



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.944 of 2015

and

M.P(MD)No.1 of 2015

The Branch Manager,
Reliance General Insurance Company Ltd.,
Annamalais,
108,Subalakshmi Nagar,
Covai Road,
Karur.

... Appellant/2nd Respondent

Vs.

1.D.Jeyalakshmi
2.Minor D.Balaji
3.Minor D.Abirami
(Minor respondents 2 & 3 are
rep. By their mother and
natural guardian the
1st respondent herein)
4.A.Rajamani
5.M.Gopal

...R1 to R4/Petitioners 1 to 4
: R5/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the Judgment and decree dated 28.01.2015 passed in M.C.O.P.No.556 of 2009 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Madurai.

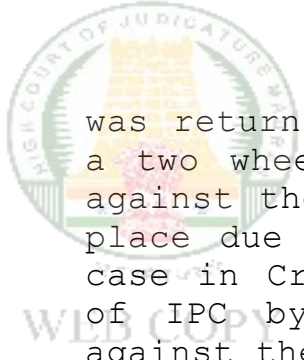
For Appellant	: Mr.K.Gokul
For R1 to R4	: Mr.S.Harigopalakrishnan
For R5	: No appearance

JUDGMENT

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

The Insurance Company has preferred this appeal aggrieved over the judgment and decree of the Motor Accident Claims Tribunal (IV Additional District Court), Madurai, passed in MCOP No.556 of 2009, dated 28.01.2015.

2.The original petitioner was filed by the respondents 1 to 4 herein claiming compensation of Rs.15,00,000/- on the ground that on 05.08.2008 at about 12.30 hours, when the deceased Duraipandi



was returning to his home from his brother's house at Dindigul in a two wheeler, a Lorry TN-47-7216 came in a high speed and hit against the motorcycle. It is alleged that the accident had taken place due to rash and negligent driving of the lorry driver. A case in Crime No.247 of 2008 was registered under Section 304(A) of IPC by the Inspector of Police, Nilakottai Police Station against the driver of the lorry.

3.The claimants have further stated that the deceased was working as a Foreman in Arcan Building contracting ILC in Dubai and he was earning Rs.25,000/- per month. Since they lost their only bread winner, they are entitled for the compensation sought for in the petition.

4.The appellant restricted the claim on various grounds, but the tribunal, after analyzing both oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded a compensation of Rs.21,45,000/-with interest @ 7.5% p.a. The award is challenged in this appeal.

5.Mr.K.Gokul, learned counsel for the appellant submitted that the deceased was working in an Arabian country and it was not a permanent employment and therefore, the income arrived at by the Tribunal is to be reduced. He further submitted that the tribunal has awarded Rs.3,00,000/- towards loss of love and affection, which is on the higher side.

6.Per contra, learned counsel for the claimants argued in support of the findings given by the tribunal.

7.The appellant has preferred this appeal only challenging the quantum of compensation and there is no dispute with regard to the manner of the accident and the finding on negligence.

8.As regards quantum, though the claimants have stated that the earning of the deceased was Rs.21,000/- per month as per salary certificate Ex.P2, but the tribunal has taken the notional income as Rs.10,000/-. In the recent decision in 2017(2) TN MAC 512, the Division Bench of this Court, in similar facts, fixed notional income at Rs.15,000/-. So, the submission of the learned counsel for the appellant cannot be accepted. The tribunal added 50% towards future prospects and after deducting 1/3rd therefrom towards personal expenses, calculated the loss of income at Rs.18,00,000/- (Rs.10,000 x 12 x 15). As per the decision in Pranay Sethi, the first claimant would be entitled for Rs.40,000/- towards loss of consortium, but the tribunal has not awarded any amount on the head. Rs.3,00,000/- awarded for loss of love and affection is on the higher side and it is reduced to Rs.1,00,000/-. The award of the tribunal in all other heads are just and reasonable and the same are confirmed. The award of the

Tribunal is modified as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	18,00,000	18,00,000	confirmed
2.	For Loss of love and affection for R2 & R3	3,00,000	1,00,000	reduced
3.	Loss of love and affection to the fourth respondent	10,000	10,000	confirmed
4.	Loss of consortium to the first claimant		40,000	awarded
5.	Cremation expenses	25,000	25,000	confirmed
6.	Transport charges	10,000	10,000	confirmed
	Total	Rs.21,45,000/-	Rs.19,85,000/-	

9. In the result, the appeal is partly allowed. The award is modified to Rs.19,85,000/- as against Rs.21,45,000/-. The interest at the rate of 7.5% is maintained. The appellant is directed to deposited the modified amount, less already deposited. On such compliance, the major claimants are permitted to withdraw their share as per the ratio of apportionment made by the tribunal. The share of the minors shall be deposited in any one of the Nationalized Bank, in a fixed deposit scheme, till they attain majority. The first claimant, being the mother and guardian of minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minor children. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-I)



1. The IV Additional District Judge,
Motor Accident Claims Tribunal,
Madurai.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2copies)

+ 1 cc TO Mr.S.Vijayakumar , Advocate in SR No. 85245

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AE/SV MMS/SAR1/29.01.2018/4P/5C

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