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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 18.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.2847 of 2013

1. A.Meenakshi
  2. A. Sankari
- ... Appellants/ Claimants

Vs.

1. L.Loganathan
  2. M/s Sree Mathi Mariammal Service,  
D.No.114-D, Race Course, Coimbatore-18.
  3. M/s New India Assurance Company Limited,  
D.No.435, D.B.Road, R.S.Puram,  
Coimbatore 641 002.
  4. M/s New India Assurance Company Ltd,  
Divisional Office, Peple's park,  
Government Arts College Road, Coimbatore.
- ... Respondents/ Respondents.

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 30.12.2008 passed in MCOP No.597 of 2007 by the I Additional District Judge, Motor Accident Claims Tribunal, Coimbatore.

For Appellants : None appeared. Name printed  
in the cause list

For respondents: Ms.A.Salomi for R3 and R4  
for Mr.C.Ramesh Babu

RR1 & 2 : Ex-Parte before the Tribunal

#### J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal seeking enhancement of compensation.



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2. The claimants have filed a claim petition before the Tribunal seeking compensation of Rs.10,00,000/- for the death of one Subbaiah, son of the first claimant and brother of the second claimant, in a road accident that took place on 10.02.2007.

3. The brief case of the claimants is as follows: On 10.02.2007 at about 10.30 p.m. the deceased Subbaiah was riding his motorcycle bearing registration No.TN-38-R-0684 along Coimbatore-Mettupalayam Road towards Karamadi and while nearing Thannerpandal, he was riding his motorcycle in a normal speed following a bus bearing registration No.TN38-W-9353, which proceeded ahead of the deceased and the bus was stopped by its driver without any signal, by applying sudden brake, thereby, the motorcycle dashed behind the bus, rear right side and due to the impact, the deceased sustained grievous injuries all over his body and was taken to nearby Mettupalayam Government Hospital, where, he was declared as dead. According to the claimants, the rash and negligent driving of driver (first respondent) of the bus was the cause of accident and since the second respondent/ owner of the vehicle insured his bus with the third respondent/ insurance company and the motorcycle was insured with the fourth respondent, all off them are liable to pay compensation.

4. The claim petition was resisted by the third respondent/ Insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimants, three witnesses were examined as PW1 to PW3 and Ex.P1 to Ex.P10 were marked. On the side of the third respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded total compensation of Rs.4,54,362/- and after deducting 40% contributory negligence on the part of deceased, has awarded a sum of Rs.2,72,617/- as compensation to the claimants under various heads as extracted hereunder.

| Sl No | Heads                            | Amount in Rs. |
|-------|----------------------------------|---------------|
| 1     | Transportation charges           | 2,000         |
| 2     | Mental agony and sufferings      | 10,000        |
| 3     | Love and affection to I claimant | 7,000         |



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| Sl No | Heads                                       | Amount in Rs. |
|-------|---------------------------------------------|---------------|
| 4     | Love and affection to II claimant           | 3,000         |
| 5     | Funeral expenses                            | 7,000         |
| 6     | Loss of income                              | 4,25,362      |
|       | Total                                       | 4,54,362      |
|       | After deducting 40% contributory negligence | 2,72,617      |

Not satisfied with the quantum of compensation, the claimants have filed the present appeal seeking enhancement of compensation.

7. Originally, Mr.P.Durai has appeared on behalf of the appellants. Subsequently, based on the representation made by him that he has already given change of vakalath to the appellant, this court has directed the Registry to print the name of the appellants in the cause list. Subsequently, this matter was posted on several hearings, however, there was no representation on behalf of the appellant. Finally on 25.02.2021, when the case was posted for hearing, none appeared and hence, the matter was posted on 01.03.2021 and 04.03.2021 and 11.03.2021 " for dismissal". Today also, none appeared on behalf of the appellant. This appeal is of the year 2013 and has been filed seeking enhancement of compensation. Therefore, this court decided to dispose the appeal on merits, with the assistance of the learned counsel appearing for the third respondent/ insurance company.

