

IN THE JUDICATE OF MADRAS HIGH COURT

DATED : 08.01.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.M.A.No.723 of 2014

and

M.P.No.1 of 2014

National Insurance Company Limited,
1st Floor, Vijaya Complex, Dharavari Garden,
Ward No.3, Station Road, Ongole,
Prakasam District, Andhra Pradesh,
Regional Office,
Coimbatore Stock Exchange Building,
Trichy Road, Coimbatore. ... Appellant/3rd Respondent

Vs.

1.Tmt.S.Alphin Vinitha
2.Minor P.Andreya David
3.Minor P.Calvin David
4.M.T.Xavier
5.Tmt.Florance

6.V.Brahma Reddy
7.T.Subba Reddy

... Respondents 1 to 5/Claimants/
6th respondent/1st respondent/
7th Respondent/2nd Respondent

Civil Miscellaneous Appeal has been filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 31.01.2013 in M.A.C.T.O.P.No.1224 of 2011
passed by the Motor Accidents Claims Tribunal (3rd Additional
District and Sessions Court), Coimbatore.

For Appellants : Mr.N.B.Surekha

For Respondents: Mr.N.E.A.Dinesh (For R1 to R5)

* * * * *

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (III Additional District and Sessions Court), Coimbatore, in and by award dated 31.01.2013 in M.A.C.T.O.P.No.122 of 2011, the present appeal has been filed by the Insurance Company.

2.The respondents 1 to 5 herein are the claimants before the Tribunal and they are wife, minor sons and parents of the deceased Pravin David. It is the case of the claimants before the Tribunal that on 03.03.2011, while the said Pravin David was proceeding in his Tata Indigo Car bearing Reg.No.TN-37-AR-7981 to Palakkad, a lorry bearing Reg.No.AP-27-X-4647 driven by the 6th respondent herein, owned by the 7th respondent and insured with the appellant/Insurance company came in a rash and negligent manner from the opposite direction and dashed against the car and thus, caused the accident. In the said accident, the said Pravin David died on the spot. Hence, the respondents 1 to 5/claimants made a claim for a sum of Rs.60 lakhs as compensation before the Tribunal.

3.Since the present appeal has been filed by the appellant only questioning the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal. Hence, in the present appeal We are dealing with only correctness of the quantum of compensation awarded by the Tribunal.

4.In order to prove the claim before the Tribunal, on the side of the claimants, the 1st claimant/wife of the deceased examined herself as P.W.1, besides examining two other witnesses as P.W.2 & P.W.3 and marked 14 documents as Ex.P.1 to Ex.P.14. On the side of the Insurance Company, Syeed Mali, Senior Assistant in National Insurance Company was examined as R.W.1 and two documents were marked as Ex.R.1 & Ex.R.2.

5.The Tribunal after analysing the entire evidence has come to the conclusion that the accident was the result of the rash and negligent act of the driver of the lorry bearing Reg.No.AP-27-X-4647 insured with the appellant/Insurance company. By coming to such a conclusion, the Tribunal has calculated the compensation amount under different heads and passed an award for a total sum of Rs.28,58,870/-. The break up details of the compensation amount awarded by the Tribunal are as follows_

Loss of income	: Rs.26,45,370/-
Transportation	: Rs. 1,500/-
Damage to cloth	: Rs. 2,000/-
Loss of consortium	: Rs. 1,00,000/-
Loss of Love and affection	: Rs. 1,00,000/-
Funeral Expenses	: Rs. 10,000/-
Total	<u>Rs.28,58,870/-</u>

Aggrieved over the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the present appeal.

6.Now, it is contended by the learned counsel for the appellant/Insurance Company that according to the claimants, the deceased was a Managing Partner in M/s.A.D.Systems and earning a sum of Rs.20,000/- per month. But, the said business is a partnership business and the deceased was one of the partners. In order to prove the income earned by the deceased, no tangible evidence was produced before the Tribunal. However, the Tribunal had taken a sum of Rs.13,300/- as monthly income of the deceased. Thereafter, by adding 30% of the amount towards future prospects, by deducting 1/4th amount towards persons expenses and by applying multiplier 17, the Tribunal has awarded a sum of Rs.26,45,370/- as loss of income. According to the learned counsel for the appellant/Insurance Company, the compensation amount of Rs.26,45,370/- awarded by the Tribunal under the head of loss of income needs proper reduction as the same is on the higher side. That apart, the learned counsel for the appellant/Insurance Company submitted that the Tribunal has also not deducted any amount towards Income Tax. Therefore, according to the learned counsel for the appellant, by deducting 10% amount towards Income Tax and by fixing some lesser amount as monthly income of the deceased, the compensation amount has to be recalculated.

7.Countering the submissions made by the learned counsel for the appellant/Insurance Company, it is submitted by the learned counsel for the claimants that in order to prove the income earned by the deceased before the Tribunal, on the side of the claimants, Income Tax Returns filed by the deceased for the period from 2008-09 to 2010-11 were marked as Ex.P.12 (series). As per Ex.P.12, the annual income of the deceased was Rs.2,25,560/-, that is to say that the monthly income of the deceased comes between Rs.18,000/- and Rs.19,000/-. The Tribunal has taken only a sum of Rs.1,60,000/- as annual income of the deceased and fixed a sum of Rs.13,300/- as monthly income of the deceased. Further, the Tribunal has added only 30% of the amount towards future prospects. Since the lesser amount of

Rs.1,60,000/- had alone been taken as annual income of the deceased, there is no need to deduct any amount towards Income Tax. Furthermore, the Tribunal has added only 30% instead of 40% towards further prospects. Therefore, according to the learned counsel for the claimants, absolutely there is no need to interfere with the award passed by the Tribunal.

