



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :20.07.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.835 of 2013

1.S.Sangilimuthu
2.S.Vaduvammal
3.S.Jayanthi
4.S.Chandrasekar .. Appellants/Claimants

Vs.

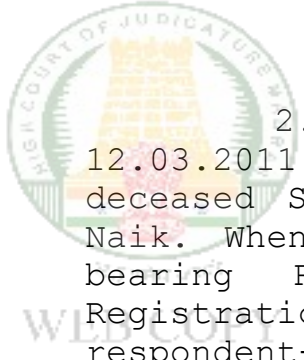
1. Monoj Kumar
2. The New India Assurance Company Ltd.,
Represented by its Branch Manager,
Parasuram Palace,
Dehradun Road,
Dehradun,
Uttaranchal - 248 003.
3. The New India Assurance Company Ltd.,
Represented by its Divisional Manager,
85/P, Market Road,
Thanjavur. .. Respondents/Respondents
(R1 set aside by the Tribunal)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decreetal order made in M.C.O.P.No.870 of 2011 dated 18.12.2012, by the Motor Accident Claims Tribunal (Additional District Court/ E.C. Court), Thanjavur.

For Appellants : Mr.G.Karnan
For Respondent No.2 : Mr.S.Sarvagan Prabhu
For 3rd Respondent : No Appearance
For 1st Respondent : Set Exparte by Tribunal.

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the Order and Decreetal order made in M.C.O.P.No.870 of 2011 dated 18.12.2012, by the Motor Accident Claims Tribunal (Additional District Court/ E.C. Court), Thanjavur.



2. It is a case of fatal accident took place on 12.03.2011 at about 03.00 p.m. At the time of accident, the deceased Senthil was in active service in Indian Army as Lance Naik. When the deceased was travelling in the Military Vehicle bearing Registration No. BA-02-D-150027, a Lorry bearing Registration No. LJA-070R-8615, which is insured with the first respondent-Insurance Company, came in a rash and negligent manner and dashed against the Military Vehicle and due to the accident, the petitioner sustained grievous injuries and despite best medical treatment was given to the petitioner, he died on 09.05.2011.

3. The claimants filed an application in M.C.O.P.No.870 of 2011 on the file of the Motor Accident Claims Tribunal, (Additional District Court/ E.C. Court), Thanjavur, seeking compensation.

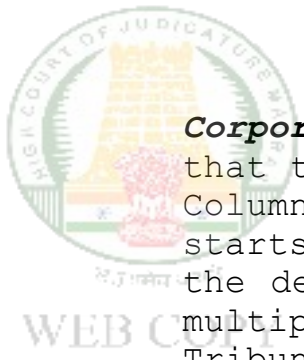
4. Before the Tribunal, the Claimants examined 4 witnesses as P.Ws.1 and 4 and marked 11 documents as Ex.P.1 to Ex.P.11. The respondents did not let in any oral and documentary evidence.

5.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the claimants and the respondents also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the first respondent and since the first respondent's vehicle is insured with the second respondent, the Tribunal directed the respondents 1 and 2 to pay a sum of Rs.18,19,000/- as compensation.

6. Against which, the claimants have filed this present appeal on the ground that the Tribunal has awarded compensation by taking into consideration the age of the claimants instead of age of the deceased and it should not have adopted multiplier '11' and it should have adopted multiplier '17' and the the Tribunal erroneously awarded very meagre amount for loss of love and affection towards parents of the deceased.

7. The learned counsel appearing for the claimants relied on the judgment reported in **2012(2) TN MAC 321 (SC) in Amrit Bhanu Shali and Others Vs. National Insurance Company Ltd. And others**, wherein the Hon'ble Supreme Court has held as follows:

"17. The selection of Multiplier is based on the age of the deceased and not on the basis of the age of dependant. There may be a number of dependants of the deceased whose age may be different and, therefore, the age of dependants has no nexus with the computation of



Corporation, 2009 (2) TN MAC 1 (SC), this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13".

8. In this case, the age of the deceased at the time of accident was '29', multiplier '17' ought to have been adopted. The Tribunal taking into consideration the age of the mother of the deceased had adopted the multiplier '11' which is against the settled positions. It is well settled that in the given circumstances, the age of the deceased can be taken into consideration for applying the multiplier instead of taking into consideration the age of the parents. Even in the above said case, the Hon'ble Supreme Court has held that the High Court committed a serious error not considering the age of the deceased for adopting multiplier.

9. Per contra, the learned counsel for the second respondent Insurance Company relied upon the judgment of this Court in **2017(2) TN MAC 72 (DB) in R.Vijayalakshmi Vs.M.Muthu Viswanath**, wherein it has been held in paragraph Nos.24, 25 as follows:

24. The same principle was once again adopted by the Honourable Supreme Court very recently in **Y.P.Shakuntala and others v. Manaager, Reliance General Insurance Company Ltd., and others**, 2016 (2) TN MAC 735 (SC).

25. We are, therefore, of the opinion that between the age of the deceased of a road accident, and the age of the claimant, whichever is higher of the two, is liable to be taken into account and consideration. Hence, the contention of the learned counsel for the appellants cannot be accepted that, it is the age of the deceased, which must be taken into account, and on the other hand, the contention canvassed by the learned counsel for the respondent/Insurance Company is liable to be accepted.

10. The learned counsel for the appellants would submit that the principle, mentioned above, that is between the age of the deceased of a road accident, and the age of the claimant,



whichever is higher of the two, is liable to be taken into consideration for adopting multiplier is against the principles laid down by the judgment of the Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Trnaspot Corporation, 200992) TN MAC 1 (SC)**.

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11. Considering the facts and circumstances of the case, this Court is of the view that the age of the deceased should be taken into considering for adopting multiplier. In the case on hand, the decedent is aged 29 years at the time of accident and hence, multiplier '17' should be adopted. The income of the deceased is Rs.18,000/- and since the deceased was aged 29 years, 50% has to be added, which comes to (18,000 + 9000) Rs.27000/- and considering the fact that the deceased was unmarried person, 50% has to be deducted towards personal expenses. After deducting 50% the amount comes to Rs.13,500/- and by adopting multiplier '17', (13,500 X 12 X 17) the loss of income comes to Rs.27,54,000/- instead of Rs.17,82,000/-. The award of the Tribunal is modified only on the basis of change of multiplier, which is based on the age of the deceased. In all other heads, the award granted by the Tribunal is unaltered. In view of the said modification, the total compensation comes to Rs. 28,01,000/-.

12. The appellants/claimants are entitled to get the following compensation:

Heads	Amount
Loss of Income	Rs.27,54,000/-
Loss of love and affection	Rs. 20,000/-
Loss of life	Rs. 10,000/-
Funeral and Transportation Expenses	Rs. 7,000/-
Total	Rs.27,91,000/- rounded off to 28,00,000/-

13. It is stated that during the pendency of the appeal, the first appellant died and the other appellants are the legal heirs of the first appellant. A memo has been filed to that effect. The said memo is recorded.

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the award passed M.C.O.P.No.870 of 2011 dated 18.12.2012, by the Motor Accident Claims Tribunal (Additional District Court/ E.C. Court), Thanjavur., is hereby modified. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, and on such deposit being made, the claimants are



permitted to withdraw their respective share as apportioned by the Tribunal, with proportionate interests and costs. No Costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

To
The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
(Additional District Court/ E.C. Court),
Thanjavur.

+1 CC to M/s.G.KARNAN, Advocate, SR No. 66633.

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate, SR No. 66805.

CM

JS/SKN-RSK/SAR2/16.08.2017/5P/4C

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