8. The ground raised in the appeal is that the deceased was a permanent employee of M/s Pricol Company, Coimbatore and he was working as a machine operator and was earning a sum of Rs.8181/- per month, as per the Ex.P10 salary certificate. However, the Tribunal has taken only 1/3 amount of Rs.2727/- to calculate the compensation under the head " loss of income". It is further stated that the above said company is a public limited company and hence, the deceased had all opportunities to reach higher position and hence, the claimants are entitled to the benefit of future prospects. It is further stated that the compensation awarded under the various heads are very meagre and hence, compensation awarded by the Tribunal has to be enhanced.

9. Now the point for consideration is whether the compensation awarded by the Tribunal has to be enhanced.



#### 10. POINT

The case of the claimants itself is that at the time of accident, the deceased was riding his motorcycle, following a bus bearing registration No.TN38-W-935, which proceeded in front of him, and since the driver of the bus had applied sudden brake, the deceased dashed behind the bus and sustained grievous injuries and died. The Tribunal while fixing contributory negligence on the part of the deceased has discussed that since the deceased was riding his vehicle without leaving sufficient distance, he dashed behind the bus and hence he also responsible for the accident and had fixed 40% contributory negligence on the part of the deceased. However, considering the facts and circumstances of the case, this court fixed the contributory negligence at 20% on the part of the deceased.

11. It is not disputed that the deceased was working as a machine operator in a private concern and was earning a sum of Rs.8181/- per month. To prove the same, Ex.P10 salary certificate was produced before the Tribunal. Accordingly, monthly income of the deceased is fixed at Rs.8181/-. As per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% should be added towards "Future prospects". It is stated in the claim petition as well as the post mortem report that the deceased was aged 27 years and no contra evidence was placed by the respondents to disprove the same. Therefore, proper multiplier to be adopted in the instant case is '17', as per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The deceased was a bachelor on the date of accident and hence, 50% should be deducted from the income of the deceased towards his "Personal expenses". Thus, loss of dependency is calculated as  $8181 + 3272 = 11453 - 50\% = 5727 \times 17 \times 12 = 11,68,308$ . Accordingly a sum of Rs.11,68,308- is awarded towards "Loss of dependency". Besides, a sum of Rs.20,000/- and Rs.15,000/- is awarded towards "Loss of love and affection" to the mother/first claimant and the second claimant/sister respectively and a sum of Rs.15,000/- each is awarded towards "Funeral Expenses" and "Loss of estate". Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

| Sl.No | Heads                  | Compensation Awarded by the Tribunal | Compensation enhanced/ Awarded by this court |
|-------|------------------------|--------------------------------------|----------------------------------------------|
| 1     | Transportation charges | 2,000                                | -                                            |



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| Sl.N<br>o | Heads                                        | Compensation<br>Awarded by the<br>Tribunal                | Compensation<br>enhanced/<br>Awarded by<br>this court     |
|-----------|----------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------------|
| 2         | Mental agony and sufferings                  | 10,000                                                    | -                                                         |
| 3         | Loss of love and affection to first claimant | 7,000                                                     | 20,000                                                    |
| 4         | Loss of love affection to second claimant    | 3,000                                                     | 15,000                                                    |
| 5         | Funeral expenses                             | 7,000                                                     | 15,000                                                    |
| 6         | Loss of income                               | 4,54,362                                                  | 11,68,308                                                 |
| 7         | Loss of estate                               | -                                                         | 15,000                                                    |
| 8         | Total                                        | 4,54,362                                                  | 12,33,308                                                 |
| 9         |                                              | 2,72,617<br>(After deducting 40% contributory negligence) | 9,86,646<br>(After deducting 20% contributory negligence) |

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. It is to be noted that the claimants have not filed the appeal in time and there is a delay of 1423 days in filing the appeal. Therefore, the claimant is not entitled to get interest for the delayed period.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.2,72,617/- to Rs.9,86,646/- . No costs.

(ii) The third respondent/insurance company is directed to deposit the revised compensation of Rs.9,86,646/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, excluding the period of delay in filing the appeal, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.



(iii) On such deposit being made by the insurance company, the claimants are entitled to withdraw the same, as per the apportionment made by the Tribunal, after following due process of law.

Sd/-  
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

mst  
To

The I Additional District Judge,  
Motor Accident Claims Tribunal,  
Coimbatore.

Copy to

The Section Officer,  
V.R.Section, Madras High Court.

CMA. No.2847 of 2013

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srg 25/11/2021