BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.691 of 2014

1)M.Meena
2)M.Pavithra
(2nd appellant declared as major and guardianship discharged vide court order dated 5.2.16 made in M.P(MD).1/15 in CMA(MD).691/14
3)Minor M.Avinash
(Minor Appellant No.3 is represented through his mother and next friend 1st appellant Mrs.M.Meena)
4)M.Ponnusamy
5)Mrs.P.Ponnuthai ... Petitioners/Appellants

vs.

1)C.Vadivel
2)The Branch Manager,
Oriental Insurance Co.Ltd.,
K.J.R.Complex,
No.16, North Veli Street,
Madurai-625 001.
(The 1st respondent remained set exparte hence he is given up) ... Respondents/ Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.4 of 2011 on the file of Motor Accident Claims Tribunal/Sub Court, Periyakulam, dated 08.03.2013.

For Appellant : Mr.K.Kumaravel

For Respondents : Mr.K.Bhaskaran

JUDGMENT

This Civil Miscellaneous has been filed against the judgment and decree in MCOP.No.4 of 2011 dated 08.03.2013 on the file of Motor Accident Claims Tribunal/Sub Court, Periyakulam.

2.In an accident which occurred on 18.11.2010, one M.P.Murugan died. Wife, two children and parents of the deceased laid a claim petition before the Tribunal claiming compensation of Rs.12,00,000/-. The 2nd respondent insurance company resisted the claim. After considering the oral and documentary evidence adduced on either side, the Tribunal held that the driver of the Auto insured with the 2nd respondent company was responsible for the accident and therefore, directed the 2nd respondent company to pay compensation of Rs.6,27,500/- with interest at 9% per annum to the appellants/claimants. Seeking enhancement on the quantum of compensation, the appellants/claimants have filed the present appeal.

3.Though the appellants in the memorandum of grounds of appeal have sought for enhancement under all heads, learned counsel for the appellants would emphasize his contention only to the fixation of monthly income of the deceased by stating that as per the decision of the Hon'ble Supreme Court in *Syed Sadiq vs. United India Insurance Co.Ltd., reported in 2014 (1) TN MAC 459 (SC)*, the Tribunal ought to have determined the income of the deceased as Rs.6,500/-.

4.Perusal of the records shows that the appellants/claimants have marked Ex.P4 to prove that the deceased was earning Rs.4,500/- per month by working in a private company. Apart from that, the appellants have claimed that the deceased was earning Rs.6,000/- per month from a small dairy farm. However, in the absence of proof, the Tribunal fixed the income of the deceased as Rs.4,500/- as per Ex.P4.

5.As regards the monthly income of a labour involved in an unorganised sector, referring to a judgment reported in *2011(13) SCC 236, Ramchandrappa vs. Manager, Royal Sundaram Alliance Co. Limited.*, the Apex Court in Syed Sadiq's case, has held as follows:-

> ''*8.The appellant/claimant in his appeal further claimed that he had been earning Rs.10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs.3500/- p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in the case of Ramchandrappa v. Manager, Royal Sundaram Alliance Company Limited, 2011(13)SCC 236, has held as under:*
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> > *''13.In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a Coolie and was earning Rs.4500/- per month at the*

time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3000/- p.m. Secondly, the Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14.We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, Appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to Rs.150/- per day or Rs.4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the Appellant from Rs.4500/- to Rs.3000/- per month. We, therefore, accept his statement that his monthly earning was Rs.4500/-."

9. There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month.''

6.Following the above judgment, this Court is inclined to fix the monthly income of the deceased as Rs.6,500/-. After deducting 1/3rd towards the personal expenses of the deceased and applying '15' multiplier according to the age of the deceased namely, 44, the loss of income works out to Rs.7,79,940/-. (Rs.4,333x12x15). Except the above, the award under the other heads are confirmed. Accordingly, quantum of compensation is modified as hereunder:-

Loss of income	=	Rs.7,79,940/-
Loss of consortium	=	Rs. 10,000/-
Funeral expenses	=	Rs. 10,000/-
Total	=	Rs.7,99,940/-
(Less) Amount awarded by the Tribunal	=	Rs.6,27,500/-
Enhanced compensation	=	Rs.1,72,440/-

7.For the enhanced compensation, rate of interest is fixed as 7.5%. Accordingly, the appellants/claimants are entitled to enhanced compensation of Rs.1,72,440/- with interest at 7.5% per annum from the date of petition till the date of deposit, in addition to the compensation of Rs.6,27,500/- awarded by the Tribunal with interest at 9% per annum from the date of petition till the date of deposit. The 2nd respondent insurance company is directed to deposit the compensation of Rs.7,99,940/- with interest as stated above, less the amount already deposited, if any, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellants 1, 2, 4 and 5 are permitted to withdraw their respective shares in the modified compensation with proportionate accrued interest in the ratio fixed by the Tribunal without filing any formal petition. The share of the 3rd appellant/minor shall be deposited in a Nationalised Bank till he attains majority and the interest on such deposit is permitted to be withdrawn by the 1st appellant/mother of minor once in three months directly from the bank.

Accordingly, the Civil Miscellaneous Appeal is allowed in part. No costs.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To
The Subordinate Judge,
Motor Accident Claims Tribunal/Sub Court,Periyakulam.

Copy To : The Record Keeper, Vernacular Records.
Madurai Bench of Madras High Court, Madurai (2 copies)
+1 cc to Mr.K.Kumaravel, Advocate, IN SR No.60891
+1 cc to Mr.K.Bhaskaran, Advocate, IN SR No.60978

CMA(MD)No.691 of 2014
12.04.2018

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