



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.07.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.1357 of 2013

M/s.National Insurance Co.Ltd.,
Through its Branch Manager,
North Car Street,
Nagercoil,
Kanyakumari District.

... Appellant

Vs.

1) Packiam

2) Benedict Raj

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.04.2012 passed in MCOP.No.57 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Padmanabhapuram.

For Appellant : Ms.P.Malini

For R1 : Mr.N.Dilipkumar

For R2 : Mr.D.Senthil Kumar

JUDGMENT

The present appeal has been filed against the judgment and decree dated 18.04.2012 passed in MCOP.No.57 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Padmanabhapuram.

2.It is the case of the 1st respondent/claimant that on 16.10.2009 while the deceased Senthil Kumar was travelling in a Bike bearing registration No.T.No.75-A-8735 Pulser with one Viswam and Kannan, in the opposite direction, the 1st respondent drove another bike in a rash and negligent manner and dashed against the Bike bearing registration No.T.No.75-A-8735, in which, Senthil Kumar died. The mother of the deceased filed a claim petition in MCOP.No.57 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Padmanabhapuram, claiming compensation of Rs.15,00,000/-. Considering the oral and documentary evidence, the Tribunal awarded compensation of Rs.5,02,000/- with 7.5% interest per annum. Aggrieved by the said award, the appellant has filed this appeal challenging liability and quantum.



3. Learned counsel for the appellant contended that it is a head-on collision of two vehicles and therefore, the Tribunal ought to have fixed contributory negligence on the riders of both the two wheelers. Further, the quantum of compensation awarded under various heads is excessive and it requires reduction.

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4. Learned counsel for the 1st respondent/claimant would submit that the Tribunal has erred in taking the age of the mother of the deceased for applying multiplier method instead of taking the age of the deceased and if it is done, the compensation towards loss of income would be more. Further, as per the Supreme Court judgment in National Insurance Company Limited vs. Pranay Sethi and others (Special Leave Petition (Civil) No. 25590 of 2014 dated 31.10.2017), 40% of salary should be added towards future prospects of the deceased since the deceased was 22 years of age at the time of accident and the Tribunal ought to have awarded Rs.15,000/- each towards funeral expenses and loss of estate.

5. As rightly contended by the learned counsel for the 1st respondent, the Tribunal has failed to consider the age of the deceased for applying appropriate multiplier. If age of the deceased is taken, then the proper multiplier is 18. After adding 40% of salary towards future prospects as per Pranay Sethi's case, after deducting 50% of salary since the deceased was a bachelor at the time of accident and applying 18 multiplier, the loss of income works out to Rs.10,58,400/-. Even if contributory negligence is fixed in the ratio of 50:50, the appellant would be liable to pay more than Rs.5,00,000/-. Therefore, in my considered opinion, the quantum of compensation awarded by the Tribunal at Rs.5,02,000/- does not require interference by this Court.

6. The appellant is directed to deposit the entire award amount with interest and costs to the credit of the claim petition, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the same without filing any formal petition before the Tribunal.

With the above observation, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

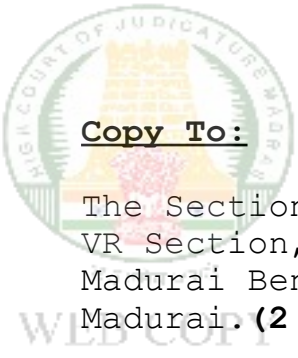
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Sub Judge,
<https://hcservices.ecourts.gov.in/hcservices/>
Motor Accident Claims Tribunal,
Padmanabhapuram.

**Copy To:**

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

+1CC to M/s.P.Malini, Advocate, SR.No. 72576
+1CC to Mr.N.Dilipkumar, Advocate, SR.No.72293
+1CC to Mr.D.Senthil Kumar, Advocate, SR.No.72235

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