

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1902 of 2011 and
M.P.No.1 of 2011

National Insurance Co.Ltd,
Rep.by its Branch Manager,
Having Branch Office at
Erode Branch-II, No.1272-1273
Palaniappan Complex,
Mettur Road, Erode.

..Appellant/2nd Respondent

..Vs..

1.M.Sarojini
2.V.Malaiyappan
3.Anuradha
(R-3 set exparte in Lower Court)

..Respondents/Petition/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26-08-2010 made in MCOP No.91 of 2009 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Pollachi.

For Appellant : Ms.R.Sree Vidhya

For R1&R2 : Mr.Ma.P.Thangavel
R3 set exparte

J U D G M E N T

The instant appeal has been filed by the Appellant Insurance Company challenging the award dated 26-08-2010 passed by the Subordinate Judge, Motor Accident Claims Tribunal, Pollachi in M.C.O.P.No.91 of 2009.

2. The brief facts leading to the filing of the instant appeal are as follows:

(i) Mr.M. Mohanraj died on 18.03.2009 as a result of an accident caused by a Milk Tanker Lorry bearing registration

No.TN-45-Y-6417 owned by the 3rd respondent and insured with the appellant.

(ii) The respondent Nos.1 to 2 in this appeal are the dependants of the deceased M. Mohanraj. They preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.91 of 2009 seeking a compensation of Rs.25,00,000/-.

(iii) The Motor Accident Claims Tribunal by its award dated 26.08.2010 directed the appellant to pay the respondent Nos.1 & 2, a sum of Rs.8,10,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

(iv) Aggrieved by the Award dated 26.08.2010 passed in M.C.O.P.No.91 of 2009, the instant appeal has been filed by the Appellant Insurance Company.

3. Heard M/s.R.Sreevidhya learned counsel for the Appellant and Mr.Ma.P.Thangavel learned counsel for the respondents. The 3rd respondent being the owner of the insured vehicle has remained exparte both before the Tribunal as well as this Court.

4. According to the learned counsel for the Appellant, the Tribunal has failed to take note of the fact that there was no acceptable evidence to prove the alleged occupation and income of the deceased and the deceased was not an Income tax assessee or paying professional tax.

5. Further, she would contend that the tribunal failed to note that Mr. Krishna kumar-P.W.3 had admitted that he did not know the period of employment of the deceased and also admitted that he has not produced any salary register and he did not know his salary for the first month and his oral evidence has not been proved by documentary evidence.

6. Further, she would contend that the claimants in their claim petition have stated that the deceased was doing mineral water business along with his partner viz., PW4-Kanthakumar, but the Tribunal has failed to take note of the fact that P.W.4 had admitted that there were no documents to establish the alleged purchase of mineral water and no documentary proof was produced to prove the sales mentioning the names of the customers of the shops, for which, the goods were supplied, so the said evidence cannot be accepted. She also contended that the tribunal has erroneously applied 13 multiplier, instead of 10 multiplier under the impugned award.

8. Per Contra, the learned counsel for the respondent Nos.1 & 2 would submit that even though the respondents 1 & 2 had made a claim for Rs.25,00,000/- before the tribunal, the

tribunal under the award has granted only a sum of Rs.8,10,000/- as compensation.

9. According to him, as on the date of the accident, the deceased was employed as Sales Manager and was earning a monthly income of Rs.20,000/-, but the Tribunal under the impugned award, has assessed the monthly income only at Rs.10,000/-. Therefore, according to him, the compensation awarded by the Tribunal is a just compensation.

10. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:-

a. The respondents 1 and 2 have produced the salary certificate of the deceased, which is marked as Ex.P.11 before the Tribunal. As per the salary certificate Ex.P.11, the deceased was earning monthly income of Rs.10,000/- per month at the time of the accident. The tribunal has assessed the monthly income of the deceased at Rs.10,000/- only based on the salary certificate Ex.P.11.

b. No contra evidence has been produced by the appellant Insurance Company before the Tribunal to disprove the claim of the respondents 1 & 2 that the deceased was earning a monthly income of Rs.10,000/- at the time of the accident.

c. The Tribunal under the impugned award, has awarded a total compensation of Rs.8,10,000/- under the following heads.

Sl. No.	Amount awarded by the tribunal
Loss of Dependency	Rs. 7,80,000/-
Funeral Expenses	Rs. 10,000/-
Loss of love and affection	Rs. 20,000/-
Total	Rs. 8,10,000/-

d. Even though the Tribunal may have applied wrong multiplier, in the considered view of this Court, the compensation awarded to the respondent Nos.1 & 2 is a just compensation.

11. In the light of the above observations, there is no merit in the instant appeal. Accordingly this appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

12. It is submitted that the compensation awarded by the tribunal has already been deposited before the tribunal. The respondents 1 and 2 are permitted to withdraw the same as per the ratio apportioned by the tribunal on filing an appropriate application.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

ggi/msr

To

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

2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.R.Sreevidhya, Advocate SR.No.70684

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.70471 (18/02/2019)

C.M.A.No.1902 of 2011 and
M.P.No.1 of 2011

RJ (CO)

GMV (26/11/2018)

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