



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	13.07.2018
Date of Judgment	01.08.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)Nos.808 and 809 of 2016

M/s.National Insurance Company Limited,
Represented though its Divisional Manager,
Divisional Office, Door No.3, North Veli Street,
Madurai-625 001. : Appellant/2nd Respondent
(in both Appeals)

Vs.

1.S.Vijayarampal
2.S.Sakthikumaran : R1 and R2/Petitioners

3.N.Kamaraj : R3/1st Respondent
(R3 Exparte in tribunal: Notice dispensed with)
(in both Appeals)

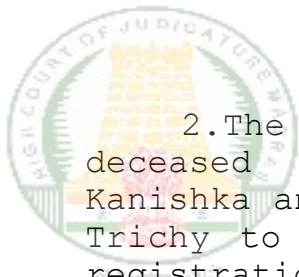
COMMON PRAYER:- Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act, 1988 against the award made in MCOP Nos.812 and 816 of 2010, dated 26.07.2012 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Madurai.

In both Appeals

For Appellant : Mr.J.S.Murali
For R1 and R2 : Mr.N.Sudhagar Nagaraj
For 3rd Respondent : Ex-parte

COMMON JUDGMENT**(Judgment of the court was delivered by T.KRISHNAVALLI,J)**

These appeals have been filed challenging the common award passed by the Motor Accident Claims Tribunal (IV Additional District Judge), Madurai, in MCOP Nos.812 and 816 of 2010, dated 26.07.2012.



2.The brief facts of the case is that on 13.01.2010 the deceased Sundaravel along with his wife Renugadevi, daughter Kanishka and son Vijayarampal and Sakthikumaran were proceeding from Trichy to their native Tuticorin in his Maruthi Omni Car bearing registration No.TN-01-H-1843 to cerebrate the Pongal festival. While the Car proceeding near Ambalakaranpatty deviation road on Trichy-Madurai Highways at 10.30 am, the Van bearing registration No.TN-49-F-0126 belonging to the 1st respondent came from south to north in its wrong track without adhering to road rules driven by its driver in a rash and negligent manner and hit against the Maruthi Car. In the impact, the wife and daughter of the deceased Sundaravel were died on the spot, while the deceased Sundaravel and others sustained severe injuries and they were taken to Government Rajaji Hospital, but on the way to the hospital Sundaravel died. The claimants have filed the claim petition claiming compensation of Rs.90,00,000/- on the ground that the driver of the offending vehicle caused the accident.

3.Before the tribunal, on the side of the claimants, 7 witnesses were examined as PW1 to PW7 and marked 41 documents. On the side of the Insurance Company, no witness was examined and no document was marked.

4.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.35,85,000/- in respect of MCOP No.812 of 2010 and Rs.22,48,328/- in respect of MCOP No.816 of 2010/- together with interest @ 7.5% p.a.

5.The learned counsel for the appellant submitted that though this appeal has been filed on various grounds, they only challenged the quantum of compensation awarded by the tribunal. It is further submitted that it is a fit case for applying split multiplier, but the tribunal by applying normal multiplier, awarded excessive compensation.

6.Per contra, the learned counsel for the respondents 1 and 2/claimants submitted that the award of the tribunal is based on the evidence and it is also reasonable and hence, it has to be confirmed.

CMA(MD)No.808 of 2016:-

7.As regards quantum, it is not in dispute that the deceased Sundaravel was serving as Manager in BHEL and he was earning a sum of Rs.83,846/- per month. The tribunal, on the basis of the evidence and averments made in the claim petition, fixed the age of the deceased as '59' and fixed the net monthly income at Rs.48,246/-.

8.With regard to quantum, PW1 has deposed that the deceased was working as Manager in BHEL, Trichy at the time of the accident.

Ex.P17 salary certificate shows that the deceased was drawing Rs.48,246/- as net pay per month. The tribunal has fixed the monthly salary of the deceased at Rs.48,246/-. Ex.P9 postmortem certificate reveals that the deceased died at the age of 59. By applying multiplier '9' and after deducting $1/3^{\text{rd}}$ from the salary of the deceased for his personal expenses, the tribunal has awarded Rs.34,73,712/- towards loss of income. The tribunal has awarded Rs.70,000/- towards Car Damages; Rs.1,000/- for Damage to dress materials; Rs.5,000/- towards transport expenses; Rs.10,000/- for funeral expenses; Rs.10,000/- towards loss of love and affection; Rs.10,085/- for medical expenses and Rs.5,000/- towards loss of estate. In total, the tribunal has awarded Rs.35,85,000/- to the claimants along with interest @ 7.5% p.a.

