



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A. (MD) No.1455 of 2016

- 1.S.Kolappan
- 2.R.Chellammal
- 3.K.Vijaya

... Appellants/petitioners

- Vs -

- 1.P.R.S.Sreenivasan

- 2.The United India Insurance Co. Ltd.,
rep. by its Branch Manager,
P.W.D.Office Road, Nagercoil,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

- 3.A.Dominio Savio

- 4.The New India Assurance Company Limited,
Rep. By its Branch Manager,
Opp. Anna Stadium,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondents/Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.09.2010 passed in M.C.O.P.No.229 of 2007 by the learned District Judge, Motor Accidents Claims Tribunal, Kanyakumari at Nagercoil.

For Appellants: Mr.T.Selvakumaran
For R-2 : Mr.B.Rajesh Saravanan
For R-4 : Mr.B.Vijay Karthikeyan

J U D G M E N T

The appeal is directed against the judgment dated 16.09.2010 passed in M.A.C.O.P.No.229 of 2007 by the learned District Judge, Motor Accidents Claims Tribunal, Kanyakumari at Nagercoil.

2.The case of the claimants in the petition is briefly as follows:



On 29.04.2006 at about 15.15 hours, the deceased was driving the van bearing registration No.TN 74 B 0397 from Palayamkottai to Nagercoil and when it was proceeding near Vagaikulam New Colony, a lorry bearing registration No.TCK 3353 belonging to the first respondent came from the opposite side in a rash and negligent manner and dashed against the van, as a result of which, the driver of the van and seven others travelling in the van died and others sustained multiple serious injuries. Hence, the legal heirs of the deceased filed a petition before the Tribunal claiming compensation of Rs.10,00,000/-

3. Before the Tribunal, on the side of the petitioners, the first petitioner was examined as P.W.1 and Exs.P1 to P8 were marked. On the side of the respondents R.Ws.1 to 3 were examined and Exs.R1 to R4 were marked.

4. On consideration of the evidence available on record, the Tribunal has awarded a sum of Rs.4,35,000/- payable by the respondents 1 and 2 with interest at the rate of 7.5%. Aggrieved over the award, the appeal has been preferred by the claimants for enhancement of compensation.

5.The present appeal has been filed challenging the quantum of compensation. The second respondent / Insurance Company has also filed an appeal in C.M.A.(MD)No.1539 of 2011 challenging the liability fixed by the Tribunal. The Court below fixed the entire liability against the driver of the lorry. Today (08.11.2019), this Court, after considering all the materials available on record, has disposed of the said C.M.A.(MD)No.1539 of 2011, by modifying the order of the Court below and fixing the liability against the driver of the lorry and the driver of the van as 50 : 50 and accordingly, the liability is fixed against the respective Insurance Company in the ratio at 50:50.

Therefore, now the only point for determination in this appeal is what is the just compensation?

6.The learned counsel for the appellants / claimants has questioned about the notional income fixed by the Court below. According to the appellants the age of the deceased was 33 years at the time of accident. The accident occurred in the year 2006 and the deceased was working as driver and therefore, he would have earned more than Rs.7,500/-. However, the Court below has taken his monthly income only as Rs.3,000/- p.m. Further, he would contend that the Court below has wrongly applied the multiplier as '17' and for the age group of 33, the correct multiplier to be applied is only '16'.

7.On the other hand, the learned counsel for the respondents / Insurance Companies have submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the



right conclusion and awarded a just, fair and reasonable compensation. Therefore, the order of the Tribunal is in accordance with law and the same has to be confirmed. Hence, the learned counsel for the respondents have strongly opposed for any enhancement. But they would fairly admitted that the Court below has wrongly applied the multiplier as '17' instead of '16'.

8. Heard both sides and perused the materials available on record.

9. It has to be seen that since the deceased was working as driver, it would be appropriate to fix the notional income of the deceased as Rs.4,500/- p.m. Since the age of the deceased was found to be 33 years, the appropriate multiplier to be applied as per the decision of Apex Court in **Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC)** case, is '16'. Therefore, 40% has to be added towards future prospects as the age of the deceased was found to be as 33, as per the decision of the Hon'ble Supreme Court in **NATIONAL INSURANCE CO. LTD., v. PRANAY SETHI**, reported in **2017 (2) TN MAC 609 (SC)**. If 40% is added towards future prospects, the monthly income would be Rs.4,500/- + Rs.1,800/- (Rs.4,500 X 40%) = Rs.6,300/-.

