



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A (MD) No.1013 of 2017
and
CMP (MD) No.10446 of 2017

The Divisional Manager,
M/s.Oriental Insurance Company Limited,
No.5, Bharathidasan Salai,
Cantonment,
Trichy District.

...Appellant /2nd Respondent

Vs.

1.Dhanam @ Dhanalakshmi
2.Manickam
3.M/s.P.R.P. Exports,
Narsingampatti Village,
South Street,
Melur Taluk,
Madurai District.

...R1 and R2/Petitioners 1 and 2

...3rd Respondent/1st Respondent
(3rd respondent remained ex-parte
before the lower court)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in MCOP No.1763 of 2013, dated 20.03.2017 on the file of the Motor Accident Claims Tribunal-cum-Special District Judge (MCOP), Trichirappalli.

For Appellant : Mr.K.Bhaskaran

For R1 and R2 : Mr.K.Benjamin

For 3rd Respondent: No appearance

JUDGMENT

(Judgment of the court was delivered by **T.KRISHNAVALLI, J)**



(Special District Judge), Trichirappalli, in MCOP No.1763 of 2013, dated 20.03.2017.

2.The brief facts of the case are that on 27.05.2012, the deceased was riding the motor Bike Bajaj XCD 125 bearing registration No.TN-48-K-3905 along with his friend one Elakiaarasan, who was travelling as pillion rider. While they were proceeding on Kulithalai-Thogamalai Main Road from north to south direction near Metupatti PRP, Pannai, at that time, a tractor bearing registration No.TN59-AX-2392, which was driven by its driver in a rash and negligent manner, suddenly turned the tractor to go to inside of the PRP Pannai and thereby dashed against the motor cycle. In the impact, both of them were thrown out and sustained multiple fatal injuries all over the body and they were taken to the hospital, but on the way the deceased Sivalingam died. A case stands registered in Crime No.132 of 2012 by the Thogamalai Police Station. The claimants are the parents of the deceased and they filed a claim petition in MCOP No.1763 of 2013 before the tribunal seeking compensation of Rs.25,00,000/-.

3.The appellant filed a counter affidavit denying the allegations made in the claim petition and they also disputed the age, income and avocation of the deceased.

4.Before the Tribunal, the claimants have examined 5 witnesses and marked Exs.P1 to P12. On the side of the Insurance Company, two witnesses were examined and Exs.X1 to X4 were marked through witness. The Tribunal, after considering the oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the tractor was responsible for the accident and awarded compensation of Rs.15,05,064/- together with interest @ 7.5% p.a.

5.Learned counsel for the appellant would submit that the award passed by the Tribunal is excessive and it has to be reduced. On the other hand, the learned counsel for the claimants argued in support of the judgment of the tribunal.

6.We have heard both sides and perused the materials available on record.

7.In the instant case, it is not in dispute that the deceased was 32 years old at the time of accident and he was working as a Supervisor at Arun Stationery Stores, Thottiam. Though, it was claimed that he was earning Rs.15,000/- per month, no reliable document was filed to prove the income of the deceased. Hence, the Tribunal fixed notional monthly income at Rs.10,000/- and after deducting 1/3rd towards personal and living expenses and by applying proper multiplier '16', awarded Rs.12,80,064/- towards loss of dependency. Further, the Tribunal awarded Rs.25,000/- towards funeral and transportation and Rs.2,00,000/- towards loss of love and affection. In total, the Tribunal has awarded

Rs.15,05,064/- as compensation with interest @ 7.5% p.a.

8. The appellant herein has no dispute over the age of the deceased and about his monthly income at Rs.10,000/- as fixed by the tribunal. Having due regard to the judgment delivered by the Hon'ble Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi (2017)13 SCALE 12** and **Sarla Verma Vs. Delhi Transport Corporation [(2009)6 SCC 121]**, the correct multiplier to be applied should be 16 having regard to the age of the deceased and an addition of 40 percent towards future prospects is also warranted. Since the deceased is a bachelor, 50% has to be deducted towards his personal and living expenses. Considering the above facts, it would be appropriate to fix notional income at Rs.7,000/-per month. By applying proper multiplier '16', this Court awards Rs.13,44,000/- [Rs.7,000/- x 12 x 16] towards loss of dependency. In addition to that, the claimants are entitled to Rs.30,000/- towards conventional damages. Considering the above facts, this Court is of the opinion that as per the decisions of the Hon'ble Apex Court referred supra, the award of the tribunal requires modification. The compensation awarded by the tribunal is modified as hereunder:-

S.No	Head	Amount awarded by the tribunal [Rs.]	Amount awarded by this court [Rs.]
01.	Loss of Dependency	12,80,064/-	Rs.13,44,000/-
02.	Loss of love & affection	2,00,000/-	-
04.	Funeral and Transportation	25,000/-	15,000/-
06.	Loss of Estates	-	15,000/-
	Total	Rs.15,05,064/-	Rs.13,74,000/-

9. In the result, the Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.15,05,064/- is reduced to **Rs.13,74,000/-**. The interest awarded by the tribunal is maintained. The appellant Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such the compliance, the claimants are



permitted to get equal share with accrued interest and costs. The excess amount, if any, shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The special District Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+ 1 CC TO MR.K.BHASKARAN, ADVOCATE IN SR NO. 76853

+ 1 CC TO MR.K.BENJAMIN, ADVOCATE IN SR NO. 77127

ER

BU/MK/RP/SAR-I : 25.09.2018 : 4P/6C

Judgement made
in C.M.A(MD)No.1013 of 2017
03.08.2018