

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 06.09.2018

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI**C.M.A. (MD) No.478 of 2018**

1.M.S.Vasanthi

2.D.J.Abirami

..Appellants/Petitioners

Vs.

1. Senthil

2. R.Rajeshwari

3. M/s.Future General Insurance Company Ltd.,

Through its Authorized Officer,

Sri Ram Centre,

3rd Floor, Door No.180,

P.P.Savadyi,

Theni Main Road,

Madurai-625 016.

4. S.Murugesan

5. M/s.Iffco Tokio General Insurance Company Ltd.,

Through its Authorised Officer,

Door No.82, Preetham Plaza,

Ground Floor, 1st Floor,

Chandragandhi Nagar,

Ponmeni,

Madurai-625 016.

(The claim petition was dismissed
as against the respondents 4 & 5
and therefore they are given up
in the above appeal)

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act,
1988, to enhance the quantum of compensation awarded in Judgment
and Decree, dated 09.08.2017 passed in M.C.O.P.No.606 of 2014, on
the file of Learned Special District Judge/MACT (In-charge),
Madurai.

For Appellants

: Mr.I.Suthakaran

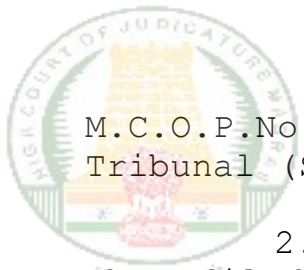
For R3

: Mrs.K.R.Shiva Shankari

* * * * *

JUDGMENT

THIS Civil Miscellaneous Appeal has been filed by the
appellants-claimants against the award, dated 09.08.2017, made in



M.C.O.P.No.606 of 2014, passed by the Motor Accident Claims Tribunal (Special District Judge (In-charge)) Madurai.

2.The appellants are claimants in M.C.O.P.No.606 of 2014. They filed the claim petition against the respondents claiming a sum of Rs.1,00,00,000/- (One Crore Only) for the death of one D.J.Venkatasubramanian, son of the first appellant and the brother of the second appellant. Before the Tribunal, except the third respondent, all other respondents were remained ex-parte. The Tribunal considering the pleadings, oral and documentary evidence, awarded a sum of Rs.25,19,220/-.

3.Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal.

4.The learned counsel appearing for the appellants contended that the Tribunal had wrongly applied the multiplier of '11' taking into consideration the age of the first appellant, who is the mother of the deceased. The Tribunal ought to have applied the correct multiplier of '18' taking into consideration the age of the deceased. The Hon'ble Apex Court in the judgment reported in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., vs. Pranay Sethi and others]** held that the age of the deceased should be basis for adopting the multiplier method. The learned counsel appearing for the appellant further contended that the Tribunal has awarded meagre amounts on other heads.

5.Per contra, the learned counsel appearing for the third respondent contended that the deceased was bachelor at the time of accident and the age of the dependants are the basis for arriving at loss of income to the claimants. The Tribunal has applied the correct multiplier. The Tribunal erred in awarding a sum of Rs.1,00,000/- towards loss of love and affection and prayed for dismissal of the appeal.

6.I have heard the learned counsel appearing for the appellant and the third respondent and perused the materials available on record. The respondents 1,2,4 & 5 remained ex-parte and hence, notice to the respondents 1,2, 4 & 5 is dispensed with.

7. The first point is to be decided in the present appeal is, whether the Tribunal is correct in applying the multiplier of '11' based on the age of the mother of the deceased or whether the Tribunal ought to have applied multiplier of '18' taking into account the age of the deceased. The Tribunal has taken the age of the mother of the deceased and applied multiplier of '11' based on the judgment reported in **CDJ 2016 BHC 12328 United India Insurance Company Ltd., & another vs. Sobha Amarsingh Rajput & others**. The Hon'ble Apex Court in the judgment reported in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., vs. Pranay Sethi and**



others] held that the age of the deceased should be the basis for applying the multiplier.

8. In view of the judgment of the Hon'ble Apex Court, the order of the Tribunal taking the age of the mother of the deceased, is not correct. The Tribunal is ought to have taken the age of the deceased for applying the multiplier. The deceased was 23 years at the time of accident. As per the judgment reported in **2009(2)TN MAC 1 (SC) Sarla Verma v. Delhi Transport Corporation**, the correct multiplier is '18'. By applying the multiplier '18', instead of '11', the appellants are entitled to a sum of Rs.39,24,360/- (2,18,020 x 18) towards loss of income.

9. In the Judgment of the Hon'ble Apex Court referred to above, the Apex Court has not awarded any amount towards loss of love and affection, transportation and damage to clothes.

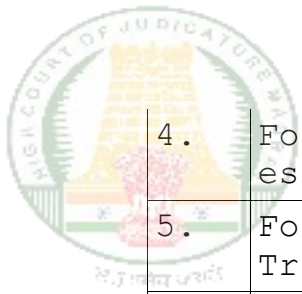
10. Applying the ratio in the judgment, a sum of Rs.1,00,000/- awarded by the Tribunal towards loss of love and affection, Rs.10,000/- towards transportation and Rs.1,000/- towards damage to cloths, are set aside.

11. Similarly, a sum of Rs.10,000/- (Rupees Ten Thousand Only) was awarded by the Tribunal towards funeral expenses. This Court finds that the same is very meagre and therefore, a sum of Rs.15,000/- (Rupees Fifteen Thousand Only) is awarded by this Court towards funeral expenses. Further, a sum of Rs.15,000/- (Rupees Fifteen Thousand Only) is awarded towards loss of estate.

12. The rate of interest awarded by the Tribunal at 7.5% per annum is confirmed.

13. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	23,98,220	39,24,360	enhanced
2.	For loss of love and affection	1,00,000	-	Set aside
3.	For loss of funeral expenses	10,000	15,000	enhanced



4.	For loss of estate	-	15,000	awarded
5.	For Transportation	10,000	-	Set aside
6.	For loss to cloths	1,000	-	Set aside
	Total	Rs.25,19,220	Rs.39,54,360	By enhancing a sum of Rs.14,35,140/-

14. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.25,19,220/- (Rupees Twenty Five Lakhs Nineteen Thousand Two Hundred and twenty only) to a sum of **Rs.39,54,360/-** (Rupees Thirty Nine Lakhs Fifty Four Thousand and Three Hundred and Sixty only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The third respondent Insurance Company is directed to deposit the enhanced award amount, less the amount already deposited, if any, along with accrued interest and costs to the credit of M.C.O.P.No.606 of 2014, on the file of the Special District Judge/MACT (In-charge), Madurai, within a period of **eight weeks** from the date of receipt of copy of this judgment;

(iii) The appellants-claimants are directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment;

(iv) On such deposit being made, the first claimant is entitled to a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only), the second claimant is entitled to a sum of Rs.9,54,360/- (Rupees Nine Lakhs Fifty Four Thousand Three hundred and sixty only), less the amount already withdrawn, if any, with respective proportionate interest by making necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Special District Judge/
<https://hcservices.ecourts.gov.in/hcservices/>
MACT (In-charge), Madurai.



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

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+1cc to Mr.I.Suthakaran, Advocate Sr.No.82957
+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.82906

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VB/SKN/SAR4/26.10.2018/5P/6C

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