



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2018

CORAM

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

C.M.A(MD)No.73 of 2018
and
CMP(MD)No.1135 of 2018

United India Insurance Company Ltd.,
through its Branch Manager,
Karuvelil Buildings,
Parumala Kadavu,
Mannar, Azhapuzha-689 622.
Kerala State.

: Appellant/2nd Respondent

Vs.

1.Rajammal
2.Minor Sivakumar
3.Minor Eswari
4.Angammal
5.Appaiya
6.Alagaiya

: R1 to R5/Petitioners
: R6/1st respondent

[R2 and R3 are represented by their
mother and natural guardian 1st respondent]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicle Act, 1988, against the judgment and decree, dated
31.08.2017 passed in MCOP No.46 of 2014 by the Motor Accident
Claims Tribunal (Sub Court), Arupukkottai.

For Appellant : Mr.G.Prabhu Rajadurai
For R1 to R5 : Mr.V.Sasikumar

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.46 of 2014, dated
31.08.2017, by the Motor Accident Claims Tribunal (Sub Court),
<https://hcservices.ecourts.gov.in/hcservices/> Arupukkottai, the Insurance Company has come forward with the
present appeal.



2.The respondents 1 to 5 as claimants filed the claim petition in MCOP No.46 of 2014, before the Motor Accident Claims Tribunal (Sub Court), Arupukkottai, claiming compensation of Rs.45,00,000/- for the death of the deceased Balamurugan, in a motor vehicle accident occurred on 09.05.2014.

3.The brief facts of the case are that on 09.05.2014 at 10.15 a.m, while the deceased Balamurugan was riding his two wheeler bearing registration No.TN-67-H-6439 on Madurai-Tuticorin National Highways, suddenly crossed the road nearing Koppu Chittampatti Vilaku. At the time, a Maruthi Alto bearing registration No.KL-30-9639 hit against the two wheeler. Due to the impact, the deceased sustained injuries all over the body and succumbed to injuries on the spot. A criminal case was registered by the Panthalgudi Police, in Crime No.34 of 2014 under Sections 279 and 304(A) IPC against the driver of the offending vehicle.

4.Before the tribunal, the claimants have examined three witnesses and marked Exs.P1 to P7. 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.38,06,600/- together with interest @ 7.5% p.a. Aggrieved by the impugned award passed by the tribunal, the appellant Insurance Company is before this court.

6.Heard Mr.G.Prabhu Rajadurai, learned counsel for the appellant and Mr.V.Sasikumar, learned counsel for the respondents 1 to 5 and perused the materials available on record.

7.The learned counsel for the appellant/Insurance Company submitted that the tribunal has failed to consider the fact that the accident happened in the middle of the road, due to the negligence on the part of the deceased and the deceased was not wearing helmet at the time of the accident. It is further submitted that the tribunal has erroneously calculated the future prospectus @ 50%, instead of 40% and the award of the tribunal under other conventional heads is on the higher side.

8.On the other hand, learned counsel for the respondents 1 to 5 submitted that on the basis of evidence produced by the claimants, the tribunal has passed the award and prayed for dismissal of the appeal.

9.The nature of accident and the finding on negligence are not in dispute and this appeal is confined only to the quantum of compensation awarded by the tribunal.

10. In the instant case, the tribunal has fixed the age of the deceased as 35 years, based on the evidence of PW1 and Ex.P4 (Postmortem Certificate). Perusal of Exs.P6 and P7 salary certificate and employment identity card of the deceased reveal that the deceased was earning Rs.15,600/- per month. The tribunal, based on the evidence, fixed monthly salary at Rs.15,600/- and by adding 50% towards future prospectus, calculated the monthly income of the deceased at Rs.23,400/- (Rs.15,600/- + Rs.7,800/-). After deducting 1/4th towards personal and living expenses and by applying multiplier '16', the tribunal has awarded Rs.33,69,600/- towards loss of income; Rs.1,00,000/- towards loss of consortium; Rs.3,00,000/- towards love and affection and Rs.25,000/- towards funeral expenses; Rs.10,000/- for transportation and Rs.2,000/- for damages on cloths. In total, the tribunal has awarded Rs.38,06,600/- as compensation together with interest @ 7.5% p.a.

11. The main contention raised on the side of the appellant is that the tribunal without considering the age of the deceased, has applied 50% of the salary for grant of future prospectus, which is on the higher side and the award of the tribunal under other conventional heads is excessive.

12. As regards quantum, it is not in dispute that the deceased was 35 years old on the date of accident and he was drawing a salary of Rs.15,600/- per month. Hence, as per the decision reported in 2017(13) SCALE 12 (National Insurance Company Limited vs. Pranay Sethi and others), by adding 40% towards future prospectus, the income of the deceased is arrived at Rs.21,840/- (Rs.15,600/- + Rs.6240/-). After deducting 1/4th towards his personal and living expenses and by applying multiplier 16, this court calculates the loss of income at Rs.31,44,960/-. Further, as per the decision in the case of Pranay Sethi, the award of the tribunal, on conventional heads require modification. The compensation awarded by the tribunal is modified as hereunder:-

S.No	Head	Amount awarded by the tribunal [Rs.]	Amount awarded by this court [Rs.]
01	Loss of Income	33,69,600/-	31,44,960/-
02.	Loss of love & affection	3,00,000/-	Nil
03.	Loss of Consortium	1,00,000/-	40,000/-
04.	Transportation	10,000/-	10,000/-
05.	Funeral expenses	25,000/-	15,000/-
06.	Damages on cloths	2,000/-	2,000/-
07.	Loss of Estates	-	15,000/-
	Total	Rs.38,06,600/-	32,26,960/-



13. In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the tribunal is modified into Rs.32,26,960/- as against Rs.38,06,600/-. The appellant/Insurance Company is directed to deposit the modified award amount, 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 wife of the deceased as well as the dependant of the deceased is entitled to Rs.8,26,960/- and the claimants 2 and 3, the minor children are entitled to Rs.9,00,000/- each and the 4th claimant mother of the deceased is entitled to Rs.4,00,000/- and the 5th claimant father of the deceased is entitled to Rs.2,00,000/-. The share of the minor claimants shall be deposited in a Fixed Deposit in any one of the Nationalized Banks, until they attain majority. The 1st respondent/1st claimant is permitted to withdraw the interest amount once in three months, if she wants, for maintaining the minor children. The appellant is permitted to withdraw the excess amount, if any. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Sub Judge,
Motor Accident Claims Tribunal, Aruppukottai.

Copy to:

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

+1. C.C. to M/S.G.PRABHU RAJADURAI, Advocate, SR.No.48549.

+1. C.C. to M/S.V.SASI KUMAR, Advocate, SR.No.48353.

Judgment made in
C.M.A (MD) No.73 of 2018
13.02.2018

ER

SDS/GT/SAR.4/19.03.2018/4P/6C