



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

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C.M.A(MD)No.737 of 2018

and

C.M.P(D)No.8324 of 2018

The Branch Manager,
The Oriental Insurance Company Ltd.,
No.3607/21, Sathyamoorthy Road,
2nd Floor, (near Team Hospital),
Pudukottai Taluk cum District. ... Appellant/Respondent -2

vs.

1.Chellammal	..1 st Respondent/Petitioner -1
2.Adaikalam	..2 nd Respondent/Petitioner -2
3.Thavamani	..3 rd Respondent/Petitioner-3
4.Palanivel	..4 th Respondent/Petitioner-4
5.Viswanathan	..5 th Respondent/Respondent-1

(Respondent No.5 given up)

Prayer: The appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the order of the Tribunal of MACT cum Additional District Judge-cum-Special Judge, Pudukottai, made in M.C.O.P.No.426 of 2014, dated 25.07.2017 and allow the appeal with costs.

For Appellant	: Mr.B.Chandra Sekaran
For R1 to R4	: Mrs.A.Banumathy

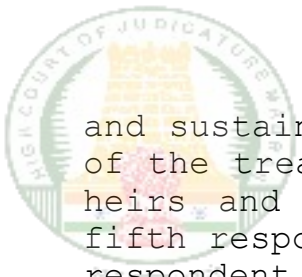
JUDGMENT

Being aggrieved by the award passed by the Motor Accidents Claims Tribunal-cum-Additional District Judge-cum-Special Judge, Pudukottai, in M.C.O.P.No.426 of 2014, dated 25.07.2017, the appellant Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the second respondent in M.C.O.P.No.426 of 2014, on the file of the Motor Accidents Claims Tribunal (Additional District Judge-cum-Special Judge) Pudukottai. The respondents 1 to 4, the claimants filed a claim petition claiming a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) as compensation for the death of one Krishnan in the accident that occurred on 25.05.2014. The first respondent is the wife of the deceased and the respondents 2 to 4 are the sons of the deceased.

3.Facts of the Case:-

According to the respondents 1 to 4, the said Krishnan was riding a bicycle on 25.05.2014 and at that time, a bus bearing Registration No.TN-55-AD-9398 belonging to the fifth respondent, driven in a rash and negligent manner by its driver came from north and dashed against the said Krishnan. The said Krishnan fell down



and sustained multiple injuries. He died on the next day, in spite of the treatment given to him. The respondents 1 to 4 are the legal heirs and dependants of the deceased. The bus belonging to the fifth respondent was insured with the appellant and hence, the fifth respondent and the appellant are liable to pay compensation.

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4. The fifth respondent remained ex-parte before the Tribunal.

5. The appellant filed counter statement and denied that the accident occurred due to the rash and negligent driving by the driver of the bus and contended that the accident occurred only due to the negligence of the deceased and also contended that the compensation claimed is excessive.

6. Before the Tribunal, the fourth respondent examined himself as P.W.1, and one Boopathiraj was examined as P.W.2 and marked 7 documents as Ex.P1 to P7. The appellant and the fifth respondent did not let in any oral and documentary evidence.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the negligent driving by driver of the bus and held that the fifth respondent and the appellant are liable to pay compensation and awarded a sum of Rs.7,43,500/- as compensation to the respondents 1 to 4.

8. Aggrieved by the said award, the appellant Insurance Company has filed the present appeal.

9. The contention of the learned counsel appearing for the appellant that the Tribunal erred in fixing the monthly income of the deceased at Rs.4,500/- without any basis and awarded excess amount towards loss of income. The Tribunal erred in awarding a compensation on different heads and the same is not in consonance with the judgment of the Hon'ble Apex Court reported in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., vs. Pranay Sethi and others]**.

10. Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the amount fixed by the Tribunal at Rs.4,500/- towards monthly income of the deceased is very meagre, while the deceased was earning a sum of Rs.15,000/- per month. The amount awarded by the Tribunal is just and proper compensation and is not excessive.

11. I have heard the learned Counsel appearing for the appellant and the respondents 1 to 4 and perused the materials available on record.

12. The issue to be decided in the appeal is, whether the quantum of compensation awarded by the Tribunal is excessive or proper and just compensation.

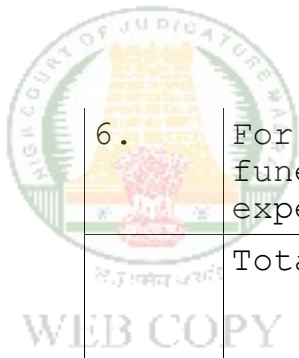


13. The respondents 1 to 4 claimed that the deceased was earning a sum of Rs.15,000/- per month as agricultural coolie. They have not let in any evidence to substantiate their claim. In such circumstances, the Tribunal considering the age of the deceased as 65 years, has fixed as notional income of Rs.4,500/- per month and applied multiplier and after deducting 1/3rd, awarded a sum of Rs.2,83,500/- towards loss of income. The same is not excessive and it is just and proper.

14. As far as compensation under the conventional head is concerned, as per the judgment of the Hon'ble Apex Court reported in **2017(2) TNMAC 609 (SC) [National Insurance Co.Ltd., vs. Pranay Sethi and others]**, the legal heirs of the deceased are entitled to get a sum of Rs.70,000/-. In the present case, the Tribunal has awarded a sum of Rs.4,60,000/- under different heads, which is excessive and the same is set aside. As per the judgment referred to above, the respondents 1 to 4 are entitled to a sum of Rs.70,000/- towards conventional head (The first respondent is entitled to get Rs.40,000/- towards consortium, the Respondents 1 to 4 are entitled to Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses). The rate of interest awarded by the Tribunal at 7.5% per annum is confirmed.

15. 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	2,83,500	2,83,500	confirmed
2.	For loss of Estate	25,000	15,000	reduced
3.	For loss of consortium to the first respondent	1,00,000	40,000	reduced
4.	For loss of love and affection to the respondents 2 to 4	3,00,000	-	Set aside
5.	For Ambulance	10,000	-	Set aside



6.	For loss of funeral expenses	25,000	15,000	reduced
	Total	Rs7,43,500	Rs.3,53,500	By reducing a sum of Rs.3,90,000/-

16. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The respondents 1 to 4 are entitled to a sum of **Rs.3,53,500/-**. The appellant Insurance Company is directed to deposit the modified award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.426 of 2014, on the file of the Motor Accidents Claims Tribunal, Additional District Judge-cum-Special Judge, Pudukottai, within a period of **eight weeks** from the date of receipt of copy of this judgment;

17. On such deposit being made, the first respondent/first claimant is entitled to a sum of Rs.2,03,500/- (Rupees Two Lakhs Three Thousand and Five hundred only), the respondents 2 to 4/claimants 2 to 4 are entitled to a sum of Rs.50,000/- each (50,000 x 3) (Rupees One Lakhs Fifty Thousand only) with respective proportionate interest, by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS-IV)

To

1. The Additional District Judge cum Special Judge,
The Motor Accidents Claims Tribunal, Pudukottai

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

+1 cc to M/s.A.Banumathy , Advocate SR.No.83831

+1 cc to Mr.E.Chandrasekaran , Advocate SR.No.84136

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