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C.M.A.(MD)Nos.919 of 2018
and 657 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A. (MD)Nos.919 of 2018

and 657 of 2019

and

CMP (MD)No.8078 of 2019

in

CMA (MD)No.657 of 2019

C.M.A (MD)No.919 of 2018:

- 1.Karthika
- 2.Minor Meenatchi
- 3.Kandasamy
- 4.Chinnaponnu ... Appellants /Petitioners

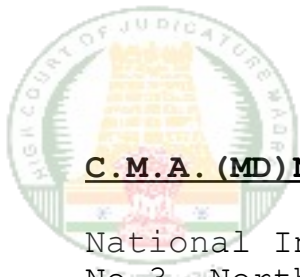
(Minor rep by Mother and Natural
Guardian viz first Appellant)

Vs.

- 1.P.Chandan
- 2.The Divisional Manager,
The New India Insurance Company Ltd.,
Door No.248-B, Kamarajar Salai,
Madurai.
- 3.C.Boominathan
- 4.The Divisional Manager,
National Insurance Company Ltd.,
Door No.3, South Veli Street,
Madurai District. ... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 07.03.2017 made in M.C.O.P.No.2615 of 2015 on the file of the Motor Accidents Claims Tribunal /VI Additional District Judge, Madurai.

For Appellants	:Mr.K.Kumaravel
For R-2	:Mr.B.Rajesh Saravanan
For R-4	: Mr.D.Sivaraman
For R-1 & R-3	: No Appearance



C.M.A. (MD)No.657 of 2019:

National Insurance Company Limited,
No.3, North Veli Street,
Madurai District,
Through its Divisional Manager

... Appellant /4th Respondent

- Vs -

1.Karthika
2.Minor Meenakshi
3.Kandasamy
4.Chinnaponnu

...Respondents 1 to 4 /Petitioners

(Minor rep by Mother and Natural
Guardian viz first Respondent)

5.P.Chandran

6. The New India Insurance Company
Through its Divisional Manager,
Door No.248-B, Kamarajar Salai,
Madurai District.

7.C.Boominathan ...Respondents 5 to 7 /Respondents 1 to 3

Prayer: Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 07.03.2017 made in M.C.O.P.No.2615 of 2015 on the file of the Motor Accidents Claims Tribunal /VI Additional District Judge, Madurai.

For Appellant	: Mr.D.Sivaraman
For R1 to R4	:Mr.K.Kumaravel
For R5 to R7	:No Appearance

* * * * *

C O M M O N J U D G M E N T

Both the Civil Miscellaneous Appeals arising out of the common award, dated 07.03.2017 made in M.C.O.P.No.2615 of 2015 on the file of the Motor Accidents Claims Tribunal /VI Additional District Judge, Madurai.

2.The appellants in C.M.A.(MD)No.919 of 2018 are claimants and the appellant in C.M.A(MD)No.657 of 2019 is the fourth respondent/Insurance Company in the claim petition.



3. Since both the appeals arose out of a single Judgment, they will be heard and disposed of by a common Judgment.

4.Facts of the Case:

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According to the claimants, on 18.09.2015 when the deceased Ganesan was riding his two wheeler from North to South, on Nilakkottai - Anaipatti road, a bus insured with the New India Assurance Company came from the opposite direction, and dashed against the deceased, due to which he fell down from the bike and at that time, a van insured with the National Insurance Company came from North to South and ran over him, due to which Ganesan died. Hence, the claimants filed an application in M.C.O.P.No.2615 of 2015 on the file of the Motor Accidents Claims Tribunal /VI Additional District Judge, Madurai claiming a sum of Rs.20,00,000/- as compensation.

5. Before the Tribunal, on the side of the claimants P.Ws.1 and 2 were examined and twenty documents were marked as Exs.P.1 to P.20. On the side of the respondents, no oral and documentary evidence was marked.

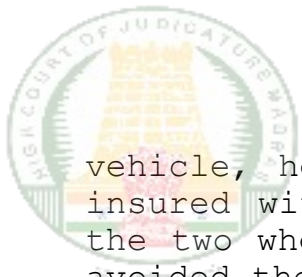
6. On consideration of the evidence available on record, the learned Tribunal has awarded a sum of Rs.16,36,240/- with interest at the rate of 7.5%. Challenging this award, the appeal has been filed by the Insurance Company. The Tribunal has found that drivers of both the vehicles are responsible for accident and so, they are liable to pay 50:50 of the compensation amount.

