



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.10.2021

Delivered on : .08.12.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

WEB COPY

C.M.A(MD) No.651 of 2014

and

M.P.(MD)No.1 of 2014

National Insurance Company Limited.,
Nagercoil, through its Divisional Manager,
Divisional Office, Anguvilas Building 1st Floor,
North Car Street, Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

... Appellant/2nd Respondent

Vs.

1.Creamer Rajan
2.Victoria Mehalakumari
3.Shanthini Kemala Kumari

(respondents 1 to 3 are represented by
their power of attorney, the 4th respondent)

4.Jaikar Singh

...Respondents 1 to 4/Claimant

5.Paulraj

(notice to 5th respondent may be dispensed with
since he remained exparte before the Tribunal)

...5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order of the Claims Tribunal in M.C.O.P.No.103 of 2013, dated 20.03.2014, on the file of the Chief Judicial Magistrate Court of Kanniyakumari at Nagercoil and the allow appeal.

For Appellant	: Mr.J.S.Murali
For R1 to R4	: Mr.T.Selvakumaran
R5	: Exparte before Tribunal

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order, passed in M.C.O.P.No.103 of 2013, dated 20.03.2014, on the file of the Chief Judicial Magistrate Court of Kanyakumari at Nagercoil.

2.The appellant herein is the second respondent, the respondents 1 to 4 herein are the claimants and the fifth respondent

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



herein is the first respondent in the original claim petition.

3. Brief substance of the petition, in M.C.O.P.No.103 of 2013, is as follows:-

On 14.11.2010, at about 4.30 pm., when the deceased - Sarojini was walking along Vetturmanimadaam - Parvathypuram, M.S. Road, Kaliangadu, a two wheeler bearing Registration No.TN-75-D-1498 that belonged to the first respondent was driven by its rider in a rash and negligent manner, dashed against the pedestrian and she sustained injuries. She was admitted in Sisrutha Private Hospital, Kaliyangadu and then, she was admitted in Aasaripallam Government Medical College Hospital, she was found dead by the Doctors. The deceased was a retired School Teacher and was earning Rs.11,007/- as pension and she was receiving a sum of Rs.3,941/- per month, as family pension after the death of her husband, who worked in L.I.C. More over, the deceased used to take tuition for the students and she used to earn Rs.5,000/- per month. In total, the deceased was earning Rs.20,000/- per month. The petitioners are the dependents of the deceased and they claimed a sum of Rs.10,00,000/- as compensation.

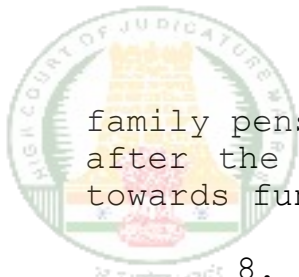
4. Brief substance of the counter filed by the second respondent, in M.C.O.P.No.103 of 2013, is as follows:-

The age of the deceased at the time of accident is 77 years. Though there was ten feet mud road available, the deceased walked on the Thar road, without observing the up-coming vehicle, she suddenly try to cross the road and invited the accident. All the petitioners are above the age of 42 years and they are all married and are living separately with their family and they are not the dependents of the deceased, at the time of accident. The family pension is available only for the deceased and there is no possibility of the petitioners to get the family pension. The first respondent was not having valid driving license, at the time of accident.

5. The first respondent was set *exparte*. On the side of the petitioners, one witness was examined and eleven documents were marked. On the side of the respondents, no witness was examined and no document was marked.

6. The Tribunal, after considering both sides, has awarded a sum of Rs.7,02,900/- as compensation. Against the award, the second respondent / appellant has preferred this Appeal.

7. On the side of the appellant, it is stated that the Tribunal has failed to consider that all the claimants are aged about 49 years to 58 years and they are not the dependents of the deceased. The Tribunal has failed to consider that the income of the deceased was not actually proved by the claimants. The claimants are all aged more than 25 years and they are not entitled to claim



family pension, that was said to have been received by the deceased, after the death of her husband, who worked in L.I.C. The award, towards funeral expenses and love and affection are all excessive.

