



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.98 of 2015

and

M.P.No.1 of 2015

Branch Manager,
National Insurance Co. Ltd.,
74-A, Paramathy Road,
Namakkal - 637 001.

... Appellant /2nd Respondent

/versus/

1. Vidhya Venkatesh,
2. Minor Kasi Venkatesh,
S/o.K.K.Venkatesh,
Minor rep by his mother &
next friend Vidhya Venkatesh,

3. K.Krishnamurthy Chetti,

4. K.K.Gayathiri,

5.C.Mohan,

...1 to 4 Respondents/Claimants

... 5th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, praying against the award and decree dated 03.10.2013 made in M.C.O.P.No.439 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondents: No appearance

J U D G M E N T

(The case has been heard through video conference)

Heard the Learned Counsel for the appellant. Inspite of paper publication, there is no representation for the respondents.

2.This Appeal is filed by the Insurance Company being aggrieved by the compensation awarded to the claimants.

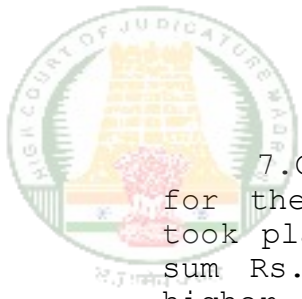


3.The facts of the case is that, on 28.02.2003, K.K.Venkatesh, while travelling in his TVS Suzuki motorcycle bearing registration No.KA-05-R-402 with one Vikram on the pillion, near Arunagiri rice mill along Krishnagiri-Hosur National Highways, a lorry bearing registration No.TN-47-A-7599, insured under the Appellant/Insurance company, rash and negligent hit the motor cycle. The rider of the motor cycle K.K.Venkatesh died on the spot. The claim petition was filed by his wife, son and parents seeking compensation for a sum of Rs.50,00,000/-. The deceased was a D.Pharm Diploma holder and earning Rs.30,000/- per month. He had passport and had every possibility of getting foreign employment and he could have earned not less than one lakh rupees per month. Due to his sudden demise, his wife, son and parents are left without breadwinner.

4.The claim petition was contested by the Insurance Company on the ground that the accident occurred due to negligence of the deceased K.K.Venkatesh, who recklessly driven the motor cycle without noticing the lorry. Three persons travelling in the motor cycle at the time of accident is contrary to the policy condition as well as the Motor Vehicles Act.

5.The Tribunal, after taking note of the evidence placed by the claimants as well as the Insurance Company, awarded a sum of Rs.21,49,080/-. The Tribunal fixed the monthly income of the deceased as Rs.13,340/-, tentatively since the salary certificate relied by the claimants were not proved in the manner known to law. Regarding negligence, the criminal case was registered against the lorry driver before the Magistrate Court, so, negligence attributed on the part of the deceased was not accepted by the Tribunal.

6.The Learned Counsel for the Insurance Company/Appellant would submit that in the absence of evidence to show the actual income of the deceased, the Tribunal ought not to have fixed Rs.13,340/- as monthly income, without reason or basis. D.Pharm certificate and passport of the deceased cannot be the basis to fix the income at Rs.13,340/- notionally. Further, the Learned Counsel for the appellant would also state that the deceased age at the time of accident was 31 years and therefore, the multiplier should have been only "16" and not "17". The Tribunal has erroneously applied multiplier "'17'".



7. On considering the submissions made by the learned Counsel for the appellant, this Court finds that the accident, which took place in the year 2003, the fixation of notional income at sum Rs.13,340/- without proper evidence appears to be on the higher side. At the same time, the Tribunal has not taken note of future prospects as mandated by the judgment of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi.

8. Hence, this Court modified the award of the Tribunal as below:-

SL. No.	Compensation under various heads	Award passed by this Court
1.	Loss of income (Rs.7,500 + 40%) $\times \frac{3}{4} \times 16 \times 12$	Rs.15,12,000/-
2.	Loss of consortium for 1 st claimant	Rs.40,000/-
3.	Loss of love and affection for 2 nd to 4 th claimants. (Rs.20,000 $\times$ 3)	Rs.60,000/-
4.	Loss of estate	Rs.15,000/-
5.	Funeral Expenses	Rs.15,000/-
	Total	Rs.16,42,000/-

9. Accordingly, the award of the Tribunal is modified and reduced from Rs.21,49,080/- to Rs.16,42,000/-. This Court holds that the claimants are entitled for a sum of Rs.16,42,000/- with interest at the rate of 7.5% p.a. (excluding the period between 10.08.2006 and 21.06.2009). The appellant/Insurance Company shall deposit the modified award amount with interest 7.5%, from the date of petition till the date of deposit, less the amount of Rs.11,50,000/- already deposited, within a period of 8 weeks from the date of receipt of a copy of this judgment.

10. The award of this Court shall be apportioned as below

1st claimant/wife	: Rs.6,50,000-00
2 nd claimant/minor son	: Rs.6,50,000-00
3 rd claimant/father	: Rs.1,71,000-00
4 th claimant/mother	: Rs.1,71,000-00

11. The claimants/respondents 1, 3 & 4 are permitted to withdraw their respective share amount from the Court deposit, on filing proper application. As far as the minor's share is



concerned, the award amount of the minor 2nd claimant/2nd respondent shall be deposited into a Nationalised Bank, till he attains majority. The interest accrued on the minor deposit amount shall be withdrawn by the 1st claimant/mother of the minor child once in 6 months and to be utilised for the welfare of the child.

12. Accordingly, the Civil Miscellaneous Petition is Partly-Allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

rpl

To
The Motor Accidents Claims Tribunal,
Additional District Court, Krishnagiri.

Copy to:
The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.43101

C.M.A.No.98 of 2015

SSI (CO)
CB(31/08/2021)