7. Aggrieved by the said award, the appellants in C.M.A.(MD) No.919 of 2018, who are the claimants and the appellant in C.M.A.(MD) No..657 of 2019, who is the fourth respondent/Insurance Company have filed these appeals.

8. The points for consideration in this appeal are as follows:-

- (i) Whether the drivers of both the vehicles are responsible for the accident?
- (ii) What is the just and fair compensation?

9. With regard to the liability, the Insurance Company would contend that the accident had occurred only due to the negligence on the part of the deceased himself, who rode the two wheeler in a rash and negligent manner having two persons on pillion and has invited the accident. Therefore, according to him, the Tribunal ought to have held that the deceased alone was responsible for the accident. Further, he would contend that when three persons were riding in a two wheeler against the statutory provisions, the rider of the bike cannot have proper control over the vehicle as he would have sat in a cramped manner. It was only because he could not control his



vehicle, he first dashed against the bus and then against the van insured with the appellant and if only two persons were riding in the two wheeler, the deceased could have controlled the vehicle and avoided the accident.

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10.However, the learned counsel for the claimants would contend that no one was examined on behalf of the Insurance Company in this regard. The Tribunal has also rightly pointed out that the Insurance Company has not taken any steps to examine the aspect whether the rider of the bike drove the vehicle along with two other persons or not and no evidence was taken by the Insurance Company to prove that three persons were travelled in the bike. In these circumstances, the Tribunal has rightly fixed the liability as 50 % on the part of the driver of the bus and 50% on the part of the driver of the van.

11.Considering the above stated facts and circumstances of the case, this Court is of the opinion that the Insurance Company has not taken any steps to prove the statement that the deceased drove the vehicle along with three persons. Therefore, this Court is not in a position to accept the said contention of the learned counsel for the Insurance Company and that the learned Judge after considering the evidence found that both the drivers are responsible for the accident and hence, this Court does not find any reason to interfere with the order of the Tribunal and also the fixation of liability as 50:50, which is correct. The point No.(i) is answered accordingly.

Point No. (ii) :

12.As far as quantum of compensation is concerned, the learned counsel for the claimants would contend that the deceased was working as a labour in a flower market and he was earning about Rs.1,000/- per day. However, the Court below taken the notional income of the deceased as Rs.6,500/- p.m. which is very low and it should be fixed as Rs.12,000/- p.m.

13.On the other hand, the learned counsel for the Insurance Company would contend that the Tribunal has rightly fixed a sum of Rs.6,500/- as monthly income by following the Judgment of the Hon'ble Apex Court in **Syed Sadiq etc., vs. Divisional Manager, United India Insurance Company** reported in **2014(1) TN MAC 459(SC)** wherein it has fixed a sum of Rs.6,500/- as notional income for the vegetable vendor. He would further submit that the same principle will apply to the present case also, since the deceased was a worker in the flower market. He would also submit that the claimants made a claim only for a sum of Rs.3,00,000/- before the Tribunal. Therefore, he would contend that the Tribunal has awarded a just and reasonable compensation and the same does not require interference and hence, this appeal is to be dismissed.



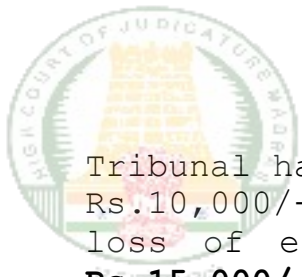
14. In reply, the learned counsel for the claimants would submit that in the above said decision in **Syed Sadiq**, the Hon'ble Apex Court has fixed the notional income as Rs.6,500/- for the accident took place in the year 2008, whereas in the present case, the accident had occurred and the rider also died on the spot in the year 2015. Now, the cost of living has got increased subsequently and therefore, depends upon the increase in cost of living, it should be fixed on the higher side. The learned counsel for the claimants also contended that as per Order 41 Rule 33 C.P.C., this Court has power to enhance the compensation even without an appeal or cross objections.

15. The scope of Order 41, Rule 33 of the Code of Civil Procedure and the power of the High Court to enhance the Award amount in accident cases in the absence of Cross-Objections has been discussed by the Supreme Court in **Nagappa v. Gurudayal Singh, 2004 (2) TN MAC 398 (SC): AIR 2003 SC 674**, where the Apex Court has held that the Court is required to determine Just Compensation and there is no other limitation or restriction for awarding such Compensation and in appropriate cases wherefrom the evidence brought on record if the Tribunal/Court considers that the Claimant is entitled to get more Compensation than claimed the Tribunal may pass such award and would empower the Court to enhance the Compensation at the Appellate stage even without the injured filing an Appeal or Cross-Objections.