8. On the side of the appellant, it is further stated that the claimants are not entitled for getting the family pension that was said to have been received by the deceased and that the amount should not be calculated. There is no proof that the deceased was taking tuition and was earning Rs.5,000/- per month.

9. On the side of the respondents / claimants, it is stated that the legal representatives of the deceased are entitled for compensation. A judgment of this Court reported in **2016-1-TNMAC-453 (DB) (Branch Manager, ICICI Lombard General Insurance Co., V. Kaliyamoorthy)** is cited, wherein, it is stated as follows:-

"10. There is a distinction between being a dependent on the income and receiving a contribution from the deceased, either monetarily or through the services rendered by the deceased to the members of the family, legal representatives, which is also a decisive factor, in computing the compensation. Though the provision under Section 2(1)(d) of the Workmen's Compensation Act, 1923, defines, who are all the dependents entitled to claim compensation under the Workmen's Compensation Act, there is a clear distinction under Section 166 of the Motor Vehicles Act, which states that all the legal representatives are entitled to claim compensation.

10. From the evidence of P.W.1 and Ex.P1-F.I.R, Ex.P2-M.V.I. Report, Ex.P3-Observation Mahazer, Ex.P4-Copy of rough sketch, Ex.P6-Copy of charge sheet, it is clear that the accident took place due to the rash and negligent driving of the rider of the motorcycle.

11. From Ex.P7, it is clear that the deceased was getting pension. Copy of the certificate for receiving pension was marked as Ex.P7. The last pension received by the deceased was Rs.11,007/-, Ex.P10 was the certificate for the same. Document for receipt of Rs.3,941/- as family pension was marked as Ex.P11. There is no contra evidence on the side of the appellant. Whatever the pension the deceased was getting, she would have spent only for herself and for her children and the loss of income has to be considered, accordingly. The husband of the deceased was an employee of L.I.C and after his death, the deceased was receiving Rs.3,941/- as family pension. It is true that the claimants are not entitled for the family pension, in their individual capacity, but, as long as the deceased was alive, she might have received the family pension and the income derived from the family pension has to be added to calculate the income of the deceased.



12. There is no proof that the deceased was earning Rs.5,000/- through tuition. In the above circumstances, on the basis of Ex.P7, Ex.P10 and Ex.P11, it is decided that the deceased was earning Rs.14,948/- per month. After deducting 1/3rd (Rs.4,983/-) towards her own expenses, the deceased might have contributed Rs.9,965/- to her family. The age of the deceased at the time of accident is 77 years. Multiplier '5' is applicable. Loss of income is fixed at Rs.5,97,900/- (Rs.9,965/- X 5 X 12 = Rs.5,97,900/-). As per the judgment of the Hon'ble Supreme Court in **Pranay Sethi's** Case, it is decided that the claimants are entitled to Rs.70,000/- towards conventional charges. In total, the claimants are entitled to **Rs.6,67,900/-** as compensation. **The first claimant is entitled to Rs.1,72,900/- and the claimants 2 to 4 are entitled to Rs.1,65,000/- each** as compensation.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the award, passed in M.C.O.P.No.103 of 2013, dated 20.03.2014, on the file of the Chief Judicial Magistrate, Kanyakumari at Nagercoil, is hereby reduced from **Rs.7,02,900/- to Rs.6,67,900/-**.

14. The appellant / Insurance Company is directed to deposit the entire compensation of Rs.6,67,900/- along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the respondents 1 to 4 / claimants are permitted to withdraw their respective shares with proportionate interest as apportioned by this Court, after deducting any amount received by them earlier. The appellant/Insurance Company shall withdraw the excess amount, if any already deposited. The Claimants are not entitled for interest for the default period, if there is any default. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Chief Judicial Magistrate Court of Kanyakumari
at Nagercoil.



2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-38029[F] dated 09/12/2021)

+1 CC to M/s.J.S.MURALI, Advocate (SR-37914[F] dated 09/12/2021)

C.M.A(MD)No.651 of 2014
08.12.2021

DJ(CO)
KB(24.01.2022) 5P 6C