

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 13.09.2017****CORAM:****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.A(MD) .No.1057 of 2013**

The New India Assurance Company Ltd.,
Nagercoil Village,
Kanyakumari District.

... Appellant / 3rd Respondent

- Vs -

1.Rathina Bai

2.Anitha

3.Ajin Kumar

...Respondents 1 to 3 /Petitioners

4.Reguram

...4th respondent/ 1st respondent

5.Mrs.Subatra Chandra

...5th respondent / 2nd respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.10.2012 passed in M.C.O.P.No.149 of 2006, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Padmanabapuram.

For Appellant : Mr.K.Murugesan

For R1 to R3 :Mr.V.M.Balamohan Thambi

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award, dated 08.10.2012 passed in M.C.O.P.No.149 of 2006, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Padmanabapuram.

2.The case of the claimants in the petition is briefly as follows:

The accident took place on 05.05.2006 at about 04.45 P.M. When the deceased Nelson and one Devarajan were travelling in a two wheeler bearing Registration .No.TN 74 A 2939, a Mini Bus driver in a negligent manner and dashed against the two wheeler, as a result of which, the deceased sustained grievous injuries. Thereafter, the deceased was taken to the Hospital. But in



spite of the treatment given, he died. Hence, the petitioners/claimants filed a claim petition claiming a compensation of Rs.8,00,000/-.

3. Before the Tribunal, on the side of the petitioners, P.W.1 was examined and Exs.P1 to P8 were marked. On the side of the respondents R.Ws.1 to 3 were examined and Exs.R1 to R4 were marked.

4. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimant and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the mini bus and directed the appellant/Insurance Company to pay a sum of Rs.4,66,000/-, as compensation.

5. Against which, the appellant/Insurance Company has filed this present appeal on the ground of negligence and quantum.

6. The learned counsel for the appellant / Insurance Company submitted that the learned Judge failed to see that accident took place only due to the negligence on the part of the deceased and that the deceased only dashed the two wheeler against the parked mini bus on the backside. Hence, the learned Judge failed to consider the contributory negligence of the deceased. The learned Judge did not consider the evidence of the respondent properly and on assumption came to the conclusion that only due to rash and negligent driving of the driver of the bus, the accident occurred. The learned counsel for the appellant also raised objections with regard to occupation and income of the deceased. He further contended that the finding of the Tribunal has to be set aside.

7. Per contra, the learned counsel for the respondents 1 to 3/ claimants has made his submissions by supporting the award passed by the Tribunal and also argued that the award may be enhanced.

8. Heard the learned counsel for the appellant / Insurance Company and the learned counsel for the respondents 1 to 3 / claimants and perused the records carefully.

9. The points for consideration in this appeal are as follows:-

(i) What is the just and fair compensation?

(ii) Whether there is a contributory negligence on the part of the deceased?

Point No.1:

10. As far as quantum of compensation is concerned, at the time of accident the deceased was working as a tailor and was earning a sum of Rs.6,000/- per month, but the claimants had not produced any document to substantiate their claim. At the time of accident, the deceased was aged about 55 and that, as there was no proof for the income of the deceased, the Tribunal has taken the

monthly income as Rs.3,000/-, after deducting his personal expenses, which is not correct and hence, this Court, considering the well settled law and to meet the ends of justice, the income of the deceased is fixed at Rs.4,500/- (Rupees Four Thousand and Five Hundred Only) and after adding 30% towards future prospects, a sum of Rs.5,850/- (Rupees Five Thousand Eight Hundred and Fifty only) is arrived as the monthly income of the deceased and if 1/4 is deducted towards personal expenses, the monthly income of the deceased would be Rs.4,387/- (Rupees Four Thousand Three Hundred and Eighty Seven Only) and as per **Sarla Verma's** case by applying the appropriate multiplier '11', the loss of income would be **Rs.5,79,084** (Rupees Five lakhs Seventy Nine Thousand and Eighty Four Only) [Rs.4,387/- X 12 X 11]. In all other heads, the amounts awarded by the Tribunal shall stand unaltered.

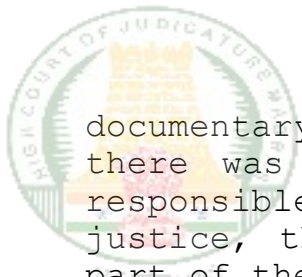
11.The rate of interest awarded by the Tribunal at 7.5% per annum is confirmed.

12. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.N o	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	For Loss of Income	3,96,000	5,79,084	enhanced
2.	For loss of consortium to the first petitioner	20,000	20,000	confirmed
3.	For Loss of Love and affection	20,000	20,000	confirmed
4.	For Ambulance Charges	10,000	10,000	confirmed
5.	For Loss of Estates	10,000	10,000	confirmed
6.	For Funeral expenses	10,000	10,000	confirmed
	Total	04,66,000	Rs.6,49,084	By enhancing a sum of Rs.1,83,084/-

Point No.2:

13. Perusal of the finding of the Tribunal would go to show that there was no documentary evidence to show that the two wheeler hit backside of the offending vehicle. Though there is no



documentary evidence, still the finding of the Tribunal is that there was an oral evidence by R.W.3 that the deceased was also responsible for the accident and therefore, to meet the ends of justice, the contributory negligence of 25% shall be fixed on the part of the deceased and 75% shall be fixed on the bus driver.

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14. In the result,

(i) This Civil Miscellaneous Appeal is disposed of.

(ii) The award of the Tribunal is enhanced from **Rs.04,66,000/-** (Rupees Four Lakhs Sixty Six Thousand Only) to a sum of **Rs.6,49,084/-** (Rupees Six Lakhs Forty Nine Thousand and Eighty Four Only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(iii) Since, 25% contributory negligence has been fixed on the deceased, the claimants are entitled only to a sum of **Rs.4,86,813/- (Rs.6,49,084 x 75%)** along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

(iv) The claimants are directed to submit their Savings Bank Account Detail along with the copy of their passbooks to the Tribunal **forthwith**;

(v) The appellant-Insurance is directed to deposit the entire award amount namely, **Rs.4,86,813/- (Rs.6,49,084/- x 75%)** along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.149 of 2006 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Padmanabapuram, within a period of **eight weeks** from the date of receipt of a copy of this judgment;

(vi) On compliance of payment of additional Court Fees, if any, by the claimants, the Tribunal is directed to transfer the entire award amount namely **Rs.4,86,813/-** along with accrued interest and costs directly to the Personal Savings Bank Account Numbers of the claimants, through RTGS/NEFT system, after getting their Account Details, within a period of **two weeks thereafter**; the first respondent is entitled to get a sum of Rs.2,43,813/- and the second and third respondents are entitled to get Rs.1,21,500/- each with interest.

(vii) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(WRITS)

/True Copy/



1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Padmanabapuram.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.V.M.BALAMOHAN THAMPI Advocate in SR. No. 78523

+1cc to Mr.K.MURUGESAN Advocate in SR. No. 78707

RJ2

JS/KP/SAR.1/3.11.2017/5P-5C

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