



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.07.2018

CORAM:

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

C.M.A (MD) No.1212 of 2015
and
MP (MD) No.1 of 2015

The Branch Manager,
M/s.New India Insurance Company Limited,
482-482, 3rd Floor, SNV Chamber Building,
New Power House Bus Stop,
Cross Cut Road, Gandhipuram,
Coimbatore-641 012.

: Appellant/Respondent No.2

Vs.

1.R.Ganesan
2.D.Manjula
3.G.Rajasekar

: Respondents 1 to 3/ Petitioners 1 to 3

4.K.Rajendran

: R4/Respondent No.1

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 04.03.2015 made in MCOP No.1476 of 2013, on the file of Motor Accident Claims Tribunal (Special District Court), Tiruchirapalli

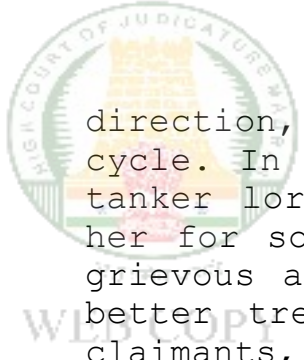
For Appellant : Mr.D.Sivaraman
For R1 to R3 : Mr.N.Sudhagar Nagaraj

JUDGMENT

[Judgment of the Court was made **by T.KRISHNAVALLI, J.**]

Challenge made in this appeal is to the award passed by the Motor Accident Claims Tribunal (Special District Judge), Trichirappalli, in MCOP No.1476 of 2013, dated 04.03.2015.

2.The brief facts of the case are that on 28.09.2010 at about 9.30 am, the deceased G.Mallika was travelling as pillion rider in the motor cycle bearing registration No.TN-45-R-5187, which was driven by her husband Ganesan and when they were travelling on Trichy-Karur Road from western direction to eastern direction near SKV Hotel, Trichy, at that time, a Tanker Lorry bearing registration No.TN-40-A-1708 driven by its driver came in the same



direction, in a rash and negligent manner and hit behind the motor cycle. In the impact, the deceased fell down on the road and the tanker lorry rode on the right leg of the deceased and dragging her for some distance. Due to the impact, the deceased sustained grievous and multiple injuries all over her body and in spite of better treatment, she died on 22.11.2010 in the hospital. The claimants, being the husband, daughter and son of the deceased, sought compensation of Rs.21,00,000/- on the ground that the driver of the offending vehicle was responsible for the accident.

3.The claimants have further stated that the deceased was working as a Manager in M/s.M.K. Agencies, Trichy and she was getting Rs.14,500/- per month. A criminal case in Crime No.343 of 2010 stands registered by the Traffic Investigation (North) Police, Fort Police Station, Trichy against the driver of the offending vehicle.

4.The appellant Insurance Company resisted the claim contending that the accident had taken place due to the negligence of the deceased, so they are not liable to pay any compensation and the claim was on the higher side.

5.Before the tribunal, on the side of the claimants, 5 witnesses were examined as PW1 to PW5 and marked 13 documents. On the side of the appellant Insurance Company, no witness was examined and no document was marked. Exs.X1 to X13 were marked through witnesses.

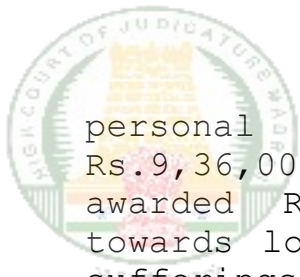
6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.15,08,467/-. Challenging the award, the present appeal has been filed.

7.Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3 and perused the materials available on record.

8.The manner of the accident and the finding on negligence are not in dispute and the appeal is confined only to quantum of compensation awarded by the Tribunal.

9.It is contended by the learned counsel for the appellant that the tribunal has not properly fixed the income of the deceased and the notional income fixed by the tribunal at Rs.9,000/- is on the higher side, so the quantum is to be reduced. On the other hand, the learned counsel for the respondents 1 to 3/claimants submitted that the award is reasonable, which does not warrant any interference of this court.

10.In the instant case, it is not in dispute that the deceased was at the time of the accident and she was working as Manager in M/s.M.K. Agencies, Trichy. The Tribunal fixed notional monthly income at Rs.9,000/- and after deducting 1/3rd towards



personal expenses and by applying multiplier '13', awarded Rs.9,36,000/- towards loss of dependency. Further, the Tribunal awarded Rs.40,000/- towards loss of consortium; Rs.30,000/- towards loss of love and affection; Rs.25,000/- towards pain and sufferings; Rs.4,57,467/- towards medical expenses and Rs.20,000/- for funeral and transportation. In total, the Tribunal has awarded Rs.15,08,467/- as compensation.

11.Perusal of the records would reveal that the deceased was working as Manager in M/s.M.K. Agencies, Trichy and she was getting a salary Rs.14,500/- per month. Considering the above facts and keeping in view of the decision reported in **2017(13) SCALE 12 (National Insurance Company Limited vs. Pranay Sethi and others)**, it would be appropriate to fix notional income of the deceased at Rs.6,500/- per month and by adding 25% towards future prospect, the monthly income is arrived at Rs.8,125/- and after deducting 1/3rd towards her personal expenses, the loss of dependency is arrived at Rs.5,417/- per month. By applying proper multiplier '13', this Court awards Rs.8,45,052/- [Rs.5,417/- x 12 x 13] towards loss of income (which is rounded off to Rs.8,45,000/-).

12.Further, as per the decision in **Pranay Sethi's case**, this Court awards Rs.40,000/- towards loss of consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Taking into consideration the facts and circumstances, the award of the tribunal at Rs.4,57,467/- towards medical expenses is confirmed. In total, the claimants would be entitled for **Rs.13,72,467/-** together with interest @ 7.5% p.a.

13.In the result, this Civil Miscellaneous Appeal is partly allowed. The award is reduced to **Rs.13,72,467/-** from Rs.15,08,467/-. The appellant Insurance Company is directed to deposit the modified amount, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the first claimant is entitled to withdraw Rs.7,72,467/- and the claimants 2 and 3 are each entitled to withdraw Rs.3,00,000/- with accrued interest and costs without filing any formal petition before the tribunal. The excess amount, if any, shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar



To

The Special District Judge,
Motor Accident claims Tribunal,
Tiruchirappalli.

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V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.D.Sivaraman , Advocate in SR No. 70678
+ 1 cc TO Mr.N.Sudhagar Nagaraj , Advocate in SR No. 70757

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