



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A. (MD) .No.930 of 2015

1.Rajendran

2.Poongodi

3.Minor.Thenmozhi

Minor represented by Guardian

Mother Poongodi.

... Appellants/Petitioner

Vs.

1.A.Saravanan

2.D.Ramesh

3.The Branch Manager,

National Insurance Company Limited,

Branch No.1, 33, Pramanode Road,

Contonment,

Trichy 620 001.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 13.02.2013 made in M.C.O.P.No.246 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Kuzhithalai.

For Appellant : Mr.M.Paramashivan
for Mr.MA.P.Thangavel

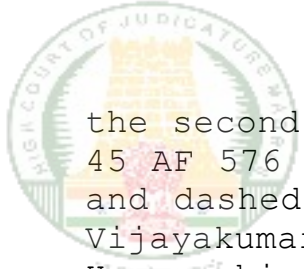
For R3 : Mr.J.S.Murali

J U D G M E N T

The Civil Miscellaneous Appeal has been filed challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Sub Court, Kuzhithalai in M.C.O.P.No.246 of 2010, dated 13.02.2013.

2. The claim petition was filed by the parents as well as the sister of the deceased Vijayakumar, who died in a motor accident, on 06.07.2010.

On the fateful day, the deceased Vijayakumar was proceeding to his College in TVS Starcity two wheeler bearing Registration No.TN 48F 3490 as pillion rider, driven by his friend Saravanan from Madurai - Pettai Road, at that time, the Tipper Lorry belonging to

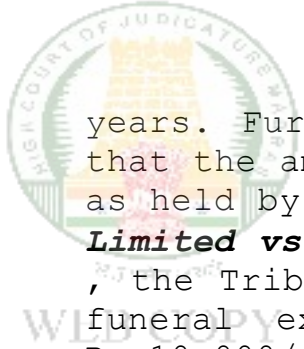


the second respondent by name Selvarani bearing Registration No.TN 45 AF 576 came from South to North in a rash and negligent manner and dashed against the two wheeler. In that process, the deceased Vijayakumar sustained grievous injuries and died on the spot. Hence, his parents and his sister filed the claim petition seeking compensation of Rs.15,00,000/-, on the ground that the driver of the Tipper Lorry was responsible for the accident.

3. The only challenge made in the present appeal is the Tribunal has fixed the notional income of the deceased as Rs.4,000/- per month. According to the appellants/claimants, the deceased was studying third year Diploma Course in Electrical and Electronics Engineering in Vetri Vinayaga Polytechnic, Tholloorpatti and he was 19 years old. The learned counsel for the appellants/claimants contended that the deceased was taking care of his cattle at home and by virtue of that, he was earning about a sum of Rs.4,000/- per month as part time income. He further contended that after completion of the Diploma Course, the deceased would be earned more than a sum of Rs.15,000/-. However, the Tribunal has fixed the notional income of the deceased only as Rs.4,000/-, since the claimants have stated in the claim petition that the income of the deceased as Rs.4,000/-. But the Tribunal has not considered the income earned by the deceased by virtue of his part time employment. Even assuming that if he is working in any Company, by virtue of his qualification, he would have earned much more than Rs.15,000/-. He was already working in the cattle farm and earned a sum of Rs.4,000/-. The said amount has not been taken into consideration for the purpose of income of the deceased. Therefore, he contended that the notional income fixed by the Tribunal should be revised.

4. On the other hand, Mr.J.S.Murali, learned counsel appearing for the third respondent/Insurance Company strongly opposed the submission of the learned counsel for the appellants stating that the appellants/claimants have stated in the claim petition that the income of the deceased as Rs.4,000/-. Therefore, at any cost, the said amount need not be revised and the amount awarded by the Tribunal is just and fair. He further contended that the multiplier fixed by the Tribunal is also just and fair.

