



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	25.02.2021
Date of Judgment	08.06.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI
C.M.A(MD)No.53 of 2013

Mrs.Revathi

: Appellant/Claimant

Vs.

1.Mr.Vanarajan

2.ICICI Lombard General Insurance Company Limited,
United Arcade, Annamalai Nagar,
Karur Bye Pass Road, Trichy.

3.R.Kumar

4.New India Assurance Company Limited,
No.66, W.B Road, Trichy.

: Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Principal District Court), Tiruchirappalli, in MCOP No.2219 of 2009, dated 14.08.2012.

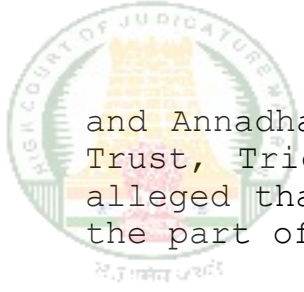
For Appellant : Mr.T.Senthilkumar
For R1 and R3 : No appearance
For 2nd Respondent : Mr.S.Srinivasa Raghavan
For 4th Respondent : Mr.J.S.Murali

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Principal District Court), Tiruchirappalli, in MCOP No.2219 of 2009, dated 14.08.2012.

2.The short facts of the case is that on 05.05.2009, the deceased Selvakumar and his son Muthugugan were travelling in the Car PY-02/C-2442 on Tiruchy-Dindigul main road and at about 6.14 hours, when the Car was nearing Ayyalur, the Tipper Lorry TN-57-L-8375 came in a rash and negligent manner and hit against the Car and thereafter, against a Van, which was coming behind the Car. Due to the impact, both the Selvakumar and Muthugugan sustained severe injuries and they were taken to Government Hospital, Dindigul, however, they died. The legal heir of the Muthugugan filed a claim petition in MCOP No.2219 of 2009 seeking compensation of Rs.10,00,000/- for the death of his son.

3.The claimant has stated that the deceased was 22 years at the time of accident and he was working as Manager at Kalyana Mandapam



and Annadhana Chatram run by Trichy Gandhi Market Vegetable Sellers Trust, Trichy, thereby he was earning Rs.7,000/- per month. It is alleged that the said Muthugugan died only due to the negligence on the part of the driver of the Tipper Lorry.

4. In the counter filed by the 2nd and 4th respondent Insurance Companies, they disputed the manner of accident and their liability to pay compensation.

5. Before the tribunal, on the side of the claimant(s), 4 witnesses were examined and marked 13 documents. On the side of the Insurance Companies, no witness was examined and no document was marked.

6. The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the Tipper Lorry has caused the accident and awarded compensation of Rs.2,50,000/- together with interest @ 7.5% p.a, directing the respondents 1 and 2 therein to pay the compensation to the claimant and dismissed the claim petition as against the respondents 3 and 4 therein.

7. Heard both sides and perused the materials available on record.

8. The learned counsel appearing for the appellant/claimant argued that at the time of accident, the deceased Muthugugan was working as Manager at Kalyana Mandapam and Annadhana Chatram run by Trichy Gandhi Market Vegetable Sellers Trust, Trichy and earned Rs.7,000/- per month, but the tribunal failed to consider the above aspect and awarded only consolidated amount and hence, the compensation awarded by the tribunal is not correct and prays that the Civil Miscellaneous Appeal has to be allowed.

9. In this case, to prove that the deceased was working as Manager in the above Kalyanamandapam, the Correspondent of the Trust was examined as PW4. PW4 deposed that at the time of accident, the deceased was working as Manager in the Kalyana Mandapam and Annadhana Chatram run by Trichy Gandhi Market Vegetable Sellers Trust, Trichy and he was given a sum of Rs.7,000/- per month as salary. PW4 produced Ex.P9 Ledger Accounts regarding the day today accounts of the above Kalyanamandapam and Ex.P10 salary certificate. No acquittance was produced to prove that the deceased was received Rs.7,000/- as salary per month. PW4 during his cross examination admitted that there was no acquittance Register for the receipt of the salary. Further, PW4 admitted that no stamp receipt was filed to prove that the deceased was receiving Rs.7,000/- as salary per month. From Ex.P9, it reveals that the deceased was working in the above Kalyanamandapam. But no document was filed on the side of the claimant to prove that the deceased was working as Manager in the above Mandapam. Hence, considering the facts and circumstances of the case and also perusing the materials available on record, fixed

this court fixed Rs.6,000/- towards monthly salary of the deceased.

10. It is not in dispute that at the time of accident the deceased was 22 years. It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. Hence, this court is of the considered view that 40% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493 (National Insurance Company Limited vs. Pranay Sethi and others)**. By doing so, the monthly loss of income of the deceased is calculated at Rs.8,400/- (Rs.6,000/- + 2,400/-). Since the deceased is a batcholer, 50% has to be deducted towards his personal and living expenses and thereby the monthly income is arrived at Rs.4,200/- (Rs.8,400/- x 1/2). By applying proper multiplier 18, this court awards **Rs.9,07,200/-** (Rs.4,200/- x 12 x 18) towards loss of income. In addition to that, under the conventional heads, as per the decisions in **Pranay Sethi's case and Magma General Insurance's case**, this Court awards Rs.40,000/- towards filial consortium to the claimant; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimant would be entitled for **Rs.9,77,200/-** together with interest @ 7.5% p.a.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. The award is enhanced to **Rs.9,77,200/-** from Rs.2,50,000/-. The 2nd respondent Insurance Company is directed to deposit the modified award amount together with interest @ 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the claimant is entitled to withdraw the entire amount together with accrued interest and costs, without filing any petition. The claimant shall pay the additional court fee for the enhanced amount. No costs.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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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 Accident Claims Tribunal/
The Principal District Court, Trichy.

Copy to

The Record Keeper, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate (SR-19014[F] dated 08/06/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-19082[F] dated
09/06/2021)

CMA(MD)No.53 of 2013
08.06.2021

KB(30.06.2021) 4P 6C