



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.M.A(MD)No.777 of 2019

and C.M.P. (MD)No.10081 of 2019

WEB COPY

M/s. National Insurance Company Ltd.,
Rep by its Branch Manager,
Jerome Building,
Fort Station Road,
Tiruchirappalli 620 002. .. Appellant/Respondent No.2

Vs.

1.R.Usha
2.N.Padma .. Respondents 1 & 2/Petitioners 1 & 2
3.M/s Rahamath Bus Service,
Rep. by its Managing Partner,
No.51A, Quaid-e-Millath Nagar,
Tennur, Tiruchirappalli 620 017. .. 3rd Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act to set aside the fair and decretal order dated 01.02.2019 made in M.C.O.P.No.1755 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Judge), Tiruchirappalli.

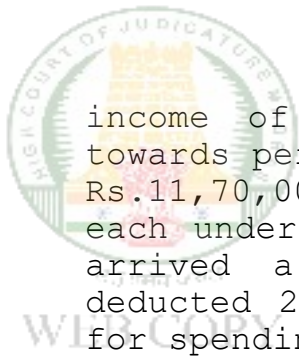
For Appellant : Mr.S.Srinivasa Raghavan
For R1 & R2 : Mr.N.Sudhagar Nagaraj
For R3 : No appearance

J U D G M E N T

This appeal is filed by the Insurance Company challenging the quantum of compensation arrived primarily on the ground that the victim of the road accident was a bachelor, aged 50 years, and the deduction for personal expenses has to be provided at 50%, whereas the Tribunal has awarded only 1/3rd.

2. The brief facts of the case are that on 17.06.2014 at about 9.30 p.m, in the night one Suresh aged about 50 years, said to be a Cook was stated to be sleeping on the edge of the road, where the accident took place, and he was ran over by the Bus bearing Registration No. TN-45-AL-8676. He was admitted in the hospital and died two days later on 19.06.2014.

3. Claiming compensation, his sisters have laid the Claim Petition before the Tribunal. The Tribunal has determined the salary of the petitioner at Rs.9,000/- to which it added Rs.2250/- towards future prospects of increase in income and thus arrived at the monthly



income of Rs.11,250/- out of which it reaches 1/3rd deduction towards personal expenses and applied multiplier '13' and arrived at Rs.11,70,000/- towards loss of income. It added a sum of Rs.15,000/- each under the head of loss of estate and for funeral expenses and arrived a total compensation of Rs.12,00,000/- from which it deducted 20% towards contributory negligence to the victim himself for spending his time in quasi contract in road margin.

4. The learned counsel for the appellant would submit that since the victim was sleeping at a place where he was not supposed to sleep, the percentage of contributory negligence deducted by the Tribunal is at the lower end. Therefore, this Court may have to interfere with that head. He would further argue that the victim of the accident was a bachelor and he has no direct dependants or had a family to support and his sisters alone are the claimants. He therefore submitted that in such circumstances, only 50% is liable to be deducted, instead of 1/3rd as has been done by the Tribunal.

5. Per contra, the learned counsel for the respondents 1 & 2/claimants would argue that the fact that the claimants are married does not imply they must be deprived of the care of their brother and the support his income has provided them. He submitted that the Tribunal has reasonable enough to arrive at the compensation it has arrived.

6. This Court has carefully perused the materials available on record and holds that 20% negligence attributed to the victim for inviting the accident upon himself is fair and reasonable and it does not want to interfere with the same.

7. Turning to the question whether it ought to be 1/3rd deduction or one half deduction is concerned, admittedly, the claimants are the sisters of the victim and both are married. Therefore, whatever support that the victim might have been providing them is not out of duty, but, out of affection. This is only where there is a duty or an obligation fell upon the victim to support a large number of family members, the court ought to move from one half to 1/3rd deduction, since the family would then be depending entirely on the income of the victim for the subsistence and survival. Therefore, it is fair enough to deduct one half. If it is one half, the total compensation amount payable under the head loss of income is Rs.8,77,500/-.

8. This Court notices that the victim had died 3 days after the date of accident which implies he would undergone untold misery and pain to his person. Therefore, on this head, this Court decides to award Rs.55,000/-. For funeral expenses this Court awards an additional sum of Rs.7,000/-. Therefore, the amount awarded under the head 'for funeral expenses' is enhanced to Rs.22,000/-. A sum of Rs.15,000/- awarded by the Tribunal under the head 'loss of estate' is



confirmed. To sum up it, the total compensation amount arrived is Rs.9,69,500/-. This is rounded to Rs.9,70,000/-.

9. Out of Rs.9,70,000/-, a sum of Rs.1,94,000/- representing 20% of the amount arrived as compensation must be deducted towards contributory negligence of the victim. The final figure of compensation which the claimants/respondents 1 and 2 are entitled to is Rs.7,76,000/- with interest at the rate of 7.5 % from the date petition till date of realization.

10. Accordingly, the respondents 1 and 2/claimants are entitled to get the following compensation:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of Income	11,70,000.00	8,77,500.00
2.	Loss of estate	15,000.00	15,000.00
3.	Funeral Expenses	15,000.00	22,000.00
4.	For pain and suffering	Nil	55,000.00
	Total	12,00,000.00	9,69,500.00 rounded off to Rs.9,70,000.00
After deducting 20% towards contributory negligence Total =			Rs.7,76,000/-

11. The learned counsel for the appellant submits that the entire compensation amount has been deposited before the trial court. The appellant would be entitled to any amount in excess of the amount that is now determined by this Court with accrued interest. The balance amount now determined by this Court can be withdrawn by the respondents 1 & 2/claimants along with interest at the rate of 7.5% from the date of petition till date of realization.

12. In fine, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSI)

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Sub Assistant Registrar(CS)

CM

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Motor Accident Claims Tribunal,
Special District Judge,
Tiruchirappalli.

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

+1 CC to M/s.N. SUDHAGAR NAGARAJ, Advocate (SR-20135[F] dated
15/10/2020)

+1 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate (SR-20129[F] dated
15/10/2020)

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PK(CO)
KB(27.11.2020) 4P 6C