**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	20.07.2018
Date of Judgment	31.07.2018

DATED : 31.07.2018**CORAM:**

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

C.M.A(MD)No.434 of 2017
and
CMP(MD)No.4657 of 2017

The Divisional Manager,
The Oriental Insurance Company Limited,
158 P.C.C. Complex, 1st Floor,
Puthur Road,
Kovilpatti-628 501.

: Appellant/Respondent No.3

Vs.

1.V.Seethalakshmi
2.Vinoth
3.Minor Ajeeth
(Minor 3rd respondent represented
by his mother and guardian the
1st respondent V.Seethalakshmi)
4.Sundarraaj
5.Vengidammal : R1 to R5/Petitioners 1 to 5
6.Annaprakash : 6th respondent/1st respondent
7.M.Karpagadass : 7th respondent/2nd respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award made in MCOP No.83 of 2013, dated 23.11.2016 on the file of the Motor Accident Claims Tribunal (Sub Judge), Sivakasi.

For Appellant : Mr.K.Bhaskaran

For R1 to R3 : Mrs.S.Mahalakshmi

For R4 and R5 : Died

For R6 and R7 : No appearance

**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 (Sub Judge), Sivakasi, in MCOP No.83 of 2013, dated 23.11.2016.

2.The brief facts of the case are that on 30.08.2006 at about 15.00 hours on Virudhunagar to Madurai Bye-Pass Road Junction when the deceased Venkatraj drove his Hero Honda Motor Cycle bearing registration No.TN-67-R-7360 along with his wife V.Seethalakshmi, at that time, a lorry bearing registration No.TN-28-E-3022 came in a rash and negligent manner without blowing horn and without adhering traffic rules from Madurai to Virudhunagar and dashed on the back side of the two wheeler. In that process, the wife of the deceased was thrown away and the lorry run over the deceased and caused his death. The claimants, being the wife, son and parents of the deceased Venkatraj sought compensation of Rs.15,00,000/- 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 Senior Driver in the Tamil Nadu Transport Corporation Limited and he was getting Rs.10,285/- per month. A criminal case in Crime No.677 of 2006 stands registered for the offences under Sections 279, 337 and 304(A) IPC by the Inspector of Police, Virudhunagar West Police Station 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, 2 witnesses were examined as PW1 and PW2 and marked 6 documents. On the side of the appellant Insurance Company, no witness was examined and one document was marked as Ex.R1.

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.28,52,780/-. Challenging the award, the present appeal has been filed.

7.Heard both sides and perused the materials available on record.

8.The facts of the accident and the finding on negligence

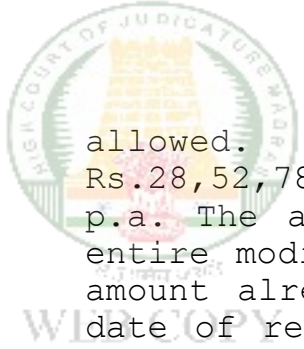


are not in dispute and the appeal is confined only to quantum of compensation awarded by the Tribunal.

9. It is contended by the learned counsel for the appellant that the tribunal has not applied proper multiplier to fix income of the deceased and the income fixed by the tribunal at Rs.10,285/- 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 42 years at the time of the accident and he was working as a Driver in the Tamil Nadu Transport Corporation. The Tribunal fixed monthly income of the deceased at Rs.10,285/- by adding 50% towards future prospects and after deducting 1/4rd towards personal expenses and by applying multiplier '15', awarded Rs.22,17,780/- towards loss of income. Further, the Tribunal awarded Rs.1,00,000/- towards loss of consortium; Rs.5,00,000/- towards loss of love and affection to the claimants 1 to 5; Rs.25,000/- towards funeral expenses; Rs.5,000/- for transportation and Rs.5,000/- towards loss of estate. In total, the Tribunal has awarded Rs.28,52,780/- together with interest @ 9% p.a., as compensation.

11. Perusal of the records would reveal that the deceased was aged about 42 years at the time of the accident and he was working as a Driver in the Tamil Nadu State Transport Corporation and he was getting a salary Rs.10,285/- per month. In this case, while calculating the income of the deceased, the tribunal has added 50% towards future prospects. As per the decision reported in **2017(13) SCALE 12 (National Insurance Company Limited vs. Pranay Sethi and others)**, while determining the income an addition of 30% should be made, if the age of the deceased was between 40 to 50 years. In the case on hand, the age of the deceased was 42 years at the time of the accident and hence, 30% has to be added towards future prospects in view of the law laid down in the case of Pranay Sethi referred supra. By doing so, the monthly income of the deceased is calculated at Rs.13,371/- and after deducting 1/4th towards his personal expenses, the loss of income is arrived at Rs.10,028/- per month. By applying proper multiplier '14', this Court awards **Rs.16,84,704/-** [Rs.10,028/- x 12 x 14] towards loss of income. In addition to that, the claimants are entitled to conventional damages as per the decision in **Pranay Sethi's case**. Hence, this Court awards Rs.40,000/- towards loss of consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.17,54,704/-** together with interest @ 7.5% p.a.



allowed. The award is reduced to **Rs.17,54,704/-** from Rs.28,52,780/-. The modified award amount carries interest @ 7.5% p.a. The appellant Insurance Company is directed to deposit the entire modified amount with accrued interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. Out of the modified award amount, the first claimant being the wife of the deceased is entitled to Rs.7,54,704/- and the claimants 2 and 3 being the children of the deceased are each entitled to Rs.5,00,000/- with accrued interest and costs.

13.It is represented by the learned counsel appearing for the respondents 1 to 3/claimants that the parents of the deceased, who are the claimants 4 and 5 were died on 20.07.2018 and 26.04.2018 respectively, during the pendency of the appeal and a memo has been filed on 23.07.2018 to that effect. The said memo is recorded. It is made clear that in the event of deposit of the entire modified award amount by the appellant Insurance Company, all the major claimants are permitted to withdraw their share as per the apportionment of this court. The share of the minor claimant is directed to deposit in any one of the nationalized bank, till he major attains majority. The first claimant, being the mother of the minor, is permitted to withdraw the interest accrued in the deposit amount once in three months for the welfare of the minor. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS-II)

TO
THE SUB JUDGE,
MOTOR ACCIDENTS CLAIMS TRIBUNAL,
SIVAKASI.

COPY TO
THE SECTION OFFICER, V.R. SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.(2 COPIES)

+2 CC To MR.K.BASKARAN, Advocate SR. NO. 74042 & 75855

C.M.A(MD)No.434 of 2017
31.07.2018

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