

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

DATED : 20.03.2019

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

C.M.A. (MD) .Nos.1358 and 1359 of 2015
and
M.P. (MD) .Nos.1 and 2 of 2015

The Branch Manager,
National Insurance Company Limited,
706, Tenkasi Road,
Rajapalayam,
Virudhunagar District.

... Appellant in both C.M.As.

Vs.

1. Subban
2. Azhagammai
3. M.Dharmaraj

... Respondents in C.M.A.No.1358/2013

1. Sathan
2. Mariyayi
3. Ragul
4. Minor Prabakaran

(4th respondent is represented by his
grandfather / guardian, first respondent)

5. M.Dharmaraj

... Respondents in C.M.A.No.1359/2013

Prayer:- Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.Nos.866 and 867 of 2013, dated 30.12.2014 on the file of the Motor Accident Claims Tribunal, Additional District and Special Court, Pudukottai.

For Appellant : Mr.J.S.Murali

For R1 & R2 in
C.M.A.No.1358/2015 : No appearance

For R1 to R4 in
C.M.A.No.1359/2015 : Mr.P.Ganapathy Subramanian

**COMMON JUDGMENT**

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

These appeals are directed against the common judgment passed in M.C.O.P.Nos.866 and 867 of 2013, by the Motor Accident Claims Tribunal, the Additional District and Special Court, Pudukottai, by the Insurance Company.

2. The brief facts of the case are that on 05.10.2013, a two wheeler bearing Registration No.TN 55 V 2576 was driven by one Alagappan, in which Mahendran was a pillion rider. When they were proceeding from Pudukottai to Thirumayam, a lorry bearing Registration No.TN 47 L 1499 came from opposite direction in a rash and negligent manner hit against the motorcycle and in the impact, both sustained grievous injuries and died on the spot.

3. The parents of the deceased Mahendran filed M.C.O.P.No.866 of 2013 claiming compensation of Rs.20,00,000/-. The legal heirs of the deceased Alagappan filed M.C.O.P.No.867 of 2013 seeking compensation of Rs.50,00,000/-.

4. The appellant opposed the claim petitions by filing a detailed counter disputing the age, income and avocation of the deceased. It is the specific case of the appellant that the rider of the two wheeler was responsible for the accident and hence, they are not liable to pay compensation.

5. In order to prove the case of the claimants, one Palaniappan, who witnessed the accident was examined as P.W.3. Ex.P1 / First Information Report shows that a criminal case was registered against the driver of the lorry. Exs.P3 and P4 are the report of the Motor Vehicle Inspector and the sketch.

6. The Tribunal, after considering the evidence especially the sketch / Ex.P4, came to the conclusion that even though the case is head on collusion, the deceased has contributed negligence to an extent of 15% and awarded compensation of Rs.6,88,500/- in M.C.O.P.No.866 of 2013 and Rs.35,33,195/- in M.C.O.P.No.867/2013 along with interest at the rate of 7.5%. The decision of the Tribunal is challenged in these appeals.

7. Mr.J.S.Murali, learned counsel for the appellant would state that even though the appellant had not produced any evidence, the Tribunal, based on the evidence of Exs.P3 and P4, should have fixed negligence at the ratio of 50:50. It is further contended that in M.C.O.P.No.866 of 2013, the deceased was a ~~saucer~~ but the Tribunal instead of deducting 50% towards the personal expenses, has deducted only 1/3rd and in both cases, the



award is exorbitant.

8. Per contra, Mr.P.Ganapathy Subramaniam, learned counsel appearing for the claimants made submissions in support of the findings of the Tribunal.

9. With regard to the negligence, the Tribunal, on the basis of the evidence of eye witness and also relying on the report of the Motor Vehicle Inspector and Sketch, has come to the conclusion that the driver of the lorry and the rider of the motorcycle were negligent at the ratio of 85:15. The Tribunal has also followed the decision reported in **2007(3) TNLJ 211 (Civil) (Tavies vs. Mann)**. Hence, the finding of the Tribunal is confirmed.

