



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.423 of 2014
and
CROSS.OBJ(MD).No.23 of 2017

C.M.A(MD).No.423 of 2014

M/s.Oriental Insurance Company Ltd.,
Through its Divisional Manager,
Door No.16, North Veli Street,
Madurai-1.

... Appellant / 2nd Respondent

Vs.

1.G.Vasantha mallika

2.Minor G.Anujana

3.Minor G.Vijytha
(Monor respondents 2 and 3 are
represented through their mother
and next friend G.Vasantha mallika)

... Respondents 1 to 3 / Petitioners 1 to 3

4.K.Jaishankar
(R4 - Given up)

... 4th Respondent / 1st Respondent

PRAYER in C.M.A(MD).No.423 of 2014:- Civil Miscellaneous Appeal filed Under Section 173 of Motor Vehicle Act, against the judgment and decree passed in M.C.O.P.No.1015/2011, dated 05.11.2013, on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Madurai.

For Appellant	: Mr.C.Jawahar Ravindran
For R.1 to 3	: Mr.N.Sudhagar Nagaraj
	For R1 to R3
For R.4	: R.4 given up

CROS.OBJ(MD).No.23 of 2017

1.G.Vasantha mallika



3.Minor G.Vijytha
(Minor respondents 2 and 3 are
represented through their mother
and next friend G.Vasantha mallika)

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... Cross Objectors 1 to 3 /
Respondents 1 to 3 / Petitioners 1 to 3

Vs

M/s.Oriental Insurance Company Ltd.,
Through its Divisional Manager,
Door No.16, North Veli Street,
Madurai-1.

... 1st Respondent /Appellant / 2nd Respondent

2.K.Jaishankar

... 2nd Respondent / 4th Respondent /
1st Respondent

PRAYER in CROS.OBJ(MD)No.23 of 2017:- Cross Objection filed under Order 41 Rule 22 (1) of Code of Civil Procedure, against M.C.O.P.No.1015 of 2011 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Madurai dated 05.11.2013 for enhancing the compensation of Rs.10,00,000/- and for which the Cross-Objectors have received the notice of C.M.A on 12.06.2014.

For Cross Objectors	: Mr.N.Sudhagar Nagaraj
For Respondents	: Mr.C.Jawahar Ravindran
	for R.1

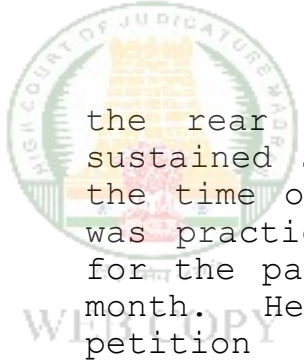
COMMON JUDGMENT

The Civil Miscellaneous Appeal in C.M.A.(MD)No.423 of 2014 has been filed by the appellant-Insurance Company against the judgment and decree passed in M.C.O.P.No.1015 of 2011, dated 05.11.2013, on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Madurai.

2. The Cross Objection in Cros.Obj.(MD)No.23 of 2017 has been filed by the Cross Objectors, against the Judgment and Decree made in M.C.O.P.No.1015 of 2011 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Madurai dated 05.11.2013 seeking enhancement of compensation of Rs.10,00,000/-.

3. The brief facts of the case is as follows and the parties have been mentioned as they have been ranked before the Tribunal:

It is a case of fatal accident in which the accident took place on 23.01.2011. While the deceased Gnanavel, was riding his motor cycle bearing Registration No.TN-59-V-5019 from Karuppayurani to Anna bus stand, Madurai, a recovery van bearing Registration No.TN-59-T-4845, which was insured with the second respondent Insurance Company, which was coming behind the motor cycle, came in a rash and negligent manner and dashed against the motor cycle in



the rear portion. Due to the said impact, the deceased had sustained severe head injuries and succumbed to the injuries. At the time of accident, the deceased was aged about 45 years and he was practicing as an Advocate in Madurai District Bar Association for the past 19 years and he was earning a sum of Rs.25,000/- per month. Hence, the legal heirs of the deceased have filed a claim petition in M.C.O.P.No.1015 of 2011 seeking a sum of Rs.40,00,000/- as compensation.

4. Before the Tribunal, on the side of the claimants, three witnesses viz., P.W.1 to P.W.3 were examined and fourteen documents viz., Exs.P.1 to P.14 were marked and on the side of the respondents, one witness viz., R.W.1 was examined and one document was marked as Ex.R1.

5. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the claimants and respondents and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the offending vehicle and directed the Insurance Company to pay a sum of Rs.20,90,671/- as compensation to the claimants

6. Against which, the Insurance Company has filed the appeal in C.M.A.(MD)No.423 of 2014 questioning the quantum of compensation and the claimants also filed Cross.Obj(MD)No.23 of 2017 seeking enhancement of compensation.

7. The learned Counsel for the claimants would submit that the Tribunal has taken a meagre sum of Rs.20,000/- per month and wrongly deducted 10% towards income tax and after deducting 1/3rd towards personal expenses, arrived at meagre amount towards loss of income. The amounts awarded under other heads are also very meagre. Hence, he needs interference of this Court to the award passed by the Tribunal and seeks enhancement of compensation.

8. The learned Counsel for the Insurance Company would submit that the Tribunal has taken a higher amount of Rs.20,000/- as monthly income of the deceased without any valid proof and has arrived at higher compensation. Hence, he seeks interference of this Court to the award passed by the Tribunal.

9. Heard the learned Counsel for the claimants/cross objectors and the Insurance Company/appellant and perused the materials available on record.

10. In the case on hand, the deceased is an Advocate and P.W.3, the President of the Madurai District Bar Association had deposed that he would be earning a minimum of Rs.25,000/- per month. Apart from that, the deceased owns agricultural lands through which he was earning a sum of Rs.5,000/- per month. A perusal of the award passed by the Tribunal, it is seen that the Tribunal

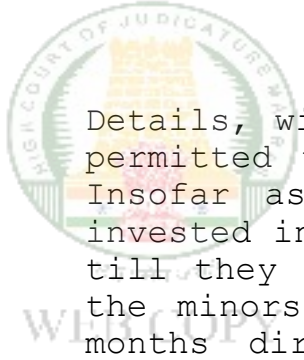
<https://hcservices.ecourts.gov.in/hcservices/>

considering his profession as well as agricultural income, it has taken a sum of Rs.20,000/- as monthly income by applying the judgment of the Division Bench of this Court reported in the Branch Manager, United India Insurance Co., Ltd., Madurai Vs. Jeyadevi and Others, 2013(1) TNMAC 610 (DB) and accordingly the annual income works out to Rs.2,40,000/- (Rs.20,000X12). After deducting Rs.8,000/- towards income tax, the annual income works out to Rs.2,32,000/-. The Tribunal has not taken any amount towards future prospects of the deceased. Hence, considering the age of the deceased, 30% of monthly income should be taken as future prospects of the deceased. Accordingly, the annual income of the deceased works out to Rs.3,01,600/- (Rs.2,32,000+30% of Rs.2,32,000/- namely, Rs.69,600/-). After deducting 1/3rd towards personal expenses, it works out to Rs.=2,01,067/- (Rs.3,01,600 Less 1/3rd of Rs.3,01,600) and applying multiplier 13, as per Sarla Verma Vs. Delhi Transport Corporation reported in 2009(2) TNMAC 1 (SC), the loss of income would be Rs.2,01,067x13=Rs.26,13,871/-. Insofar as other heads awarded by the Tribunal are concerned, it is quite reasonable and this Court is inclined to confirm the same and accordingly, it is confirmed.

11. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation as under:

S. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	For loss of income	18,80,671	26,13,871	enhanced
2	For loss of love and affection	1,50,000	1,50,000	confirmed
3	For loss of consortium	50,000	50,000	confirmed
4	For funeral expenses	10,000	10,000	confirmed
	Total	20,90,671	28,23,871	By enhancing a sum of Rs.7,33,200

12. In the result, this Civil Miscellaneous Appeal is dismissed and the Cross Objection is partly allowed by enhancing the compensation from Rs.20,90,671/- to Rs.28,23,871/-, passed in M.C.O.P.No.1015/2011, on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Madurai. The Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made and on compliance of payment of additional Court Fees, if any, by the claimants, the Tribunal is directed to transfer the award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the claimants, through RTGS/NEFT system, after getting their Account



Details, within a further period of four weeks. The claimants are permitted to withdraw their share as apportioned by the tribunal. Insofar as the minors' shares are concerned, the same shall be invested in any one of the Nationalised Banks under renewable scheme till they attain majority and the guardian of the minors/mother of the minors is permitted to withdraw the interest amount once six months directly from the Bank for the welfare of the minors. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

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

Copy to:-

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.C.Jawahar Ravindran, Advocate SR.No. 77780

+1cc to M/S.N.Sudhagar Nagaraj, Advocate SR.No. 77515

C.M.A(MD).No.423 of 2014
and
CROS.OBJ(MD).No.23 of 2017
08.09.2017

bala/ssm

JM/SV MMS/SAR 1/06.03.2018/5P/6C