5. The learned counsel appearing for the appellants/claimants contended that as held by the Hon'ble Supreme Court in the case of **Smt.Sarla Verma & Ors v. Delhi Transport Corporation & Another** reported in **2009(2) TNMAC 1(SC)**, the multiplier applicable for the age group 19 would be '18'. Further, the Division Bench of this Court, in number of cases, applying the principles laid down by the Hon'ble Apex Court in *Sarla Verma* case and awarded compensation by applying multiplier '18', for the age group of 19



years. Further, the learned counsel for the appellants contended that the amount awarded towards conventional heads are too low and as held by the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in (2017) 16 SCC 680, the Tribunal ought to have awarded a sum of Rs.15,000/- towards funeral expenses, Rs.15,000/- towards love and affection and Rs.10,000/- towards transportation. However, the Tribunal failed to award any amount towards loss of estate and the amount awarded towards funeral expenses is only Rs.5,000/- and for transportation, Rs.5,000/- only. Hence, the learned counsel for the appellants pleaded that the amount awarded by the Tribunal is too low and the same may be revised. He further contended that the amount awarded towards love and affection is also too low, because the first and second claimants are the parents of the deceased and they lost their only son and the third claimant is the minor daughter of the first and second claimants and the sister of the deceased and she lost the love and affection of her brother. Considering these aspects, Mr.J.S.Murali, learned counsel for the Insurance Company suggested that a sum of Rs.30,000/- each to the parents of the deceased may be awarded and a sum of Rs.15,000/- may be awarded to the third respondent/sister of the deceased. The learned counsel for the appellants agrees for the same.

6. Considering the submissions made by both the learned counsel on either side, the Tribunal has fixed a sum of Rs.4,000/- towards notional income. In the case of **V.Mekala vs. M.Malathi & another** reported in 2014(2) TN MAC 6(SC), the Hon'ble Apex Court fixed a sum of Rs.10,000/- as notional income for the 11th standard student. However, for the accident occurred during the year 2010, after taking into consideration the fact that the student securing higher marks in 10th standard, the Apex Court fixed a sum of Rs.10,000/- as notional income. Hence, this Court is inclined to fix a sum of Rs.8,000/-, taking into consideration the nature of the employment and the cost of living at Musiri, Trichy District and while fixing a sum of Rs.8,000/- as notional income, as per **Pranay Sethi case**, this Court, added 40% towards future prospects. Further, this Court is inclined to follow the principles laid down by the Hon'ble Apex Court in **Sarla Verma case** and therefore, decided to apply the multiplier '18'. Since the deceased is a bachelor, the Tribunal rightly deducted 50% and this Court is also inclined to deduct 50% towards personal expenses of the deceased. Therefore, the loss of income for the claimants would be Rs.12,09,600/- (Rs.8,000/- + Rs.3,200/- = 11,200/- - 50% = Rs.5,600/- x 12 x 18 = Rs.12,09,600/-). For loss of love and affection of the appellants 1 and 2/father and mother of the deceased Rs.60,000/- (Rs.30,000/- each) and for love and affection of the third claimant/sister Rs.50,000/-. As agreed by both the parties, towards the conventional damages, as held by the Hon'ble

Supreme Court in **Pranay Sethi case**, this Court awarded a sum of Rs.15,000/- towards funeral expenses, a sum of Rs.15,000/- towards loss of estate and Rs.10,000/- towards transportation. Therefore, the compensation awarded by the Tribunal stands revised from Rs.4,10,000/- to Rs.13,59,600/- in the manner stated below:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For Loss of dependency	3,60,000	12,09,600	enhanced
2.	For love and affection	30,000 +10,000	60,000 + 50,000	enhanced
3.	For Transportation	5,000	10,000	enhanced
4.	For Funeral expenses	5,000	15,000	enhanced
5.	loss of estate	-	15,000	awarded
	Total	4,10,000	13,59,600	By enhancing a sum of Rs.9,49,600/-

7. In view of the above modification, the Civil Miscellaneous Appeal is allowed in part and this Court directs the Insurance Company to deposit the entire award amount within a period of twelve weeks from the date of receipt of a copy of this order along with interest at the rate of 7.5%. On such deposit, the Tribunal is directed to transfer the said amount as apportioned by the Tribunal, directly to the Personal Savings Account Number of the claimants by way of RTGS/NEFT system, after getting their Account Details, within a period of three weeks thereafter. No costs.

8. The appellants/claimants are directed to pay the deficit Court fee if any, to the Registry before receipt of the judgment copy.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

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Sub Assistant Registrar(CS)



To
The Motor Accident Claims Tribunal,
Sub Court, Kuzhithalai.

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copy to
The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.J.S.MURALI, Advocate (SR-95499[F] dated 01/11/2019)

+1 CC to M/s.S.SRIMATHY, Advocate (SR-95497[F] dated 01/11/2019)

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