9.As stated above, the tribunal, while calculating the loss of income applied multiplier of '9'. However, as per the decision of Sarla Verma, the proper multiplier would be '8'. Since the deceased died at the age of 59 years, as per the decision in Sarla Verma, the claimants would be entitled additional 15% towards future prospects and $1/3^{\text{rd}}$ has to be deducted towards personal and living expenses. As per the above calculation, the monthly loss of contribution to the family works out to Rs.36,988/- (Rs.48,246/- + Rs.7,236/- - Rs.18,494/-). By applying proper multiplier '8', this Court awards Rs.35,50,848/- (Rs.36,988/- x 12 x 8)].

10.As per the decision of the constitution Bench in National Insurance Company Limited V. Pranay Sethi and Others, 2017(13) SCALE 12, this Court modifies the awards under the heads of conventional damages. In this manner, the compensation that is payable to the claimants is worked out as under:-

Head	Award of the tribunal	Award of this court
Loss of Income	Rs.34,73,712/-	Rs.35,50,848/-
Car Damage	Rs. 70,000/-	-
Damage to dress materials	Rs. 1,000/-	-
Transport expenses	Rs. 5,000/-	-
Funeral expenses	Rs. 10,000/-	Rs. 15,000/-
Love and Affection	Rs. 10,000/-	-
Medical Expenses	Rs. 10,085/-	-
Loss of Estate	Rs. 5,000/-	Rs. 15,000/-
Total	Rs.35,84,797/-	Rs. 35,80,848/- (R/O. Rs.35,80,000/-)

CMA (MD) No.809 of 2016;-

11.MCOP No.816 of 2010 was also filed by the claimants in MCOP No.812 of 2010 for the death of their mother in the same accident. It is not in dispute that the deceased is the mother of the claimants. It is seen from the records that the tribunal, by relying upon the decision of the Hon'ble Apex Court reported in 2010 (2) TN MAC 129 (SC), has taken the 1/3rd gross monthly income of the deceased. It is also seen from the records that the tribunal has taken the monthly income of the deceased as Rs.63,846/-, whereas the gross monthly income of the deceased Sundarraaj, who is the husband of the deceased Renukadevi was taken as Rs.48,246/-.

12.In the recent decision reported in 2018(1) T.A.C.3 (SC) (Laxmindhar Nayak and others Vs. Jugal Kishore Behera and others), the Hon'ble Apex Court has fixed the monthly income of the deceased home maker as Rs.4,500/-. In view of the latest decision of the Hon'ble Apex Court, this court thought it fit to fix the income of the deceased Renukadevi as Rs.4,500/-. After deducting 1/3rd for personal expenses, contribution of deceased towards the family is calculated at Rs.3,000/- per month.

13.As stated above, the tribunal, while calculating the loss of income applied proper multiplier '13'. Adopting the multiplier of 13 loss of dependency is calculated at Rs.4,68,000/- (Rs.3,000/- x 12 x 13]. As per the decision of the Constitution Bench in Pranay Sethi's case, this Court modifies the awards under the heads of conventional damages. In this manner, the compensation that is payable to the claimants is worked out as under:-

Head	Award of the tribunal	Award of this court
Loss of Income	Rs.22,13,328/-	Rs.4,68,000/-
Loss estate	Rs. 5,000/-	Rs. 15,000/-
Transport expenses	Rs. 10,000/-	-
Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-
Love and Affection	Rs. 10,000/-	-
Total	Rs.22,48,328/-	Rs.4,98,000/-

14.In the result, both Civil Miscellaneous Appeals are disposed of on the above terms. The award passed in respect of MCOP No.812 of 2010 is modified as Rs.35,80,000/- and the award passed in MCOP No.816 of 2010 is modified as Rs.4,98,000/- as against <https://hsr.sirguda.gov.in/services/> The interest at the rate of 7.5% is maintained. The appellant Insurance Company is directed to deposit the entire modified amount, less the amount already deposited, within a period



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of eight weeks from the date of receipt of the judgment copy. On such deposit, the both claimants are entitled to withdraw equal share along with accrued interest and costs. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To,

1. The IV Additional District Judge,
The Motor Accident Claims Tribunal,
Madurai.

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

+2CC to Mr.J.S.Murali, Advocate, SR.No. 76446,76447

+1CC to Mr.N.Sudhagar Nagaraj, Advocate, SR.No.76456

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01.08.2018

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