

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 11.04.2018****CORAM****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.A(MD) .No.327 of 2016****and****C.M.P(MD)No.4540 of 2016**

The Divisional Manager,
The New India Assurance Company Ltd.,
Virudhunagar.

... Appellant / 2nd Respondent

Vs.

1.Chandran

2.Rajammal

3.Minor Muthu Muniyandi

Rep. by his mother and natural
guardian - 2nd respondent.

... Respondents 1 to 3 / Petitioners

4.Siva Seng

... 4th Respondent / 1st Respondent

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.12.2015 made in MCOP No.32 of 2014 on the file of the Additional District Judge, Virudhunagar.

For Appellant : Mr.A.Ilango

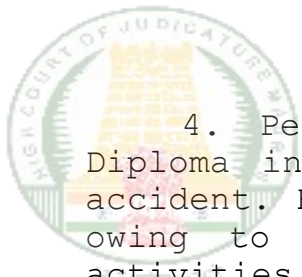
For Respondents : Mr.S.M.Mohan Gandhi for R.1 to R.3
No appearance for R.4

JUDGMENT

Assailing over the judgment and decree passed by the Motor Accident Claims Tribunal, (Additional District Judge), Virudhunagar, in M.C.O.P.No.32 of 2014 dated 22.12.2015, the present civil miscellaneous appeal has been filed.

2. Heard both sides and perused the records carefully.

3. It is a case of fatal and the appellant/insurance company, aggrieved over the compensation of Rs.12,14,000/- awarded by the tribunal, is before this Court, questioning the quantum alone. The mode of accident as well as liability are not disputed. According to the appellant/Insurance Company, the deceased is a Bachelor and therefore, the tribunal, while calculating the loss of dependency, deducted 1/2 (i.e., 50%) towards personal expenses, instead of 1/3.



4. Perusal of record shows that the deceased was studying Diploma in Electrical and Electronics Engineering at the time of accident. However, he discontinued his study prior to the accident, owing to various reasons and employed himself in agricultural activities, etc., and the tribunal has taken Rs.5,250/- as monthly income of the deceased. The Hon'ble Supreme Court, 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, the deceased was aged about 18 years at the time of accident and therefore, this Court is of the view that it would be appropriate to take the notional income of the deceased as Rs.6,000/-, instead of Rs.5,250/- per month. Admittedly, the deceased is a Bachelor and therefore, as per the settled principles of law, deduction towards personal expenses should be 50%. Insofar as future prospects is concerned, the tribunal has fixed it at 50%, however, this Court feels that 40% should be awarded towards future prospects for self employed persons.

5. Therefore, the loss of dependency arrived at by the tribunal deserves interference at the hands of this Court and the same reads as under:

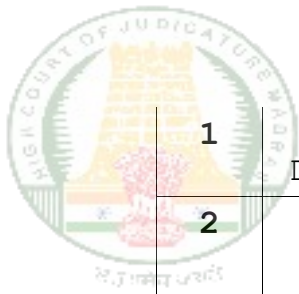
- ((Income of the deceased + future prospects) - personal expenses) is ((Rs.6,000/- + Rs.2,400/- (40%)) - Rs.4,200/- (50%)) amounts to Rs.4,200/-.
- By applying the multiplier method, it would be (Rs.4,200/- * 12 * 18) amounting to Rs.9,07,200/-.
- Therefore, the loss towards dependency is reduced and the same is fixed at Rs.9,07,200/-, instead of Rs.11,34,000/-.

6. Insofar as the other heads are concerned, it is seen that the tribunal has awarded a sum of Rs.60,000/- towards love and affection; Rs.20,000/- towards funeral expenses, which, in my considered opinion, are very meagre and therefore, this Court is inclined to enhance the compensation towards these two heads. In result, loss towards love and affection is enhanced and fixed at Rs.1,00,000/- and loss towards funeral expenses is fixed at Rs.25,000/-.

7. It is also seen that the tribunal has not awarded any sum towards amenities and on going by the facts of the case as well as after perusing the records, this Court feels that compensation towards amenities has to be ordered and accordingly, a sum of Rs.15,000/- is ordered towards amenities.

8. In result, the award of the tribunal stands modified and the same reads as under:

S.No	Head	Awarded by the tribunal	Awarded by this Court	Difference
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1	Loss of Dependency	Rs.11,34,000/-	Rs.9,07,200/-	Rs.2,26,800/- (Reduced)
2	Loss of love and affection	Rs.60,000/-	Rs.1,00,000/-	Rs.40,000/- (Enhanced)
3	Funeral expenses	Rs.20,000/-	Rs.25,000/-	Rs.5,000/- (Enhanced)
4	Loss towards amenities	NIL	Rs.15,000/-	Rs.15,000/- (Enhanced)
Total		Rs.12,14,000/-	Rs.10,47,200/-	Rs.1,66,800/- (Reduced)

9. In result, this civil miscellaneous appeal is partly allowed and

- the compensation awarded by the tribunal is reduced and fixed at Rs.10,47,200/- [Rupees Ten Lakh Forty Seven Thousand and Two Hundred only];
- The appellant/insurance company is directed to deposit the entire compensation amount awarded by this Court with interest at the rate of 7.5%, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order;
- On such deposit being made, the claimants are permitted to withdraw the same with accrued interests and costs, as apportioned by the tribunal, without filing any formal application before the Tribunal; and
- If the entire compensation awarded by the tribunal, has already been deposited, then the appellant/insurance company is at liberty to withdraw the excess amount.
- There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

gk

To
The Motor Accident Claims Tribunal,
Additional District Judge,
Virudhunagar.

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The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,



Madurai

+1 CC TO Mr. A.Ilango , Advocate, Sr.No. 60877

+1 CC TO Mr.S.M.Mohan Gandhi , Advocate, Sr.No. 60819

JAM/04/06/2018/ jc/SAR 2 / 4p-6c

C.M.A(MD) .No.327 of 2016
11.04.2018