



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2018

WEB COPY

CORAM:

**THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI**

C.M.A. (MD) No.172 of 2018
and
C.M.P. (MD) Nos.2535 and 5315 of 2018

The Branch Manager
The Oriental Insurance Company Limited,
No.3607/21, Sathiyamoorthi Salai,
Second Floor, Team Hospital Near,
Pudukkottai.

: Appellant/2nd Respondent

Vs.

1.Vimala
2.Minor Vasandh
3.Minor Krishna
4.Minor Vishva
(Minor R2 to R4 represented
by their guardian and mother
R1 Vimala)
5.Palanivelu
6.Marikannu
7.Iruthayaraj
(7th respondent remained ex-parte
before the lower court)

: Respondents 1 to 6/
Petitioners 1 to 6
: 7th Respondent/
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree made in M.C.O.P.No.746 of 2015, dated 25.5.2017, on the file of the Motor Accident Claims Tribunal-cum- Special Court for E.C.& NDPS Act cases, Additional District Judge, Presiding Officer, Pudukkottai.

For Appellant : M/s.K.Bhaskaran
For Respondents : Mrs.A.Banumathy
1 to 6

<https://hcservices.ecourts.gov.in/hcservices/>
For Respondent-7 : No appearance

**JUDGMENT**

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

Aggrieved over the award, dated 25.05.2007 passed by the Motor Accident Claims Tribunal-cum-Special Court for EC & NDPS Act cases (Additional District Judge/Presiding Officer), Pudukkottai, in MCOP No.746 of 2015, the Insurance Company has filed the present Civil Miscellaneous Appeal.

2.The brief facts of the case are that on 28.09.20015 at about 10.45 pm, the deceased Ravichandran was riding his motor cycle bearing registration No.TN-55-AA-4002 from Pudukkottai after crossing the Karuveppilan Level Crossing from south to north, at that time, a car bearing registration No.55-AD-6459 belonging to the first respondent came towards south in a rash and negligent manner and hit against the deceased. In that process, the deceased Ravichandran sustained fatal injuries and immediately, he was taken to Pudukkottai District Head Quarters Hospital, where he was declared as dead.

3.The claim was resisted by the appellant Insurance Company disputing the quantum of compensation awarded by the Tribunal.

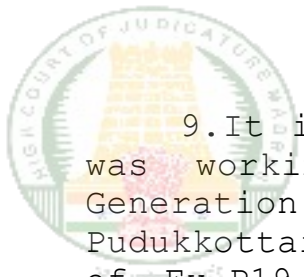
4.Before the Tribunal, on the side of the claimants, three witnesses viz., PW1 to PW3 were examined and 23 documents viz., Exs.P1 to P23 were marked and on the side of the appellant/Insurance Company, one Saravanan was examined as RW1 and court documents Exs.X1 and X2 were marked.

5.The Tribunal, on proper appreciation of the evidence, both oral and documentary, came to the conclusion that the driver of the offending vehicle caused the accident and awarded Rs.34,20,360/- towards compensation together with interest @ 7.5% p.a. Against the said award, the appellant/Insurance Company has filed the present appeal.

6.Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 6 and perused the materials available on record.

7.The manner 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.

8.It is contended by the learned counsel for the appellant that the award of the tribunal is on the higher side, so the quantum is to be reduced. On the other hand, the learned counsel for the claimants submitted that the award is reasonable, which does not warrant any interference of this court.



9.It is seen from the records that the deceased Ravichandran was working as Basic Servant (Mazdoor) in the Tamil Nadu Generation and Distribution Corporation Limited, SIPCOT, Pudukkottai and he was earning monthly at Rs.14,224/-. A perusal of Ex.P19 Pay Certificate reveals that the deceased was paid Rs.14,224/- per month. Based on the evidence, the Tribunal fixed the income at Rs.14,224/- and by adding 50% towards future prospects, calculated the total income at Rs.21,336/- and after deducting 1/4th towards personal and living expenses, the contribution was taken as **Rs.16,002/-** (Rs.21,336/- - Rs.5,334/-).

10.From the perusal of the salary certificate, it is seen that at the time of accident, the deceased was getting Rs.14,224/- per month. So the monthly income is fixed at Rs.14,224/- and after adding 40% towards future prospects and by applying multiplier 15, the monthly income is arrived at Rs.35,84,520/- (Rs.14,224/- + Rs.5,690/- x 12 x 15). After deducting 1/4th towards his personal expenses, the loss of dependency is arrived at **Rs.26,88,390/-** (35,84,520/- - 8,96,130/-).

11.As per the decision in **Pranay Sethi**, 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.27,58,390/- together with interest @ 7.5% p.a.

12.In the result, this Civil Miscellaneous Appeal is **partly allowed**. The award is reduced to **Rs.27,58,390/-** from Rs.34,20,360/-. The appellant Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, within a period of eight weeks from the date of receipt of the judgment copy. On such deposit, the claimants 1, 5 and 6 are permitted to withdraw their share with accrued interest and costs as per the apportionment of the tribunal without filing any formal petition before the tribunal. The share of the minor claimants 2 to 4 shall be deposited in any one of the Nationalised Bank, in a Fixed Deposit scheme, till they attain majority. The first respondent, being the mother and natural guardian of the minors, is permitted to withdraw the accrued interest on the fixed deposit once in three months for the welfare of the minors. The excess amount shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/



To

1. The Additional District Judge/Presiding Officer,
Special Court for E.C and NDPS Act cases,
Pudukkottai.

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

+ 1 CC TO Mr.K.BHASKARAN, ADVOCATE IN SR No. 74859
+ 1 CC TO M/s.A.BANUMATHY, ADVOCATE IN SR No. 75411

VSN

TE/SKN/SAR-2 : 25/09/2018 : 4P/6C

JUDGMENT MADE IN
C.M.A. (MD) No.172 of 2018 and
C.M.P. (MD) Nos.2535 and
5315 of 2018
25.07.2018