



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2019

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A. (MD) .No.1109 of 2017
C.M.P. (MD) .No.11267 of 2017

M/s. National Insurance Company Limited,
Through its Manager,
No.333-1, Sekkalai Road, First Floor,
Karaikudi Five Lamps,
Sivagangai District.

.. Appellant / Respondent No.2
Vs.

1.P.Sasi @ Shantha Jeyalakshmi

2.Minor Rohini

3.Pachaikannu

4.Karpagavalli

.. Respondents 1 to 4/Petitioners 1 to 4

5.Arumugam

6.Ayyanmoorthy

7.M/s.National Insurance Company Limited,
through its Manager,
No.66, Greams Road,
Chennai - 6.

.. Respondents 5 to 7/Respondents 1,3 & 4

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.06.2016 made in M.C.O.P.No.75 of 2009 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Sivagangai.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.P.Thiagarajan for R1 & R2

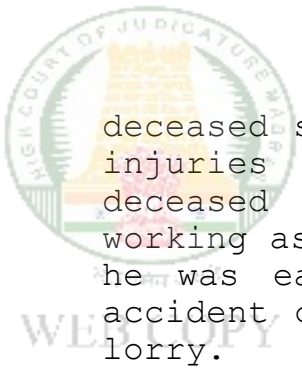
No Appearance for R3 to R7

J U D G M E N T

(Judgment of the Court was delivered by **K.KALYANASUNDARAM, J.**)

The wife, minor children and the parents of the deceased Balamurugan who died in an accident on 17.05.2008, have filed M.C.O.P.No.75 of 2009 seeking compensation of Rs.40,00,000/- (Rupees Forty Lakhs).

2.According to the claimants, on the fateful day, the deceased travelled in a Car owned by the sixth respondent herein on Sivagangai Main Road. When the Car was reached near Pudukattambur Bridge, a lorry which was driven by its driver in a rash and negligent manner hit the Car. In that accident, the



deceased sustained multiple grievous injuries and succumbed to the injuries on the same day. The claimants would state that the deceased was 34 years old on the date of accident and he was working as a Business Development Officer in Axis Bank, Chennai and he was earning Rs.25,495/- p.m. The claimants alleged that the accident occurred only due to the negligence of the driver of the lorry.

3.The claim petition was opposed by the appellant / Insurance Company by filing the detailed counter and disputed the manner of accident and their liability. According to the appellant, the deceased had invited the accident and hence, the Insurance company is not liable to pay the compensation amount.

5.Before the Tribunal, the claimants examined five witnesses and marked Exhibits P1 to P32. Exhibits X1 to X26 were also produced. On the side of the appellant/Insurance Company, one Gunaseelan was examined as RW1 and Exhibits R1 to R2 were marked.

6.The Tribunal, after considering the entire evidence came to the conclusion that the driver of the lorry caused the accident and awarded compensation of Rs.57,30,000/- (Rupees Fifty Seven Lakhs and Thirty thousand only). Challenging the same, the present appeal has been filed by the Insurance Company.

7.Heard Mr.D.Sivaraman, learned counsel for the appellant and Mr.R.Thiagarajan, learned counsel for the respondents 1 and 2 and perused the materials available on record.

8.The learned counsel for the appellant would state that this appeal has been preferred only challenging the quantum awarded by the Tribunal. According to the learned counsel, the income fixed by the Tribunal at Rs.24,322/- p.m. is without any corroboration. It is further stated that the deceased died at the age of 34 years, but the Tribunal instead of applying multiplier adopting 16, has adopted multiplier 17 and no deduction was made towards income tax.

9.Per contra, the learned counsel for the claimants submitted that the first claimant has not only lost her husband at the age of 32 years, and also her daughter in the accident. The learned counsel further submitted that the deceased was having very good future in his job and hence award of the Tribunal is to be confirmed.

10.In the instant case, the first claimant has given evidence as PW1 and deposed that her deceased husband was working in the Axis Bank and was drawing monthly salary of Rs.25,465/- per month. Exhibits P.29 and P.30 are the Salary Certificates issued by the Axis Bank. Based on the evidence of Exs.P29 and P30, the Tribunal had fixed the monthly income of the deceased at Rs.24,322/- and added 30% towards future prospects, which comes to Rs.36,483/-. Considering the fact that deceased was having a permanent



employment in the Axis Bank, we confirmed the income fixed by the Tribunal.

11.As rightly submitted by the learned counsel for the appellant Mr.D.Sivaraman, when the deceased died at the age of 34 years, 16 multiplier is to be adopted, but the Tribunal wrongly applied multiplier 17 to determine loss of dependency. After deducting $\frac{1}{4}$ th income towards living expenses of the deceased, the contribution to the family would be Rs.27,363/-. By applying multiplier 16, the loss of income is arrived at Rs.52,53,696/-. No deduction was made for Income Tax. Hence, after deducting 10% towards income tax, the loss of income would come to Rs.47,28,327/-. As per the decision of the Hon'ble Supreme Court, in the case of **National Insurance Company Limited vs. Pranay Sethi and others** reported in (2017) 16 SCC 680, Rs.70,000/- is awarded towards conventional damages. The amounts awarded by the Tribunal under the head of loss of love and affection are hereby deleted. Rs.7,750/- awarded towards medical expenses is confirmed. In total, the claimants would be entitled to Rs.48,06,077/- rounded off to Rs.48,00,000/- (Rupees Forty Eight Lakhs only), out of which, the first claimant is entitled for Rs.20,00,000/- (Rupees Twenty Lakhs only), the second claimant is entitled to Rs.20,00,000/- (Rupees Twenty Lakhs only), the third claimant is entitled to Rs.3,00,000/- (Rupees Three Lakhs) and the fourth claimant is entitled to Rs.5,00,000/- (Rupees Five Lakhs). The interest awarded by the Tribunal is confirmed.

12.In the result, the appeal is partly allowed and the compensation of Rs.57,30,000/- awarded by the Tribunal is reduced to Rs.48,00,000/-. It is represented that the appellant has already deposited Rs.40,00,000/- and the claimants were also withdrawn 50% of the award amount. Therefore, the appellant shall deposit the balance modified award amount within a period of eight weeks. On such deposit the major claimants are permitted to withdraw their share along with interest. In respect of the minor claimant, the entire share shall be deposited in a Nationalized Bank and the 1st claimant / mother of the minor is permitted to withdraw the interest once in three months. No costs, Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)



1. The Chief Judicial Magistrate, Motor Accident Claims Tribunal,
Sivagangai.

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

+1CC TO MR.P.THIAAGARAJAN, Advocate Sr. No.60889

+1CC TO MR.D.SIVARAMAN, Advocate Sr. No. 60444

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