10. Insofar as quantum, according to the claimants in M.C.O.P.No.866 of 2013, the deceased was a mason and he was earning Rs.15,000/- per month, however no document was produced to prove the income of the deceased. Hence, the Tribunal has fixed notional income of the deceased at Rs.7,500/- and by applying multiplier '13', arrived at the loss of income, after deducting 1/3rd towards his personal expenses.

11. In the case of **Smt.Sarala Varma and other vs. Delhi Transport Corporation and another** reported in **2009 (2) TNMAC 1 (SC)**, the Hon'ble Supreme Court has categorically held that if the deceased is a bachelor, deduction of 50% has to be made towards personal and living expenses. By following the decision, contribution of the deceased is arrived at Rs.3,750/- per month and by applying multiplier '13', the loss of income would be Rs.5,85,000/- (Rs.3,750/- x 12 x 13). After adding Rs.70,000/- towards conventional damages, the total compensation amount comes to Rs.6,55,000/-, from which 15% has been deducted towards contributory negligence. Therefore, the loss of dependency would be Rs.5,56,750/- which is rounded off to Rs.5,60,000/-. Out of this amount, the mother / the second claimant is entitled for Rs.3,00,000/- and the father / the first claimant is entitled for Rs.2,60,000/-. The interest awarded by the Tribunal is confirmed.

12. The third claimant in M.C.O.P.No.867 of 2013 was examined as P.W.2 and in his evidence, he has deposed that his mother died two years ago, the claimants 1 and 2 are his grand parents. He was studying B.E., and the fourth claimant was studying Diploma and his father died in the accident at the age of 50 years. He was working as a Hostel Warden in a Government Hostel and was drawing a salary of Rs.33,750/-. P.W.4 / M.K.T.Manickam, the Special Tahsildar, Adi Dravidar Department gave evidence in support of the case of P.W.2. Ex.P13 is the Service Register. Ex.P.14 / salary certificate shows that the deceased was earning Rs.33,750/- per month and died at the age of 55.

13. As per the decision of the Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi and others** reported in (2017) 16 SCC 680, 15% addition has to be made towards future prospects and after adding the same, the income of the deceased would be Rs.38,812/-. The annual income comes to Rs.4,65,744/-, from which 1/4th has to be deducted towards personal expenses and the contribution to the family comes to Rs.3,49,308/-.

14. It is an admitted fact that the deceased was having another four years left over service and the proper multiplier is '11'. Hence, for the left over service, the claimant is entitled for Rs.13,97,232/- (Rs.3,49,308/- x 4) and for the remaining period, the amount is to be calculated by taking 50% of the salary. Therefore, for the remaining period this Court awards to Rs.12,22,578/- (Rs.1,74654 x 7). The total loss of income comes to Rs.26,19,810/- (Rs.13,97,232/- + Rs.12,22,578/-). Further amount of Rs.70,000/- is awarded towards conventional damages. The total compensation amount comes to Rs.26,89,810/-, from which 15% (Rs.4,03,471/-) is deducted towards contributory negligence. In fine, the claimants would be entitled for Rs.22,86,339/- which is rounded off to Rs.22,90,000/-. Out of the modified compensation amount, the mother is entitled for Rs.5,00,000/-, the father is entitled for Rs.3,90,000/- and the children are entitled for Rs.7,00,000/- each along with interest at the rate of 7.5%

15. It is represented by the learned counsel for the appellant that in both the appeals, the entire award amount has been deposited and the claimants were also permitted to withdraw 50% of the award amount. In view of the disposal of the appeals, the claimants are permitted to withdraw their share along with proportionate interest and costs. The excess amount shall be returned to the appellant / Insurance Company.

16. In the result, both the appeals are partly allowed and the award is modified as stated supra. However, there is no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar (CS)

To

The Additional District and Special Court,

<https://hcsnivescourts.gov.in/hcsnives/> Insurance Claims Tribunal, Pudukottai.



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2 CC to M/s.J.S.MURALI, Advocate (SR-55595,55596[F] dated
21/03/2019)

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