



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.999 of 2016

- 1.D.Thangamani
- 2.Minor.D.Gowsalya
- 3.Minor D.Boopathi
- 4.Arukani Ammal (Died)
- 5.Seerangam

(Minors Petitioners 2 and 3
rep by their guardian
mother D.Thangamani)

..Appellants/petitioners

Vs.

1. M.Jaya Prakash

2. The Branch manager,
Rooyal Sundaram Alliance Insurance Co.Ltd,
No.37, Krishna Rao Tank Street,
Madurai - 625 001.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and enhance the award amount in MCOP.No.112 of 2012 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Karur, dated 10.01.2014.

For Appellants	: Mr.T.Selvakumaran
For R-1	: No appearance
For R-2	: Ms.K.R.Shivasankari for Mr.S.Srinivasa Raghavan

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants/claimants against the award of the Motor Accident Claims Tribunal (Principal District Judge), karur, passed in M.C.O.P.No. 112 of 2012, dated 10.01.2014.

2. It is the case of a fatal accident which took place on 08.03.2012 at about 11.30. hours on Karur - Dharapuram Road between Karaipalayam and Salaipalayam.



3. It is the case of the claimants before the Tribunal that on the date of accident, when the deceased S.Duraisamy @ Palanisamy, was riding his two wheeler TVS 50, the driver of the tipper lorry bearing Registration No.TN 78 Z-1730, drove the vehicle in a rash and negligent manner and dashed against the two wheeler and due to which the deceased died on the spot.

4. The claimants filed application in M.C.O.P.No.112 of 2012 on the file of the Motor Accident Claims Tribunal/ Principal District Judge, Karur, seeking compensation.

5. Before the Tribunal, the appellants/claimants examined two witnesses as P.W.1 and P.W.2 and marked six documents as Ex.P.1 to Ex.P.6. On the side of the respondents, two witnesses namely R.W.1 and R.W.2 was examined and six documents as Ex.R.1 to Ex.R.6 were marked.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the first respondent/ driver of the tipper lorry, and therefore directed the second respondent to pay a sum of Rs.7,00,000/- to the claimants as compensation.

7. Against which, the appellants/claimants filed the present appeal seeking enhancement of compensation.

8. This Court heard the submissions made on either side and perused the materials available on record.

9. The learned counsel for the appellants/claimants would submit that the Tribunal ought to have taken Rs.12,000/- as income of the deceased. The Tribunal ought to have awarded Rs.1,00,000/- towards loss of consortium and Rs.50,000/- each to the claimants towards loss of love and affection. It is further submitted that no compensation has been awarded towards future prospects. The amounts awarded by the Tribunal are on lower side. Therefore, the compensation awarded by the Tribunal has to be enhanced.

10. The learned counsel appearing for the second respondent/ Insurance Company submitted that the Tribunal awarded a just and reasonable compensation and the same does not warrant interference.

11. As rightly pointed out by the learned counsel appearing for the appellants, the Tribunal has erred in fixing the income of the deceased as Rs.5,000/-. Though, it is stated in the claim petition that the deceased was earning Rs.10,000/-, no document was produced to prove the same. Hence, Rs.6,500/- is fixed as notional

income. The Tribunal has not awarded any amount of future prospects. In this connection, it is useful to refer the judgment of the Honourable Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation** reported in **2009(2) TNMAC 1 (SC)**, wherein, it is held that for arriving at loss of income, 30% of the income to be added for future prospects in respect of age group between 40 to 50. Accordingly, if 30%, towards future prospects, is added, it would be Rs.8,450/- (Rs.6500+Rs.1950). Since there are six claimants, 1/4th of the income has to be deducted, towards personal expense of the deceased. Hence, a sum of Rs.6337.50/- has to be taken as monthly income of the deceased and accordingly, the loss of income has to be arrived at Rs.10,64,700/- (Rs.6337X12X14). The Tribunal has awarded Rs.10,000/- towards loss of consortium and the same is enhanced to Rs.50,000/-, the tribunal has awarded Rs.50,000/- loss of love and affection and considering the age of the claimants, the same is enhanced to Rs.75,000/- and the Tribunal has awarded Rs.10,000/- towards funeral expenses and the same is enhanced to Rs.25,000/-.

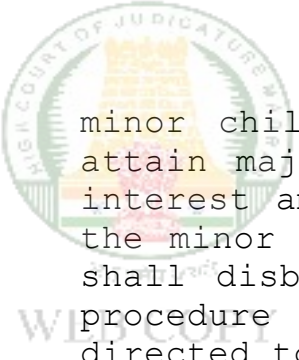
12. This Court modifies the award of the Tribunal by enhancing the compensation as under:-

S. No	Description	By Tribunal (Rs)	By this Court (Rs)	Result
1	Loss of income	6,30,000	10,64,700	Enhanced
2	Loss of consortium	10,000	50,000	Enhanced
3	Love and affection	50,000	75,000	Enhanced
4	Funeral expense	10,000	25,000	Enhanced
	Total	7,00,000	12,14,700	By enhancing Rs.5,14,700/-

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed, by enhancing the award of the Tribunal from Rs.7,00,000 (Rupees Seven lakhs only) to a sum of Rs.12,14,700/- (Rupees Twelve lakhs fourteen thousand and seven hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The second respondent/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are permitted to withdraw their respective share as apportioned by the Tribunal, with accrued interests and costs, without filing any formal application. The Tribunal is directed to deposit the shares of the



minor children in any one of the Nationalized Banks until they attain majority. The first claimant is permitted to withdraw the interest amount once in six months, if she wants, for maintaining the minor children. Since the fourth appellant died, the Tribunal shall disburse her share to her legal heirs after following the procedure contemplated under law. The appellants/claimants are directed to pay necessary additional Court fee, if any. No Costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge ,
Motor Accident Claims Tribunal,
Karur

Copy to

The section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.T.Selvakumaran, Advocate Sr.No.80111
+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.80038

DSK

VB/KK/SAR3/12/12/2017/4P/5C

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