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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	23.09.2021
DELIVERED ON	08.10.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.335 of 2020

and

C.M.P. (MD) No.4359 of 2020

The Divisional Manager,
IFFCO TOKIO General Insurance Company Limited,
North Usman Road, T.Nagar, Chennai - 17.

...Appellant/3rd Respondent

Vs.

1.Sankarasubramanian

2.Muthulakshmi

3.Minor Piramasakthi

...R-1 to R-3/Petitioners

[Minor respondent represented by

Next friend, Guardian and Father Sankarasubramanian]

4.Senthil

5.Mahalingam

...R-4 & R-5/R-1 & R-2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and decree, dated 28.02.2020, passed in M.C.O.P.No.588 of 2016 on the file of the Motor Accident Claims Tribunal, Tirunelveli/Special Subordinate Court, dealing with the M.C.O.P. Cases, Tirunelveli, by allowing this appeal.

For Appellant :Mr.V.Sakthivel

For R-1 to R-3 :Mr.R.J.Karthik

ORDER

This Appellant/Insurance company has filed this Civil Miscellaneous Petition, to set aside the order and decree, dated 28.02.2020, passed in M.C.O.P.No.588 of 2016 on the file of the Motor Accident Claims Tribunal, Tirunelveli/Special Subordinate Court.



2.It is a case of fatal accident, which took place on 19.03.2016, at about 06.15 a.m., the deceased was travelling in the Auto bearing registration No.TN-72-AR-2491 as passenger and the auto was coming in Alangulam to Tirunelveli main road, from west to east, west of Vellalankulam Vilakku, a Swaraj Mazda bearing registration No.TN 07 AA 9844 belonging to the 4th respondent drove in a rash and negligent manner in terrific speed, came from opposite side and dashed against the auto and sustained injuries and he was taken to Krishna Hospital and died later.

3.The claimants have filed a petition in M.C.O.P.No.588 of 2016 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Tirunelveli, seeking compensation.

4.Before the Tribunal, on the side of the claimants two witnesses were examined as P.Ws.1 & 2 and marked five documents as Exs.P.1 to P.5. On the side of the respondent herein, no one was examined and witness and no document was marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the respondent and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the fourth respondent herein and directed the appellant/insurance company to pay a sum of Rs.14,30,800/-as compensation.

6.The appellant/Insurance company has filed this present appeal questioning the quantum.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent Nos.1 to 3/claimants and perused the materials available on record.

8. This Appellant/insurance company has filed this Civil Miscellaneous Appeal against the fair and decretal order, dated 28.02.2020, in M.C.O.P.No.588 of 2016 on the file of the Motor Accident Claims Tribunal, Tirunelveli/Special Subordinate Court.

9.The learned counsel appearing for the appellant/insurance company contended that the Tribunal has failed to note that the claimants have not produced any records for the proof of education or age of the deceased. He further contended that the Tribunal was erred in adding 40% towards future prospects. He further contended that the Tribunal without following the settled principles of law laid down by the Apex Court and our High Courts, has awarded as against the appellant. Hence, this appeal is liable to be allowed.

10. The Tribunal has fixed notional income as Rs.9,000/-p.m. Since the deceased was a minor and 9th standard studying student on the basis of two Judgments reported in the case of **Managing**



Director, Tamil Nadu State Transport Corporation Ltd., Trichy V. Minor Sobana reported in 2019(1) TNMAC 13 and in the case of **SMT.SARALA VARMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER**, reported in **2009(2) TNMAC Page.1 (SC)**, and in the case of **Chinnaraja S. Vs. Sureshkumar (DB) reported in 2019(1)TNMAC 189.**

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11. There is no records for that the deceased is a bright student and therefore, we cannot fix Rs.10,000/-, as monthly income.

12. The paragraph No.10 of the Judgment delivered by this Court in **C.M.A.No.2234 of 2016** in the case of **Managing Director Vs. Minor S.Surya**, is extracted hereunder:

"Though Mr.P.Paramasiva Doss, learned counsel for the appellant - Transport Corporation submitted that there is no evidence that the injured in the case on hand, was brilliant and therefore, a sum of Rs.6,000/- fixed for computing the loss of future earning, is erroneous, this Court is not inclined to accept the said contention, for the reason that every child is intelligent."

Therefore, all the children are intelligent and hence, the Tribunal has rightly fixed Rs.9,000/-p.m., as his notional income is reasonable.

13. The learned counsel for the respondent Nos.1 to 3 herein/claimants is relied upon the Judgment reported in **2017 (2) TNMAC** in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others**. In the said Judgment the Hon'ble Supreme Court after taking into consideration of the Judgments delivered by the earlier Supreme Court benches holding that in addition to the income of the deceased, the claimants are entitled to claim under the head of future prospects. In the said Judgment, the Hon'ble Supreme Court laid guidelines for adding the amount under the head of future prospects. If the deceased age is less than 40 years at the time of death, then 40% of the income should be added under the head of future prospects. In other aspects the Hon'ble Supreme Court laid that the ratio in the case of **Sarala Varma** case to be followed.

14. Therefore, for further prospectus 40% is also reasonable. Regarding multiplier, below the age of 15 years only 15 will apply.

Rs.9000 x 40% = Rs.12,600 x 50/100 for personal expenses.

Rs.6300 x 15 x 12

Rs.11,34,000/-

15. On hearing both sides, this Court is inclined to modify the award amount of compensation passed by the Tribunal.

16. Accordingly, the claimants are entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	Compensation after multiplier of 15 is applied	Rs.13,60,800/-	Rs.11,34,000/-	Granted
2.	Loss of Consortium towards 1 st claimant	Rs. 40,000/-	Rs. 40,000/-	Confirmed
3.	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
4.	For funeral expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
Total		Rs. 14,30,000	Rs. 12,04,000/-	

with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

17. In view of the said modification, this Civil Miscellaneous Appeal is partly allowed, and the award amount of Rs.14,30,000/- granted by the Motor Accident Claims Tribunal/Special Subordinate Court, Tirunelveli, is reduced to Rs.12,04,000/-. The respondent Nos.1 & 2 herein/claimants are entitled to Rs.5 lakhs, each, as compensation, with accrued interests. The 3rd respondent herein/minor claimant is entitled to Rs.2,04,000/-with accrued interests, as compensation, and the amount of the minor claimant is to be deposited in any one of the Nationalized Bank till she attains majority. The Claimant Nos.1 & 2 are entitled to receive the accrued interest once in three months from the bank directly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Ksa

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
The Motor Accident Claims Tribunal/
Special Subordinate Judge, Tirunelveli.

Copy to:

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-31727[F] dated 08/10/2021)
C.M.A. (MD) .No.335 of 2020
08.10.2021

MGJ/UV(10.11.2021) 5P 5C

MGJ/UV(11.11.2021) 5P C