



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

C.M.A(MD)No. 744 of 2011

1. Hemalatha
2. S.S.Sharath
3. S.S.Shanthini

(A3 declared as major and guardianship
discharged vide Court order dated 16.02.2016
made in M.P.(MD) No.1 of 2015 in
C.M.A.(MD)744 of 2011).

... Appellants /Petitioners

Vs.

1. G.Thingalazhagan
2. ICICI Lombard General Insurance
Company Limited,
Having Office at Zonith House, Keshavrab,
Khade Marg, Mahalaxmi,
Mumbai - 400 034.

... Respondents/ Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree dated 31.11.2010 passed in M.A.C.O.P.No.1198 of 2009 on the file of the Motor Accidents Claims Tribunal (2nd Additional District Judge), Tirunelveli.

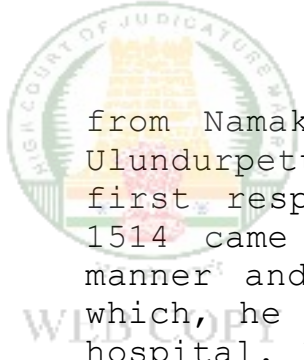
For Appellant	: Mr.G.Prabhu Rajadurai
For R1	: Dispense with
For R2	: Mrs.K.R.Shiva Shankari for Mr.S.Srinivasa Raghavan.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 30.11.2010 passed in M.A.C.O.P.No.1198 of 2009 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Tirunelveli.

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

On 24.05.2009 at about 1.15 a.m., the deceased Srinivasan was driving the IATA Indiga car bearing registration No.TN 21 AW 5172 in a careful manner by observing traffic rules and regulations



from Namakkal to Kalpakkam and when the car was reaching near Ulundurpettai Vellayur on the extreme left side of the road, the first respondent's mini lorry bearing registration No.TN 31 AA 1514 came from the opposite direction in a rash and negligent manner and hit against the TATA Indigo car and as a result of which, he sustained grievous injuries and died on the way to the hospital. Hence, the legal heirs of the deceased filed a petition before the Tribunal claiming a sum of Rs.1,00,00,000/- as compensation.

3. Before the Tribunal on the side of the petitioners, P.Ws.1 to 3 were examined and Exs.P1 to P15 were marked. The respondents did not let in any oral or documentary evidence, before the Tribunal.

4. On consideration of the evidence available on record, the learned Tribunal awarded a sum of Rs.29,59,320/- with interest at the rate of 7.5% by observing that the deceased is also responsible for the accident and so his legal heirs are entitled only to 75% of the actual eligible award amount of Rs.22,19,490/-. Aggrieved over the said award, the appeal has been filed by the claimants.

5. At the outset, the learned counsel for the appellant submitted that he is disputing only the quantum awarded by the Tribunal and hence, the finding of the Tribunal regarding rash and negligent driving of the driver of both the vehicles and the liability fixed at 75:25 is confirmed.

6. The only point for determination in this appeal is what is the just compensation?

7.The learned counsel for the appellants/claimants would submit that the deceased was working as Scientific Assistant in Indra Gandhi Centre of Atomic Energy, Kalpakkam. He would further submit that the future prospects was not awarded by the Tribunal; for loss of consortium, the Tribunal awarded only a meager sum of Rs.5,000/- to a 37 year old widow; for loss of estate, the Tribunal has awarded a meager sum of Rs.5,000/- to two children includes a minor daughter and that the Tribunal has not awarded any amount towards care and guidance of a minor and for loss of love and affection. The Tribunal has applied the multiplier as 12 instead of 13. The Tribunal awarded a sum of Rs.29,44,320/- (Rs.36,646/- x 12 x 12 x 1/3) for loss of income and the compensation awarded under the other heads are also lower side and therefore, the appellant has filed this appeal seeking enhancement of compensation.

<https://hcservices.courts.gov.in/services> 8. Considering the above submission, taking into consideration the age and avocation of the deceased, this Court fixes a sum of Rs.36,646/- as monthly loss of income and added Rs.10,993/- for

future prospects (Rs.36,646/- x 30%), which comes to Rs.47,639/- and after deducting 1/3 for his personal expenses, the monthly income of the deceased comes to Rs.31,760/- and the annual income would be Rs.3,81,120/- (Rs.31,760/- x 12). If multiplier 13 is adopted, it comes to **Rs.49,54,560/-** (Rupees Forty Nine Lakhs Fifty Four Thousand Five Hundred and Sixty only) (Rs.31,760/- X 12 X 13) towards loss of income.

9. Further, the sum of Rs.5,000/- awarded by the Tribunal towards funeral expenses is hereby enhanced to **Rs.25,000/-**; the sum of Rs.5,000/- awarded by the Tribunal towards loss of consortium is hereby enhanced to **Rs.1,00,000/-** and the sum of **Rs.5,000/-** awarded by the Tribunal towards loss of estate is confirmed.

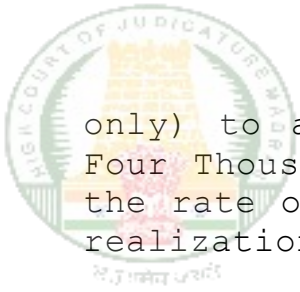
10. Similarly, the Tribunal has not awarded any compensation towards loss of love and affection. Therefore, a sum of **Rs.1,50,000/-** is hereby awarded by this Court toward loss of love and affection and the other heads are confirmed.

11. Accordingly, 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	29,44,320	49,54,560	enhanced
2.	For loss of consortium	5,000	1,00,000	enhanced
3.	For loss of love and affection	-	1,50,000	granted
4.	For funeral expenses	5,000	25,000	enhanced
5.	For loss of estate	5,000	5,000	confirmed
	Total	Rs.29,59,320	Rs.52,34,560	By enhancing a sum of Rs.22,75,240/-

12. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.29,59,320/- (Rupees Twenty Nine Lakhs Fifty Nine Thousand Three Hundred and Twenty



only) to a sum of **Rs.52,34,560/-** (Rupees Fifty Two Lakhs Thirty Four Thousand Five Hundred and Sixty only) along with interest at the rate of 7.5% per annum from the date of petition till date of realization and proportionate costs;

(ii) As observed by the Tribunal, the appellants/claimants are entitled only to 75% of the actual eligible enhanced award amount of **Rs.39,25,920/-** (Rupees Thirty Nine Lakhs Twenty Five Thousand Nine Hundred and Twenty Only).

(iii) The second respondent/Insurance Company is directed to deposit the 75% of the award amount of **Rs.39,25,920/-** (Rupees Thirty Nine Lakhs Twenty Five Thousand Nine Hundred and Twenty Only) with accrued interests and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are permitted to withdraw the entire award amount, with accrued interests and costs, as apportioned by the Tribunal, without filing any formal application before the Tribunal. No Costs.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

1. IInd Additional District Judge,
The Motor Accidents Claims Tribunal,
Tirunelveli.

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

+ 1 CC TO MR.G.Prabhu Rajadurai, ADVOCATE IN SR No.73622

+ 1 CC TO MR.S.Srinivasa Raghavan, ADVOCATE IN SR No.73747

rj2

MK/MR KKR/SAR-3/06.10.2017/4P/5C

C.M.A(MD)No.744 of 2011
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