



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

AND

THE HONOURABLE MRS. JUSTICE R.THARANI

C.M.A. (MD) No.402 of 2018

1.Kittu Nachiappa
2.Alagappan
3.Narayanan

.. Appellants/Petitioners

Vs.

1.PLA.Palaniappan

2.Reliance General Insurance Company Limited,
rep. by its Manager,
No.15-A, P.L.A.Kanagu Towers,
11th Cross Main Road,
Thillai Nagar, Trichy-620 018.

3.Suganthi

4.Cholamandalam MS General Insurance
Company Limited,
rep. by its Manager,
'Dare House', N.S.C.Bose Road,
Chennai-01.

... Respondents /Respondents

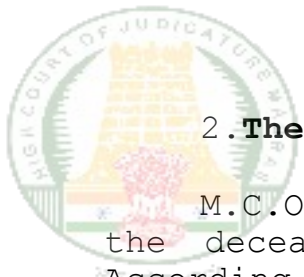
Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree dated 08.12.2015 passed in M.C.O.P.No.686/2014 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Tiruchirappalli.

For Appellants : Mr.R.Subramanian
For Respondents : Mr.V.Sakthivel for R-2
Mrs.R.Shiva Shankari for R-4
No appearance for RR-1 & 3

J U D G M E N T

[Judgment of the Court was made by **K.KALYANASUNDARAM, J**]

Being dissatisfied with the award of the Motor Accidents Claims Tribunal, the Special District Judge, Tiruchirappalli, passed in M.C.O.P.No.686 of 2014, the claimants have come up with this appeal.



2.The facts in brief are as follows:

M.C.O.P.No.686/2014 was filed by the husband and children of the deceased Kalyani, who died in an accident on 31.01.2011. According to the claimants, on the fateful day, the deceased was travelling as a passenger in a car. At that time, a bus belonging to the first respondent, driven by its driver in rash and negligent manner rammed the car. In the impact, the deceased sustained grievous injuries and died on the spot.

3.The claimants have further averred in the claim petition that the deceased was a house wife and she was earning a sum of Rs.10,000/- per month by taking tuition to the students. It is also claimed that her income could be fixed at Rs.33,333/- being 1/3rd of the income of the first claimant.

4.The Tribunal, after analysing entire oral and documentary evidence, came to the conclusion that the accident occurred due to the negligence of the driver of the bus and awarded a compensation of Rs.8,40,000/- together with interest at 7.5% per annum.

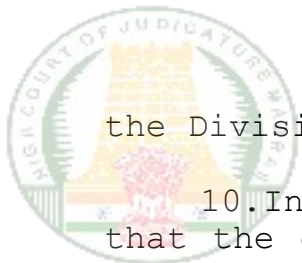
5.Mr.R.Subramanian, learned counsel for the appellants would argue that the income fixed by the tribunal is very low and as per the Schedule II of the Motor Vehicles Act (hereinafter referred as Act), 1/3rd of the income of the first claimant has to be taken as the income of the deceased, though she was a house wife. According to the learned counsel, the award is very low and the same is to be enhanced.

6.Mr.V.Sakthivel, learned counsel for the second respondent would argue that Schedule II of the Act would apply to a case, when the deceased was a non-earning member. But, in the case on hand, the case of the claimant is that she was earning a sum of Rs.10,000/- per month and hence schedule II of the Act has no application to this case.

7.Heard the rival submissions and perused the materials available on record.

8.In the instant case, the claimants have stated in the claim petition that the deceased was a house wife and she was earning Rs.10,000/- per month. Hence, the contention of the appellants that 1/3rd of the income of the first claimant has to be taken with the income of the deceased has no force.

9.In **2019 (1) TN MAC 84 (DB), Manager, New India Assurance Company Limited, New Delhi Vs. T.Nagaraj and two others**, in that case, the deceased was 27 years and she successfully completed B.A.B.Ed. In the claim petition, it was stated that earning of the deceased was about Rs.20,000/- per month, by taking tuitions, but they were not able to substantiate the claim. The Tribunal has fixed income at Rs.11,000/- per month. The same was confirmed by



the Division Bench.

10. In the case on hand, it was averred in the claim petition that the deceased was earning a sum of Rs.15,000/- per month as a teacher, but no material was placed on record even to prove his educational qualification. The tribunal has fixed the notional income as Rs.6,000/-. On perusal of the evidence, this Court is of the opinion that it is appropriate to fix the notional income as Rs.7,500/- per month and by adding 40% towards future prospects, monthly income is arrived at Rs.10,500/-, which is rounded off to Rs.10,000/- and from which $1/3^{\text{rd}}$ has to be deducted for the personal and living expenses. Hence, contribution to family is taken as Rs.6,677/-, which is rounded off to Rs.6,700/-. By applying multiplier 15, this Court awards a sum of Rs.12,06,000/- towards loss of dependency. In addition, Rs.70,000/- is awarded towards conventional damages, as per the decision of the Honourable Supreme Court reported in **2017 (2) TNMAC 609(SC) in the case of National Insurance Company Limited Vs. Pranay Sethi and others**. In total, the claimants are entitled to a sum of Rs.12,76,000/- together with interest at 7.5% per annum. The award amount shall be disbursed to appellants/claimants equally.

11. Accordingly, this appeal is allowed and the award amount of Rs.8,40,000/- is enhanced to Rs.12,76,000/-. No costs. The respondents 1 & 2 are directed to deposit the modified award amount, less the amount, if any already deposited, within a period of 8 weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw their share, as per the ratio apportioned by the Tribunal.

Sd/-

Assistant Registrar(AE)

// True Copy //

Sub Assistant Registrar(CS)

vs

To

1. Motor Accidents Claims Tribunal,
Special District Judge, Tiruchirappalli

COPY TO

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

+1CC TO MR.R.SUBRAMANIAN, Advocate Sr. No.59794

+1CC TO MR.V.SAKTHIVEL, Advocate Sr. No.59802

+1CC TO MR.S.SRINIVASA RAGHAVAN, Advocate Sr. No. 59632

C.M.A. (MD) No.402 of 2018

08.04.2019