WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.1678 of 2008

The Divisional Manager,
New India Assurance Company Limited,
Kamarajar Salai,
Madurai. : Appellant/2nd Respondent

Vs.

1.Karthikeyani :1st Respondent/Petitioner
2.Thiruthanimurugan : 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.No.758 of 2006, dated 18.06.2008 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Madurai.

For Appellant : Mr.J.S.Murali

For 1st Respondent : Mr.D.Nallathambi

For 2nd Respondent : No appearance

JUDGMENT

Assailing the judgment and decree passed by the Motor Accident Claims Tribunal, Principal District Court, Madurai, in M.C.O.P.No.758 of 2006, dated 18.06.2008, the Insurance Company has preferred this appeal. Against the claim of Rs.4,00,000/-, the Tribunal has awarded a sum of Rs.3,55,000/- along with interest at the rate of 9% per annum.

2. It is the case of the claimant that on 19.12.2005 at about 11.45 a.m., the claimant's son Rajesh was riding his TVS Suzuki motorcycle bearing Registration No.TN-59-P-3746 on Tamil Sangam Road. When it was nearing Labour School, Madura Coats over-bridge, the driver of the TVS-XL motor cycle bearing registration No.TN-59-AA2613, which was coming from opposite direction, drove it in a high speed and hit against TVS Suzuki. In the impact, he sustained injuries and he died at the hospital. It is the further case that the deceased was 22 years old at the time of accident and he was

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

working as Lab Assistant and was earned Rs.6,000/-. However, on account of his sudden death, the claimant lost her only bread winner.

3. The appellant Insurance Company resisted the claim petition contending that the deceased Rajesh overtook the vehicle, which was proceeding in the same direction and hit against the TVS-XL Motorcycle TN-59-AA-2613. The pillion-rider sustained injuries and the deceased was ran-over by a lorry and hence, the driver of TVS-XL is not responsible for the accident. They have also disputed the income and quantum as excessive.

4.Before the Tribunal, the claimant in order to substantiate her case, examined three witnesses and marked Exs.P1 to P4. On the side of the respondents, R.W.1 was examined and no document was marked. Upon consideration of the oral and documentary evidence, the Tribunal came to the conclusion that the rider of the offending vehicle is responsible for the accident and awarded compensation of Rs.3,55,000/- along with interest @ 9% p.a. Questioning the propriety of finding of the Tribunal, the present appeal has been filed by the Insurance Company.

5. Mr.J.S.Murali, learned counsel appearing for the appellant/Insurance Company would submit that the appellant examined the owner of the TVS-XL as R.W.1 and his evidence, he stated that the deceased Rajesh came in a high speed and due to his negligence, the accident had taken place, but it was not at all considered by the Tribunal. It is further contended that the deceased was bachelor and her mother was 55 years old, but the Tribunal was adopted multiplier '17' and deducted 1/3rd instead of 50% and applying multiplier '11'.

6. To prove the negligent aspect, the claimant examined one eye witness as P.W.2 and in his evidence, he would state that the rider of the TVS-XL, drove it in a rash and negligent manner and dashed against the TVS-Suzuki vehicle driven by the deceased and thereby, the accident had taken place. In addition, they have produced the copy of the FIR Ex.P1 and charge-sheet as Ex.P2. The case of the appellant was rejected on the ground that in the FIR, the involvement of the TVS-XL alone is mentioned and not lorry as stated by R.W.1. That apart, a final report was also filed only against R.W.1. Hence, the Tribunal held that the claimant has proved the driver of the TVS-XL was responsible for the accident.

7. The claimant would state that the deceased was 22 years old and he was working as Lab Assistant and earned Rs.6,000/- per month. Ex.P3 is the post-mortem certificate. Ex.P4 is the salary certificate. It is averred in the claim petition that the claimant, the mother of the deceased was 54 years old on the date of the accident.

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

8.In ***2016(2) TN MAC 735 (SC)*** [Y.P.Shakuntala and Ors. Vs. Manager, Reliance General Insurance Co., Ltd., and Ors), in that case, the tribunal awarded compensation on the basis of the age of the mother for determining the multiplier, the Hon'ble Apex Court has confirmed the finding.

WEB COPY

9. In **2017(2) TN MAC 73(DB)** [R.Vijayalakshmi v. M.Muthu Viswanath], a similar question arose for consideration, in case of death of a bachelor, whether the age of the deceased or the age of the claimant is to be taken into consideration. The Division Bench, following the decisions of the Hon'ble Supreme Court in **2010(2) TN MAC 612 (SC)** (Sakthi Devi Vs. New Indian Assurance Company Ltd), **2011(2) TN MAC 317 (SC)** (National Insurance Company Vs. Shyam Singh & others) and **2008 (8) SCC 670** (Vijay Shankar Shinde vs. State of Maharastra), has held in para 25 as follows:-

> *"25.We are, therefore, of the opinion that between the age of the deceased of a road accident, and the age of the Claimant, whichever is higher of the two, is liable to be taken into account and consideration. Hence, the contention of the learned counsel for the Appellants cannot be accepted that, it is the age of the deceased, which must be taken into account, and on the other hand, the contention canvassed by the learned Counsel for the Respondent/Insurance Company, is liable to be accepted."*

10. In the light of the above judgments, it would be appropriate to take the age of the mother of the deceased to determine the compensation. The Tribunal applying multiplier '17'. But the multiplier would be '11'.

11. As per the judgment of the Apex Court reported in ***2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi],*** the claimant would be entitled for 40% towards future prospects. It would be appropriate to fix income as Rs.3,500/- and by applying multiplier '11', the loss of income would be Rs.4,62,000/- (3,500 x 11 x 12) from which, 50% is to be deducted for personal and living expenses as the deceased was bachelor. Therefore, Rs.2,32,000/- is awarded under the head of loss of income. In addition, Rs.40,000/- is awarded towards conventional damages.

12.In the result, this Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from Rs.3,55,000/- to a sum of **Rs.2,72,000/-** along with interest @ 9% per annum from the date of petition till date of realization with proportionate costs. The appellant/Insurance Company shall deposit the modified award amount with interest and costs, within a period of eight weeks from

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

WEB COPY

the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the modified award amount. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

1.The Motor Accidents Claims Tribunal,
Principal District Court,
Madurai.

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

+1cc to Mr.D.Nallathambi, Advocate Sr.No.24473

C.M.A(MD)No.1678 of 2008
07.12.2020

VB (18.01.2021) 4P 5C

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