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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	01.03.2018
Date of Judgment	15 .03.2018

DATED : 15.03.2018

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THE HONOURABLE DR.JUSTICE **S.VIMALA**
AND
THE HONOURABLE MRS.JUSTICE **T.KRISHNAVALLI**

CMA (MD) No.12 of 2018

1.Manikandan
2.Minor Swetha
3.Minor Krithika
(Minors 2 and 3 represented by
his father and next friend 1st appellant)
: Appellants/Petitioners

Vs.

1.M.Moorthy
2.The New India Assurance Company Ltd.,
rep. By its Branch Manager,
248-B, 2nd Floor,
Rekha Towers,
Kamarajar Salai,
Madurai Town, Madurai District. : Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree, dated 02.08.2017 made in MCOP No.24 of 2016 on the file of the Motor Accident Claims Tribunal (Sub Court), Aruppukottai.

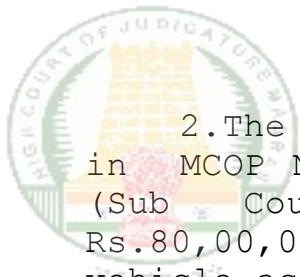
For Appellant : Mr.V.Sasi Kumar
For 1st Respondent : Dispensed with
vide order, dated 12.01.2018

For 2nd Respondent : Mr.A.Elango

J U D G M E N T

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

Challenging the award passed in MCOP No.24 of 2016, dated 02.08.2017 by the Motor Accident Claims Tribunal (Sub Court), Aruppukottai, the appellants have come forward with the present appeal.



2.The appellants 1 to 3 as claimants filed the claim petition in MCOP No.24 of 2016 before the Motor Accident Claims Tribunal (Sub Court), Arupukkottai, claiming compensation of Rs.80,00,000/- for the death of the deceased Sujatha, in a motor vehicle accident occurred on 11.03.2016.

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3.The brief facts of the case are that the deceased Sujatha is the wife of the 1st claimant and mother of the minor claimants 2 and 3. The deceased was working in the Panchayat Union Middle School at Pottithatti as a teacher. On the fateful day i.e., on 11.03.2016 at about 4.30 p.m, while the deceased Sujatha was returning home from the school in her two wheeler TN-67-J-1417 on Ramanathapuram-Paramakudi Road near Nenmeni Bus stop, a Vehicle bearing registration No.TN-65-AA-9667, which was driven by the 1st respondent came in a rash and negligent manner and dashed against the two wheeler. In the impact, the deceased fell down from the two wheeler and sustained injury on her head and all over the body and thereafter, she was taken to Paramakudi Government Hospital, where he was reported dead. A criminal case was registered by the Paramakudi Police, in Crime No.46 of 2016 under Section 304(A) IPC against the driver of the offending vehicle.

4.Before the tribunal, the claimants have examined 3 witnesses and marked 12 documents as Exs.P1 to P12. On the side of the Insurance Company, no witness was examined and no document was marked.

5.The tribunal, on proper appreciation of evidence, held that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.47,18,360/- together with interest @ 7.5% p.a. Aggrieved by the impugned award passed by the tribunal, the appellants are before this court seeking enhancement of compensation.

6.Heard **Mr.V.Sasi Kumar**, learned counsel for the appellants and **Mr.A.Elango**, learned counsel for the 2nd respondent and perused the materials available on record.

7.The learned counsel for the appellants submitted that the tribunal has failed to award future prospects especially when the deceased was working as a Secondary Grade Teacher in a Panchayat Union Middle School having permanent job and stable salary and earned Rs.39,490/- as monthly income and the tribunal has taken the monthly income of the deceased Rs.34,245/- instead of Rs.39,490/- and the award of the tribunal under the head of conventional damages is very low and it has to be enhanced.

8.On the other hand, the learned counsel for the 2nd respondent submitted that the accident was due to the negligence of the deceased herself and the claim was excessive and the award of the tribunal under the conventional heads is on the higher side.



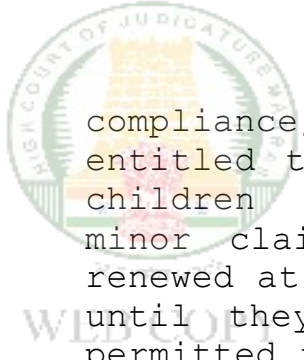
9. It is an admitted fact that the claim petition was filed by husband and minor child of the deceased.

10. In the instant case, it is not in dispute that the deceased was working as a 'teacher' in the Panchayat Union Middle School and her monthly gross salary was **Rs.39,490/-**, which is evident from PW3 and Ex.P5. It is also not in dispute that the deceased died at the age of 32 years. As per the decisions of the Hon'ble Apex Court reported in **2015(1) TN MAC 1 (SC) (Kanh Singh vs. Tukaram)** and **2015-ACJ-1612 (Chanderi Devi and another vs. Jaspal Singh and others)**, 10% has to be deducted towards Income Tax and 50% has to be added towards future prospects. After adding 50% towards future prospects, the annual income of the deceased comes to Rs.7,10,820/- (Rs.39,490/- + Rs.19,745/- x 12). After deducting 10% towards income tax, the annual income is arrived at Rs.6,39,738/- (Rs.7,10,820/- - Rs.71,082/-) and after deducting 1/3rd therefrom towards her personal expenses, the income would be Rs.4,26,492/- (Rs.6,39,738/- - Rs.2,13,246/-) and by applying proper multiplier '16', this Court awards **Rs.68,23,872/-** towards loss of dependency. As per the decision of the Hon'ble Supreme Court in the case of **Pranay Sethi**, the 1st claimant being the husband is entitled to Rs.40,000/- towards loss of consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

11. Considering the above facts, this Court is of the opinion that as per the decisions of the Hon'ble Apex Court referred supra, the award of the tribunal requires modification. The compensation awarded by the tribunal is modified as hereunder:-

S.N o	Head	Amount awarded by the tribunal [Rs.]	Amount awarded by this court [Rs.]
01	Loss of Income	43,83,360/-	68,23,872/-
02.	Loss of love & affection	2,00,000/-	1,00,000/-
03.	Loss of Consortium	1,00,000/-	40,000/-
04.	Transportation	10,000/-	10,000/-
05.	Funeral expenses	25,000/-	15,000/-
06.	Loss of Estates	-	15,000/-
	Total	47,18,360/-	70,03,872/-

12. In the result, this Civil Miscellaneous Appeal is **partly allowed**. The award of the tribunal is enhanced into **Rs.70,03,872/-** from Rs.47,18,360/-. The 2nd respondent/Insurance Company is directed to deposit the award amount as ordered by this Court, 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 1st claimant, being the husband of the deceased is entitled to Rs.20,03,872/- and the claimants 2 and 3, the minor children are entitled to **Rs.25,00,000/-** each. The share of the minor claimants shall be deposited in a Fixed Deposit to be renewed at appropriate times in any one of the Nationalized Banks, until they attain majority. The 1st appellant /1st claimant is permitted to withdraw the interest amount once in three months, if he wants, for maintaining the minor children. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To,

The Subordinate Judge,
Motor Accident Claims Tribunal,
Aruppukottai.

Copy to:

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

+ 1 cc TO Mr.V.Sasikumar , Advocate in SR No. 55336

+ 1 cc TO Mr.A.Elango , Advocate in SR No. 56120

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AE/SV MMS/SAR4/11.04.2018/4P/6C

Judgment made in
C.M.A(MD)No.12 of 2018
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