8.Keeping in view the submissions made on either side, We have carefully gone through the entire materials available on record.

9.From a perusal of the materials available on record, it is seen that in order to prove the income earned by the deceased before the Tribunal, on the side of the claimants, one Natarajan, Auditor, was examined as P.W.3, through whom Ex.P.12 (series) was marked. P.W.3 had specifically stated in his evidence that the last annual income of the deceased was Rs.2,25,560/-. But, as contended by the learned counsel for the claimants, the Tribunal has taken only a sum of Rs.1,60,000/- as annual income of the deceased. Since the said amount of Rs.1,60,000/- is less than the taxable limit, We are of the opinion that there is no need to deduct any amount towards income tax. Therefore, We are not inclined to accept the submission made by the learned counsel for the appellant/Insurance Company that by deducting 10% amount towards income tax, the compensation amount has to be reduced. Since the annual income of the deceased is less than the taxable limit, the question of deducting 10% amount towards does not arise in this case.

10.So far as the income of the deceased is concerned, from Ex.P.12 as well as from the evidence of P.W.3, it could be seen that the last annual income of the deceased was only Rs.2,25,560/-. Whereas the Tribunal has taken only a sum of Rs.13,300/- as monthly income of the deceased. In our considered opinion, the sum of Rs.13,300/- fixed by the Tribunal as monthly income of the deceased cannot be said to be on the higher side, considering the present day cost of living, that too in the present case when the claimants claimed that the deceased was earning income by running a partnership business.

11.However, as contended by the learned counsel for the claimants, the Tribunal has added only 30% amount instead of 40% amount towards further prospects. Therefore, the amount awarded by the Tribunal under the head of loss of income needs proper modification. If a sum of Rs.13,300/- is taken as monthly income of the deceased, 40% amount has to be added towards further prospects. 40% of the income comes to Rs.5,320/- and if it is added to monthly income of Rs.13,300/-, the total amount comes to Rs.18,620/- (13,300 + 5320), which would be taken as

monthly loss of income. Then, the annual loss of income works out to Rs.2,23,440/- (18,620 x 12). Considering the number of dependants, totally five in number, it would be proper to deduct 1/4th amount towards personal expenses. If 1/4th amount is deducted, the balance comes to Rs.1,67,580/- (2,23,440 - 55,860). Then, the annual loss of contribution to the family works out to Rs.1,67,580/-. Since the deceased was aged 33 years at the time of accident, the correct multiplier that has to be adopted in this case is 16. If multiplier 16 is applied, then total loss of income works out to Rs.26,81,280/-. Therefore, the sum of Rs.26,45,370/- awarded by the Tribunal under the head of loss of income is hereby modified and enhanced to Rs.26,81,280/-.

12. That apart, as per the recent decision of the Hon'ble Supreme Court reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the wife is entitled to only Rs.40,000/- for loss of consortium. Hence, the sum of Rs.1,00,000/- for loss of consortium awarded by the Tribunal is hereby reduced to Rs.40,000/-.

13. Except the above modifications, the compensation amounts awarded by the Tribunal under other heads remain unaltered as the same can not be said to be on the higher side.

14. Accordingly, the total compensation amount of Rs.28,58,870/- awarded by the Tribunal is hereby modified and reduced to Rs.28,34,780/-. The break up details of the modified/enhanced compensation amount are as follows—

Loss of income	: Rs. 26,81,280/-
Transportation	: Rs. 1,500/-
Damage to cloth	: Rs. 2,000/-
Loss of consortium	: Rs. 40,000/-
Loss of Love and affection	: Rs. 1,00,000/-
Funeral Expenses	: Rs. 10,000/-
Total	Rs. 28,34,780/-

15. In fine, the appeal is partly allowed and the total compensation amount of Rs.28,58,870/- (Rupees Twenty Eight Lakhs Fifty Eight Thousand Eight Hundred and Seventy only) awarded by the Tribunal is hereby modified and reduced to Rs.28,34,780/- (Rupees Twenty Eight Lakhs Thirty Four Thousand Seven Hundred and Eighty only). The Appellant/Insurance Company is directed to deposit the entire modified/reduced compensation amount with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. On such deposit being made, the 1st claimant/wife is entitled to Rs.14,34,780/- and

the claimants 2 & 3/minors are entitled to Rs.5,00,000/- each and the claimants 4 & 5/parents are entitled to Rs.2,00,000/- each. The claimants 1, 4 & 5 are entitled to withdraw their share with proportionate interest by making necessary application before the Tribunal. So far as the shares of the minors/claimants 2 & 3 are concerned, the same shall be deposited in any one of a nationalised banks till they attain majority and the 1st claimant is entitled to withdraw the interest accrued thereon once in every three months. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

ssv

To,

The Motor Accidents Claims Tribunal,
(III Additional District and Sessions Court),
Coimbatore.

Copy to

The Section Officer,
V.R. Section, High Court,
Madras. (2 copies)

+1cc to Mr.V.NICHOLAS, Advocate, S.R.No. 1702

+1cc to Mr.N.B.SUREKHA, Advocate, S.R.No. 1245

C.M.A.No.723 of 2014

and

M.P.No.1 of 2014

SSI (CO)

TR(14/02/2018)

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