



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2018

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD) .No.415 of 2017

- 1.Seyadu Sulaiman
- 2.Seyadu Ali Fathima
- 3.Ramzan Kani
- 4.Thakkarai Peer Mohammed

... Appellants/
Petitioners / claimants

Vs.

- 1.Kannan
- 2.ICICI Lombard General Insurance
Company Limited,
through its Branch Manager,
No.414, Veer Savarkar Marg,
Near Siddhi Vinayak Temple,
Prabhadevi,
Mumbai.

... Respondents /
Respondents

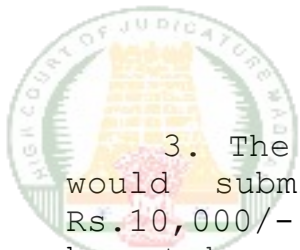
PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award made in M.C.O.P.No.781 of 2014 on the file of Motor Accident Claims Tribunal / Special Subordinate Court, Tirunelveli, dated 29.09.2015.

For appellant	:	Mr.T.Selvakumaran
For 1 st respondent	:	No appearance
For 2 nd respondent	:	Mr.K.K.Ramakrishnan

JUDGMENT

Heard the learned counsel appearing for the appellants / claimants and the learned counsel appearing for the 2nd respondent / Insurance Company.

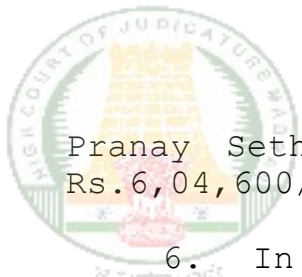
2. It is a case of fatal. The manner of the accident is not in dispute. This appeal has been filed by the appellants / claimants questioning the quantum.



3. The learned counsel appearing for the appellants / claimants would submit that though the deceased was earning a sum of Rs.10,000/- p.m. by doing a job work (beedi rolling), the Tribunal has taken only Rs.4,000/- as the monthly notional income of the deceased and it is on the lower side. By relying upon the decision of the Hon'ble Supreme Court in Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited, reported in 2014 ACJ 627, the learned counsel for the appellants / claimants requested this Court to fix a sum of Rs.6,500/- p.m. as the notional income of the deceased. He would further submit that the future prospects also has not been added in the monthly income of the deceased by the Tribunal. Thus, he prayed to enhance the award amount by fixing the notional income of the deceased as Rs.6,500/- p.m. and adding future prospects 10% in the monthly income of the deceased.

4. The learned counsel appearing for the second respondent / Insurance Company would submit that since the claimants have not produced any document in order to substantiate their claim that the deceased was earning a sum of Rs.10,000/-, the Tribunal has fixed Rs.4,000/- p.m. as the notional income of the deceased and therefore, the same may be confirmed and the award passed by the Tribunal need not be interfered with.

5. The accident is of the year 2014. The age of the deceased at the time of the accident was 50 years. According to the claimants, the deceased was earning a sum of Rs.10,000/- p.m. In the decision of Syed Sadiq, cited supra, the Hon'ble Supreme Court, keeping in mind the price rise of agricultural products, has fixed a sum of Rs.6,500/- as notional monthly income of a vegetable vendor, even in the absence of documentary evidence to prove the income. When this is the settled legal position, in the present case, Rs.4,000/- p.m. fixed by the Tribunal is on the lower side. However, considering the facts and circumstances of this case and also considering the age of the deceased, year of the accident, avocation of the deceased and number of claimants, this Court is inclined to fix Rs.6,000/- as the notional monthly income of the deceased. As per the decision reported in 2017 (2) TN MAC 609 (SC) (National Insurance Company Limited Vs. Pranay Sethi and others), considering the age of the deceased, if 10% of future prospects is added with the notional income of the deceased ie., Rs.600/-, the monthly income of the deceased comes to Rs.6,600/- ($6000 + 600 = 6600$). The Tribunal, considering the number of claimants, has rightly deducted $1/4^{\text{th}}$ amount for the personal expenses of the deceased. If $1/4^{\text{th}}$ amount is deducted from the monthly income of the deceased, the monthly loss of income comes to Rs.4950/- ($6600 - 1650 = 4950$) and the annual loss of income comes to Rs.59,400/-. As per the decision reported in 2009 (2) TN MAC 1 (SC) (Sarla Verma and others Vs. Delhi Transport Corporation and another), the Tribunal has rightly fixed multiplier No.9. If the annual loss of income of Rs.59,400/- is multiplied with 9, the total loss of income comes to Rs.5,34,600/- ($59,400 \times 9 = 5,34,600$). Instead of the compensation awarded under the other heads, if a sum of Rs.70,000/- added towards conventional head, as per



Pranay Sethi case, cited supra, the total compensation comes to Rs.6,04,600/-.

6. In view of the above, the award is enhanced from Rs.4,89,000/- to Rs.6,04,600/-. The interest at the rate of 9% p.a. awarded by the Tribunal is reduced to 7.5% p.a. The second respondent / Insurance company is liable to pay the amount now awarded with interest at 7.5% p.a. from the date of petition till the date of deposit. However, the second respondent / Insurance Company is permitted to recover the amount from the first respondent by following the procedure laid down in Oriental Insurance Company Limited Vs. Nanjappan and others reported in 2004 ACJ 721 (SC). The 2nd respondent / Insurance Company is directed to deposit the entire award amount, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the amount awarded with accrued interest and costs, as apportioned by the Tribunal, without filing any formal petition before the Tribunal. The claimants are directed to pay the Court fee, if any to be paid for the enhanced amount, within a period of four weeks from the date of receipt of a copy of this judgment.

7. This Civil Miscellaneous Appeal is accordingly allowed. No costs.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar(CS III)

gcg

To

1.The Motor Accident Claims Tribunal,
Special Subordinate Judge
Tirunelveli.

2.The Record Keeper,
VR. Section,
Madurai Bench of Madras High Court, Madurai
(2 copies)

1CC TO MR. T. SELVAKUMARAN, ADVOCATE SR 71547
1CC TO MR. K.K. RAMAKRISHNAN, ADVOCATE SR 71339

DS RSK SAR 3

9 8 18

3P 6C