

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 26.07.2018****CORAM****WEB COPY****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.A (MD) .No.314 of 2014**

- 1.Ramalakshmi
- 2.Minor.Sabarinathan
- 3.Minor.Ramakrishnan
- 4.Lakshmi

.. Appellants/Petitioners

(Minor petitioners 2&3 rep. through their mother
and next guardian 1st appellant herein)

Vs.

- 1.Thangaraj

- 2.The Branch Manager,
ICICI Lombard General Insurance Company Ltd.,
ICICI Bank Towers,
Bandra Kurla Complex,
Bandra,
East Mumbai- 400 051.

.. Respondents/Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 16.04.2012, made in M.C.O.P.No.1061 of 2011, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Tirunelveli.

For Appellant	: Mr.T.Selvakumaran
For Respondent No.1	: Mr.T.Sathiyathan
For Respondent No.2	: Mr.V.Muthukamatchi

JUDGMENT

This civil miscellaneous appeal has been filed challenging the award passed by the learned Additional District Judge, Motor Accidents Claims Tribunal, Fast Track Court No.II, Tirunelveli, in M.C.O.P.No.1061 of 2011, dated 16.04.2012.

2. Heard the learned Counsel appearing on either side and perused the materials placed on record.

3. It is a case of fatal and the tribunal has awarded a sum of <https://hcservices.ecourts.gov.in/hcservices/> RS.5,65,000/- as compensation, against which, the Appellants/claimants are on appeal before this Court.



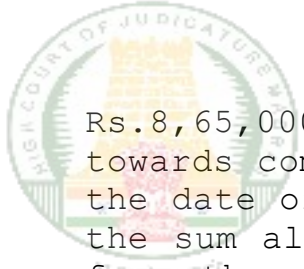
4. Though several grounds are raised in the memorandum of grounds, the main ground emphasized by the appellants is quantum.

5. The mode of accident, which occurred in the year 2011, as well as the liability are not disputed. At the time of accident, the deceased was aged about 36 years and he was working as Mason as well as Supervisor, earning a sum of Rs.25,000/- per month. It is seen that the tribunal has taken the notional income of the deceased as Rs.4,000/- per month, which, in my considered opinion, is very meagre and therefore, the same deserves interference at the hands of this Court. The Hon'ble Supreme Court, in this context, in the decision reported in **2014 (1) TN MAC 459 (SC)** in the case of **Syed Sidiq etc., v. Divisional Manager, United India Insurance Company Ltd.**, has held that the reasonable monthly income of a labour in an unorganized sector doing his own business would be Rs.6,500/-. In the present case on hand, considering the age of the deceased as well as the nature of job of the deceased, the tribunal ought to have fixed a sum of Rs.6,500/- as monthly income of the deceased, which would be reasonable.

6. The next ground emphasized by the appellants is that considering the number of dependents, the tribunal ought to have deducted 1/4 towards personal expenses. But the tribunal has assessed the age of the deceased as 39, taking into account the date of birth mentioned in the driving license and deducted 1/3 towards personal expenses, however, no compensation was awarded towards future prospects. The Supreme Court, in its latest verdict, in the case of **National Insurance Company Ltd., v. Pranay Sethi and others, decided on 31.10.2017**, has held that 40% towards future prospects is reasonable for persons, who are below 40 years. Admittedly, the age of the deceased at the time of the accident was fixed at 39 years and therefore, by applying the above principle, future prospects is to be fixed at 40%.

7. Therefore, in the case on hand, if future prospects and other appropriate principles are followed, it is a simple math that overall compensation will be on the higher side, however, the appellants/claimants restricted their claim to a sum of Rs.3,00,000/-, which in the opinion of this Court is very reasonable, for which, the learned counsel for the 2nd respondent/insurance company has no objection, therefore, the same is accordingly ordered.

8. In such a view of the matter, the civil miscellaneous appeal is partly allowed and the compensation awarded by the tribunal is enhanced and the total award amount is fixed at Rs.8,65,000/- [Rs.5,65,000/- awarded by the tribunal + Rs.3,00,000/- enhanced by this Court]. The second respondent / insurance company is directed to deposit the sum of



Rs.8,65,000/- [Rupees Eight Lakhs Sixty Five Thousand only] towards compensation, with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit and costs, excluding the sum already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. In other respects, the award stands confirmed. On such deposit, the major claimants are permitted to withdraw the same as apportioned by the tribunal, without filing any formal application before the Tribunal and the share of the minor claimants shall be deposited in a nationalized bank until they attain majority. The first appellant herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months. There shall be no order as to costs. The appellants shall pay the necessary additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.2,
Tirunelveli.

Copy to

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

+1cc to Mr.T.Selvakumaran, Advocate Sr.No.75332
+1cc to Mr.K.K.Ramakrishnan, Advocate Sr.No.75159
+1cc to Mr.B.Anandan, Advocate Sr.No.75155

PJL

VB/RP/SAR4/29.08.2018/3P/7C

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