, income and the quantum claimed in the claim petition were disputed and stated as excessive.

4.Before the Tribunal, in order establish their case, the claimants have examined 4 witnesses and marked Exs.P1 to P14. On behalf of the Insurance Company, no witness was examined and no document was produced.

5.The deceased died at the age of 28 years is not in dispute. According to the claimants, the deceased has successfully completed the Sidda Medicine Course and he was working as '**Lecturer**' in Velumailu Siddha Medical College & Hospital at Sriperumpudur. Ex.P5 Salary Certificate would show that the deceased was receiving Rs.16,000/- per month as salary.



6.The case of the claimants is that the deceased was already selected as '**Medical Officer**' by the Tamil Nadu Public Service Commission and even before his joining duty, he died in the accident and if he joins duty, he will be getting Rs.50,000/- per month. Exs.P11 and P12 reveal that the deceased was selected as "**Assistant Medical Officer**" and his scale of pay of Rs.15,600-39100 + GP 5,400. Based on the evidence, the Tribunal has awarded compensation of Rs.57,34,054/-, by applying multiplier '17'.

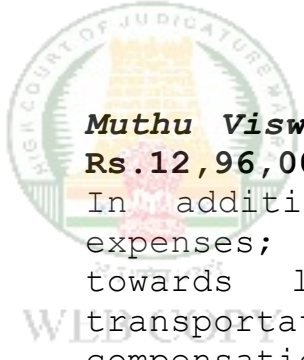
7.Mr.J.S.Murali, learned counsel appearing for the Insurance Company contended that the award is on the higher side and the Tribunal ought to have taken the actual salary received by the deceased and applied multiplier '9' based on the age of the mother. The learned counsel has not disputed the finding on negligence aspect.

8.Per contra, the learned counsel appearing for claimants would submit that the deceased was already selected as '**Medical Officer in Siddha**', which was not disputed by the Insurance Company and if the deceased had not died in the accident, he would be received Rs.45,330/- per month. The Tribunal has rightly taken the income and awarded compensation and therefore, no interference is required.

9.From the perusal of the evidence of PW1, Ex.P3 Bachelor Certificate and Ex.P4 Decree Certificate issued by Dr.M.G.R. Medical University, it is evident that the deceased has completed B.S.M.S., M.D. Velumailu Siddha Medical College & Hospital, Sriperumpudur issued the salary certificate stating that the deceased was paid Rs.16,000/- per month. The Tribunal has rightly fixed the age of the deceased as 28 years, but instead of taking the actual salary, has taken income of the deceased as Rs.45,330/-, by adding 50% towards future prospects and by applying multiplier '17', based on the age of the deceased, has awarded compensation.

10.In the instant case, even though the deceased was selected as '**Medical Officer**', but admittedly, he did not join the duty on the date of accident. Therefore, the actual salary received by the deceased has to be taken into consideration to determine the loss of dependency. The deceased was earning Rs.16,000/-, per month, considering his age, 50% is to be added towards future prospects. The monthly income of the deceased would be Rs.24,000/-. Since the deceased is a bachelor, 50% of the salary has to be deducted towards his personal and living expenses and so, the contribution to the family comes Rs.12,000/- per month.

11.It is well settled law that if the deceased was a bachelor, <https://hcservices.ecourts.gov.in/hcservices/> mother has to be taken into consideration for fixing the multiplier. **[2017(2) TN MAC 73 (R.Vijayalakshmi vs M.**



Muthu Viswanath)]. By applying multiplier '9', this Court awards **Rs.12,96,000/-** [Rs.12,000/- x 12 x 9] towards loss of dependency. In addition, this Court awards **Rs.15,000/-** towards funeral expenses; **Rs.15,000/-** towards loss of estate; **Rs.1,10,000/-** towards loss of love and affection; **Rs.14,000/-** towards transportation. In total, this Court awards **Rs.14,50,000/-** as compensation.

12.In the result, this appeal is **partly allowed**. The award amount of **Rs.57,34,054/-** is reduced to **Rs.14,50,000/-**. The interest award by the tribunal is maintained. In view of the above finding, the cross objection is dismissed. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar(Cs-IV)

To

1. The II Additional District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.
2. The Section Officer, (2 COPIES)
V.R section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.J.S.Murali, Advocate Sr.No.91148
+1cc to Mr.K.RajeswaranAdvocate Sr.No.91044

SKN

VB/KAK/SAR4/16.08.2018/4P/6C

C.M.A (MD) No.991 of 2016
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