



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A (MD) No.1018 of 2018

and

C.M.P (D) No.10635 of 2018

National Insurance Company Ltd.,
Division No.10,
Flat No.101-106-N-1,
BMC House, Cannanghad Place,
New Delhi-1.

... Appellant/2nd Respondent

vs.

1.S.Kalavathi
2.S.Sivakumar
3.S.Sathishkumar

... Respondents 1 to 3/
Petitioners 1 to 3

4.Somasundaragurukkal

... 4th Respondent/1st Respondent

Prayer: The appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award, dated 20.03.2018 made in M.C.O.P.No.38 of 2016, passed by the Motor Accident Claims Tribunal, (Additional District Judge) Fast Track Court, Theni.

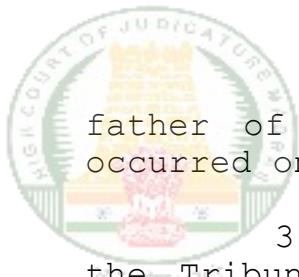
For Appellant : Mr.A.Ilango

For R1 to R3 : Mr.K.Suresh Kumar

JUDGMENT

Being aggrieved by the award passed by the Motor Accident Claims Tribunal, (Additional District Judge) Fast Track Court, Theni, in M.C.O.P.No.38 of 2016, dated 20.03.2018, the appellant Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the second respondent in M.C.O.P.No.38 of 2016. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation, for the death of one Subramani, husband of the first respondent and



father of the respondents 2 & 3 who died in the accident that occurred on 26.02.2016.

3. Challenging the quantum of the compensation awarded by the Tribunal, the appellant has come out with the present Civil Miscellaneous Appeal.

4. The learned counsel appearing for the appellant contended that the respondents 1 to 3 failed to prove that the deceased was working in PVC Pipe Company as Manager during day time and Supervisor in Bricks line during night time. The Tribunal erred in fixing a sum of Rs.10,000/- as notional income without any basis. The deceased was 50 years at the time of accident. The Tribunal erred in awarding 15% instead of 10% towards future prospects. The amounts awarded by the Tribunal under conventional heads are excessive.

5. On the other hand, the learned counsel appearing for the respondents 1 to 3 contended that the respondents 1 to 3 let in evidence to prove that the deceased was working in PVC Pipe Company in day time and supervisor in Brick Line during night time and was earning a sum of Rs.13,000/- per month. The Tribunal ought to have accepted the evidence and fixed the monthly income of the deceased at Rs.13,000/- per month. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

6. I have heard the learned counsel appearing for the appellant and the respondents 1 to 3 and perused the materials available on record.

7. From the materials on record, it is seen that the respondents 1 to 3 have stated that the deceased was working in two different concern and was earning a sum of Rs.13,000/- per month. The witnesses examined by the respondents 1 to 3 in this regard did not prove that the deceased was earning a sum of Rs.13,000/- per month. The Tribunal considering the statement in the FIR, wherein it has been stated that the deceased was working as Manager in Duraiappa Nadar PVC Company, has fixed the notional income of the deceased at Rs.10,000/- per month. The reasoning of the Tribunal for fixing the notional income is valid and the amount fixed by the Tribunal is not excessive. The age of the deceased was fixed by the Tribunal at 50 years at the time of accident and was working in two different concern. As per the judgment of the Hon'ble Apex Court reported in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**, the respondents 1 to 3 are entitled only 10% enhancement towards future prospects and a sum of Rs.70,000/- under the conventional heads. In view of the ratio of the judgment of the Hon'ble Apex Court, the loss of income is modified as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

$$10,000 + 1,000 (10\% \text{ of } 10,000) = 11,000 \times \frac{2}{3} \times 13 \times 12 = 11,44,000/-$$



8. As far as the amounts granted by the Tribunal under different heads are excessive and contrary to the judgment of the Hon'ble Apex Court referred to above, hence, the amounts granted under different heads are set aside.

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9. In view of the settled position of law, this Court modifies the award of the Tribunal by reducing 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	11,96,052	11,44,000	reduced
2.	For loss of love and affection	1,50,000	-	Set aside
3.	For loss of consortium	1,00,000	40,000	reduced
4.	For Transportat ion	5,000	-	Set aside
5.	For funeral expenses	25,000	15,000	reduced
6.	For loss of estate	5,000	15,000	enhanced
	Total	Rs.14,81,052	Rs.12,14,000	By reducing a sum of Rs.2,67,052/-

10. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The respondents 1 to 3 are entitled to a sum of **Rs.12,14,000/-** along with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit and costs. The appellant Insurance Company is directed to deposit the award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.38 of 2016, on the file of the Motor Accident Claims Tribunal, (Additional District Judge) Fast Track Court, Theni, within a period of **eight weeks** from the date of receipt of copy of this judgment.

11. On such deposit being made, the respondents 1 to 3/claimants are entitled to withdraw their respective shares as per the ratio of apportionment made by the Tribunal, less the amount already withdrawn, if any, with interest and costs, by making



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necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The Motor Accident Claims Tribunal,
(Additional District Judge) Fast Track Court, Theni.

Copy To:-

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

+ 1 CC TO Mr.K.SURESH KUMAR, ADVOCATE IN SR No. 94108

AM

TE/SV/SAR-3 : 03/01/2019 : 4P/5C

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