16. It has to be seen that since the deceased was working in the flower market. In view of the increase in the cost of living, it would be appropriate to fix the notional income of the deceased as Rs.9,000/- p.m. Since the age of the deceased was found to be 29 years, the appropriate multiplier to be applied as per the **Smt. Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1 (SC)** case, is '17'. Therefore, 40% has to be added towards future prospects as the age of the deceased was found to be as 29, 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.9,000/- + Rs.3,600/- (Rs.9,000 X 40%) = Rs.12,600/-.

17. Since there are four dependants in this case, as per the judgement **Smt. Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC)**, 1/4th has to be deducted. The loss of income after deduction would be Rs.9,000/- + Rs.3,600/- (Rs.9,000 X 40%) - 1/4th = Rs.9,450/- p.m. and therefore, the loss of income would be Rs.9,450 X 12 X 17 = **Rs.19,27,800/-**.

18. The Tribunal has fixed a sum of Rs.50,000/- towards consortium. However, as held by the Hon'ble Apex Court in **PRANAY SETHI**, it has been reduced to **Rs.40,000/-** from Rs.50,000/-. The



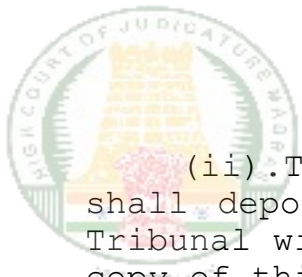
Tribunal has fixed a sum of Rs.10,000/- towards funeral expenses and Rs.10,000/- towards transportation and no amount was awarded towards loss of estate. Therefore, as per **PRANAY SETHI** case, a sum of **Rs.15,000/-** is hereby awarded for funeral expenses; **Rs.15,000/-** is awarded towards loss of estate and **Rs.10,000/-** is hereby awarded for transportation. As far as love and affection is concerned, the Tribunal has awarded a sum of Rs.75,000/- for the claimants 2 to 4. However, the age of the daughter of the deceased at the time of death of the father is two years old and definitely two years young girl lost her affection towards his father, which is priceless. Therefore, this Court awarded a sum of **Rs.1,00,000/-** towards loss of love and affection for the second claimant and a sum of **Rs.25,000/- each** for the claimants 3 and 4.

19. 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	14,91,240	19,27,800	enhanced
2.	For consortium	50,000	40,000	reduced
3.	For loss of estate	Nil	15,000	awarded
4.	For funeral expenses	10,000	15,000	enhanced
5.	For transportation	10,000	10,000	enhanced
6.	For loss of love and affection	75,000	1,50,000	enhanced
	Total	Rs.16,36,240	Rs.21,57,800 rounded off to Rs.21,60,000/-	By enhancing a sum of Rs.5,23,760/-

20. In the result,

(i).The Civil Miscellaneous Appeal in C.M.A(MD)No.919 of 2018 is allowed, enhancing the award of the Tribunal from **Rs.16,36,240/-** (Rupees Sixteen Lakhs Thirty Six Thousand Two Hundred and Forty Only) to a sum of **Rs.21,60,000/-** (Rupees Twenty One Lakhs and Sixty Thousand Only).



(ii).The second and fourth respondents in the claimant appeal shall deposit their 50 : 50 share of the award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment.

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(iii).On such deposit being made, the first claimant/wife is entitled for a sum of Rs.10,00,000/-; the second claimant/minor child is entitled for a sum of Rs.8,00,000/-; the third claimant/father is entitled for a sum of Rs.1,60,000/- and the fourth claimant / mother is entitled for a sum of Rs.2,00,000/-, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till she attain majority. The mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor.

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

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

(vi).On such payment of Additional Court fees, if any, by the claimants and upon the deposit made by the Insurance Company, 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**;

21.In view of the judgment passed in C.M.A(MD)No.919 of 2018, C.M.A(MD)No.657 of 2019 is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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C.M.A.(MD)Nos.919 of 2018
and 657 of 2019

To:

1.The Motor Accidents Claims Tribunal /
VI Additional District Judge, Madurai.

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

+1 CC to Mr.K.KUMARAVEL, Advocate (SR-86396[F] dated 12/09/2019)

+1 CC to Mr.B.RAJESH SARAIVANAN, Advocate (SR-86642[F] dated
13/09/2019

+1CC to Mr.D.Sivaraman, Advocate, SR.No.86595

C.M.A. (MD)Nos.919 of 2018
and 657 of 2019
12.09.2019

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