10.Since there are three dependants in this case, as per the judgement **Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC)**, $1/3^{\text{rd}}$ has to be deducted. The loss of income after deduction would be Rs.4,500/- + Rs.1,800/- (Rs.4,500 X 40%) - $1/3^{\text{rd}}$ = Rs.4,200/- p.m. and therefore, the loss of income would be Rs.4,200 X 12 X 16 = **Rs.8,06,400/-**.

11.The Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium. However, as per the decision of the Hon'ble Supreme Court in **NATIONAL INSURANCE CO. LTD., v. PRANAY SETHI**, reported in **2017 (2) TN MAC 609 (SC)**, the wife is entitled for a sum Rs.40,000/- . Therefore, the loss of consortium is enhanced to **Rs.40,000/-** from Rs.10,000/-. The Tribunal has awarded a sum of Rs.2,000/- towards funeral expenses, which is very low and hence, the same is enhanced to **Rs.15,000/-**, as per **PRANAY SETHI** case. The Tribunal awarded a sum of Rs.3,000/- towards loss of estate, which is also very low and hence, the same is enhanced to **Rs.15,000/-**. The Tribunal has awarded a sum of **Rs.1,000/-** towards loss of damages to clothes; a sum of **Rs.1,000/-** towards transportation and a sum of **Rs.10,000/-** towards loss of love and affection to the petitioners 1 and 2, which are reasonable and hence, the same are confirmed.

12. In view of the above, this Court modifies the award of the Tribunal by enhancing 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	4,08,000	8,06,400	enhanced
2.	For consortium	10,000	40,000	enhanced
3.	For loss of estate	3,000	15,000	enhanced
4.	For funeral expenses	2,000	15,000	enhanced
5.	For transportation	1,000	1,000	confirmed
6.	For damages to clothes	1,000	1,000	confirmed
7.	For loss of love and affection to the petitioners 1 and 2	10,000	10,000	confirmed
	Total	Rs4,35,000/-	Rs.8,88,400/-	By enhancing a sum of Rs4,53,400/-

13. In the result,

(i) The Civil Miscellaneous Appeal is allowed, enhancing the award of the Tribunal from **Rs.4,35,000/-** (Rupees Four Lakhs Thirty Five Thousand Only) to a sum of **Rs.8,88,400/-** (Rupees Eight Lakhs Eighty Eight Thousand Four Hundred Only);

(ii) The second and fourth respondents herein shall deposit their 50 : 50 share of the award amount along with 7.5% interest from the date of claim petition till the date of deposit of award amount, before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited;

(iii) On such deposit being made, the first claimant/father is entitled for a sum of Rs.1,88,400/-; the second claimant/mother is entitled for a sum of Rs.1,00,000/- and the third claimant/wife is entitled for a sum of Rs.6,00,000/-, with proportionate interests and costs.

(iv) The Claimants are directed to submit their Savings Bank Account Details along with the copies of their passbooks to the

<https://hcservices.ecourts.gov.in/hcservices/>



Tribunal **forthwith**;

(v) The claimants are directed to pay the additional Court Fees, if any, within a period of **three weeks** from the date of receipt of a copy of this judgment; and

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(vi) On such payment of Additional Court fees, if any, by the claimants and upon the deposit made by the Insurance Companies, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the respective Personal Savings Bank Account Numbers of the Claimants, through RTGS/NEFT system, after getting their Account Details, within a period of three weeks thereafter;

(vii) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

- 1.The District Judge,
Motor Accidents Claims Tribunal,
Kanyakumari at Nagercoil.
- 2.The Record Keeper, (2 Copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

- +1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-97173[F]
- +1 CC to M/s.T. SELVAKUMARAN, Advocate (SR-97445[F]
- +1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-97427[F]

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