



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.471 of 2013

and

M.P. (MD) No.1 of 2013

and

C.M.P. (MD) No.1138 of 2016

Iffco-Tokyo General Insurance
Company Ltd.,
No.19/1, 2nd Floor, Kingstone
Ramalinga Nagar, Woraiyur,
Trichy - 620 017
Rep. by its Manager

... Appellants/Respondent-2

Vs.

1.K.Mohanraj

2.Arukkani

... 1&2 Respondents/Petitioners

3.K.Selvaraj

... 3rd Respondent/Respondent-1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 31.10.2012 made in MCOP No.109 of 2011 on the file of Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Karur.

For Appellant : Mr.S.Srinivasa Raghavan

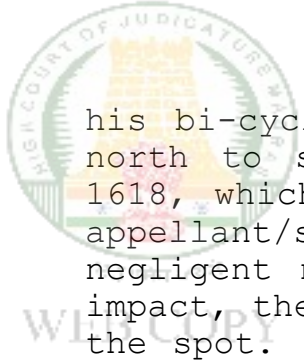
Respondents : Mr.K.P.S.Palanivel Rajan
For R.1 & R.2
: No appearance For R.3

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the fair and decreetal order dated 31.10.2012 made in MCOP No.109 of 2011 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Karur.

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

2. It is a case of fatal in which the accident took place on 20.01.2011 at about 20.30 hours. While the deceased was proceeding



his bi-cycle with Milk Cane in Perichipalayam to Kothur Road from north to south, a Eicher Lorry bearing Registration No.T.N-47-L-1618, which was owned by the first respondent and insured with the appellant/second respondent Insurance Company, came in a rash and negligent manner and dashed behind the bicycle. Due to the said impact, the deceased sustained several grievous injuries and died on the spot. At the time of accident, the deceased was aged about 62 years and he was earning a sum of Rs.15,000/- per month by milk vending business and doing agriculture. Hence, the legal heirs of the deceased /claimants filed an application in M.C.O.P.No.109 of 2011 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Karur seeking a sum of Rs.5,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimants, three witnesses viz., P.W.1 to P.W.3 were examined and nine documents viz., Ex.P.1 to Ex.P.9 were marked and on the side of respondents, neither any witness was examined nor any document was marked.

4.The Tribunal, after considering the pleadings, oral and documentary evidences and arguments of the counsel for the appellant and claimants 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 appellant/Insurance Company to pay a sum of Rs.5,00,000/-, as compensation.

5. Against which, the appellant/Insurance Company has filed this present appeal. Though the present appeal has been filed on various grounds, at the time of arguments, the learned counsel for the appellant restricts his argument only on the ground of quantum of compensation.

6. The learned Counsel for the appellant would submit that the Tribunal has wrongly taken the monthly income of the deceased as Rs.12,000/- without any proof. He further submitted that the amounts awarded under other heads are also on the higher side. Hence, he seeks interference to the award passed by the Tribunal.

7. Based on the above finding, the learned counsel for the respondents /Claimants submitted that the finding of the Tribunal that due to the rash and negligent driving of the offending, which was insured with the appellant/Insurance Company deserves no interference and has arrived at just and reasonable compensation under various heads and hence, this appeal has to be dismissed.

8. Heard the learned counsel appearing on both sides and perused the materials available on record.

9. A perusal of the award passed by the Tribunal clearly shows that the Tribunal has wrongly taken as a sum of Rs.12,000/- as monthly income of the deceased. By considering the occupation and

his earning, this Court is of the view that a sum of Rs.7,000/- can be taken as monthly income of the deceased. If that being so, by applying correct multiplier as per the Honourable Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation** reported in **2009(2) TNMAC 1 (SC)** and deducting 1/3rd of the monthly income towards personal expenses of the deceased, the loss of income will be arrived at as follows:

$$\text{Rs.7,000/-} \times 2/3 \times 12 \times 7 = \text{Rs.3,92,000/-}$$

The Tribunal has awarded a sum of Rs.10,000/- towards loss of love and affection, which is in the considered opinion of this Court, very meagre. Hence, this Court is inclined to enhance the same to Rs.50,000/-. The Tribunal has not awarded any amount towards loss of consortium. Hence, this Court is inclined to grant a sum of Rs.50,000/- towards loss of consortium. The Tribunal has awarded a sum of Rs.5,000/- towards transportation charges, which is very meagre, hence, this Court is inclined to enhance the same to a sum of Rs.10,000/-. The amount awarded under the head of funeral expenses is hereby confirmed.

10. In view of the above, this Court modifies the award of the Tribunal by enhancing, modifying and confirming 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 dependency	4,80,000	3,92,000	reduced
2	For consortium	----	50,000	granted
3	For love and affection	10,000	50,000	enhanced
4	For transportation	5,000	10,000	enhanced
5	For Funeral expenses	5,000	5,000	confirmed
	Total	5,00,000/-	5,07,000 rounded off to Rs.5,00,000	Confirmed by modifying the amount

11. In the result, this Civil Miscellaneous Appeal is dismissed by modifying the amount under various heads, dated 31.10.2012, passed in M.C.O.P.No.109 of 2011, on the file of the Motor Accidents Claims Tribunal, the Chief Judicial Magistrate, Karur. The appellant 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,



respondents 1 and 2/claimants are permitted to withdraw the entire award amount, with accrued interests and costs, as apportioned by the Tribunal, without filing any formal petition before the Tribunal. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Karur.

Copy To:-

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.P.S.PALANIVEL RAJAN, ADVOCATE IN SR No. 77149
+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 77268

SSL/KM

TE/GT/SAR-I : 23/10/2017 : 4P/5C

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