



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) .No.184 of 2018

1.Saroja

2.Minor Sivasankari

3.Minor Kayathri

4.Minor Muthuselvi

Minor appellants 2 to 4 represented through

their guardian and mother Saroja ... Appellants/Claimants

Vs.

1.Durai Pandian

2.The Branch Manager,

The National Insurance Company Ltd.,

1st Floor, 7/1-West Car Street,

Sivakasi - 626 123.

... Respondents/Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.03.2013, made in MCOP No.149 of 2010 on the file of Motor Accident Claims Tribunal/ Additional District Judge, Virudhunagar.

For Appellants : Mr.S.M.Mohan Gandhi

For Respondents : Mr.B.Thanga Aravind - for R1

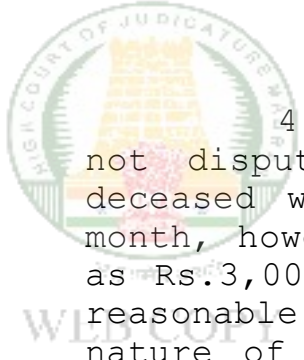
Mr.A.Ilango - for R2

JUDGMENT

Assailing over the judgment and decree passed by the Motor Accident Claims Tribunal/ Additional District Judge, Virudhunagar in M.C.O.P.No.149 of 2010 dated 14.03.2013, the present civil miscellaneous appeal has been filed.

2. Heard the learned Counsel appearing for the respective parties and perused the records carefully.

3. It is a case of fatal and the appellants/claimants, being dissatisfied with the compensation of Rs.4,49,000/- awarded by the tribunal, is before this Court, seeking enhancement. According to the appellants/claimants, because of the accident in question, they had lost the sole bread winner of their family. However, the tribunal has awarded a meagre sum and therefore, they pray for enhancement.



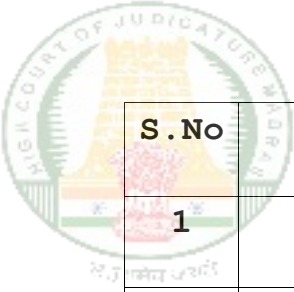
4. The manner of accident as well as the liability are not disputed. On a perusal of records, it is seen that the deceased was working as mason, earning a sum of Rs.7,500/- per month, however, the tribunal has fixed the income of the deceased as Rs.3,000/- per month, which, in my considered opinion, is not reasonable. Considering the age of the deceased as well as the nature of job, this Court fixes a sum of Rs.4,500/- as monthly income of the deceased, which would be reasonable. It is also seen from the records that no compensation was awarded towards future expenses. 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 25% towards future prospectus is reasonable for persons in the age group 40-50. Admittedly, the age of the deceased at the time of the accident was 40 years and therefore, by applying the above principle, future prospectus is fixed at 25%.

5. It is also seen that the tribunal has deducted 1/3 towards personal expenses, however, this Court is of the view that the tribunal, taking into consideration the number of dependents, in which there are three daughters, ought to have deducted 1/4 towards personal expenses. It is also seen that the tribunal has taken the multiplier as 16, however, considering the age of the deceased and by applying the principle laid down in **Sarala Verma v. Delhi Transport Corporation**, the appropriate multiplier should be 15 instead of 16. Hence, the award passed by the tribunal under the head dependency needs interference and the same reads as under:

- ((Income of the deceased + future prospects) - personal expenses) is ((Rs.4,500/- + Rs.1,125/- (25%)) - Rs.1,406/- (1/4)) amounts to Rs.4,219/-.
- By applying the multiplier method, it would be (Rs.4,219/- * 12 * 15) amounting to Rs.7,59,420/-.
- Therefore, the loss towards dependency is enhanced and the same is fixed at Rs.7,59,420/-, instead of Rs.3,84,000/-.

6. Other than dependency, the tribunal has awarded compensation on four heads, viz., Rs.10,000/- for funeral expenses; Rs.20,000/- for loss of consortium; Rs.10,000/- for transportation; and Rs.25,000/- for loss of love and affection, totalling a sum of Rs.65,000/-. Going by the facts and circumstances of the case and also the affliction faced by the appellants, this Court is inclined to enhance the compensation towards loss of love and affection and consortium. Accordingly, a sum of Rs.40,000/- is fixed towards loss of love and affection and a sum of Rs.30,000/- is fixed towards loss of consortium.

7. In result, this civil miscellaneous appeal is allowed and the modified award reads thus:



S.No	Head	Awarded by the tribunal	Awarded by this Court	Difference
1	Loss of dependency	Rs.3,84,000/-	Rs.7,59,420/-	Rs.3,75,420/-
2	Loss of consortium	Rs.20,000/-	Rs.30,000/-	Rs.10,000/-
3	Transportation	Rs.10,000/-	Rs.10,000/-	Nil
4	funeral expenses	Rs.10,000/-	Rs.10,000/-	Nil
5	Love and affection	Rs.25,000/-	Rs.40,000/-	Rs.15,000/-
Total		Rs.4,49,000/-	Rs.8,49,420/-	Rs.4,00,420/-

- The 2nd respondent is directed to deposit the entire sum of Rs.8,49,420/- [Rupees Eight Lakh Forty Nine Thousand Four Hundred and Twenty only] towards compensation with interest @ 7.5% per annum for the enhanced amount from the date of appeal till the date of realization, less the sum already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.
- On such deposit, the appellants/claimants are permitted to withdraw their respective shares with accrued interests and costs as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.
- The Tribunal is directed to deposit the shares of the minor children in a nationalized bank until they attains 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.

Sd/-
Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

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



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

+ 1 cc TO Mr.B.Thanga Aravindh , Advocate in SR No. 60898
+ 1 cc TO Mr.A.Ilango , Advocate in SR No. 60878
+ 1 cc TO Mr.S.M.Mohan Gandhi , Advocate in SR No. 61146

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AE/MMS/SAR2/30.05.2018/4P/7C

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