

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	11.01.2021
Date of Judgment	23.03.2021

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CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A(MD)Nos.1086 and 1087 of 2016andCMP(MD)Nos.9765 and 9766 of 2016**(1) CMA (MD) No.1086 of 2016:-**

The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
176-D & E, Trivandrum Road,
Vannarpettai,
Tirunelveli-627 003.

: Appellant/2nd Respondent

Vs.

1.Puthiyapandi
2.Esakkiammal
3.Vijayalakshmi
4.Packiyaraj

: R1 to R3/Petitioners
: R4/1st Respondent

(2) CMA (MD) No.1087 of 2016:-

The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
176-D & E, Trivandrum Road,
Vannarpettai,
Tirunelveli-627 003.

: Appellant/2nd Respondent

Vs.

1.Chellathai
2.Pappa @ Kutty Pappa
3.Muthumari
4.Packiyaraj

: R1 to R3/Petitioners
: R4/1st Respondent

PRAYER: Civil Miscellaneous Appeals have been filed under section 173 of the Motor Vehicles Act, against the common award, dated 08.02.2016 made in MCOP Nos.741 and 742 of 2015 on the file of the Motor Accident Claims Tribunal (II Additional District and Sessions Court), Tirunelveli.



For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R3 : Mr.V.Sasikumar

For 4th Respondent : No appearance

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COMMON JUDGMENT

Challenge made in these appeals is to the common award passed by the Motor Accident Claims Tribunal (III Additional District and Sessions Judge), Tirunelveli, in MCOP Nos.741 and 742 of 2015, dated 08.02.2016.

2.The brief facts of the case are that on 18.04.2015 at 8.15 pm, the deceased Chellappa was riding the motor cycle TN-72-BB-0848, while the deceased Aruputhamani was travelling as pillion rider and when they were proceeding on the Mettu Pirancheri Cremation Yard near Electric Transformer, at the time the Mahindra Van TN-72-8280 came from the opposite direction in a rash and negligent manner and dashed against the motor cycle. In that process, the deceased Chellappa died on the spot, while the deceased Aruputhamani sustained grievous injuries all over the body and while he was taking treatment in Tirunelveli Medical College hospital, he succumbed to injury. The claimants, in both claim petitions, who are the legal heirs of the deceased filed separate claim petitions seeking compensation of Rs.15,00,000/- each on the ground that the driver of the offending vehicle was responsible for the accident.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.8,16,600/- in respect of MCOP No.741 of 2015 and Rs.11,35,000/- in respect of MCOP No.742 of 2015 together with interest @ 9% p.a to the claimants. Challenging the common award of the tribunal, the Appellant Insurance Company is before this court.

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

5.The manner of the accident and the finding on negligence are not in dispute and these appeals are confined only to quantum of compensation awarded by the Tribunal.

6.Learned counsel for the appellant would submit that the common award passed by the Tribunal is excessive and it has to be reduced. It is further contended by the learned counsel for the appellant that the interest awarded by the tribunal is excessive. On the other hand, the learned counsel for the claimants argued in support of the judgment of the tribunal.

CMA(MD) No.1086 of 2016:-

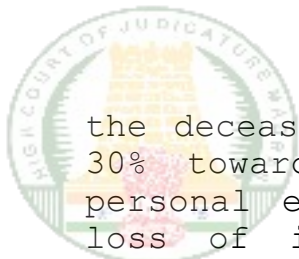
7.It is not in dispute that the deceased Arputhamani was doing Construction work. It is also not in dispute that the deceased died at the age of 45 years. The tribunal has fixed the monthly income of the deceased at Rs.6,500/-. By applying multiplier '14' and adding 50% towards future prospects and after deducting 2/3rd towards personal expenses, the tribunal has awarded Rs.10,92,000/- towards loss of income. The tribunal has awarded Rs.10,000/- towards loss of love and affection to each claimants; Rs.5,000/- for funeral expenses; Rs.5,000/- towards loss of estate and Rs.3,000/- towards travelling expenses to the hospital. In total, the tribunal has awarded Rs.11,35,000/- to the claimants along with interest @ 9% p.a.

8.Perusal of the records would reveal that the deceased Arputhamani was doing Construction work. Since no reliable document has been produced to prove the income, keeping view of the decision of the Hon'ble Apex Court in the case of **Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd., (2014(1) TN MAC 459 (SC)**, the tribunal has rightly fixed the notional income of the deceased at Rs.6,500/- per month.

9.It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 25% of the established income should be the warrant where the deceased was between the age of 40 and 50 years. In the instant case, the tribunal has wrongly added 50% towards future prospects. Hence, this court is of the considered view that 25% 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.8,125/- (Rs.6,500/- + Rs.1625/-). Since the deceased was married and the number of dependant family members is 3, the deduction towards Personal & Living Expenses of the deceased should be 1/3rd. After deducting 1/3rd towards his personal and living expenses, the monthly income is arrived at Rs.5,417/- (Rs.8,125/- x 1/3). By applying proper multiplier 14, this court awards **Rs.9,10,056/-** (Rs.5,417/- x 12 x 14) towards loss of income. In addition to that, as per the decisions in **Pranay Sethi's case** and **Magma General Insurance's case**, this Court awards Rs.40,000/- towards loss of consortium to the 1st claimant and Rs.40,000/- each to the claimants 2 and 3 towards filial consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.10,60,056/-** together with interest @ 7.5% p.a.

CMA(MD) No.1087 of 2016:-

10.It is not in dispute that the deceased Chellappa was doing Agricultural work. It is also not in dispute that the deceased died at the age of 52 years. The tribunal has fixed the monthly income of

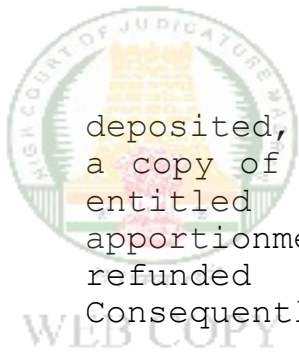


the deceased at Rs.6,500/-. By applying multiplier '11' and adding 30% towards future prospects and after deducting 1/3rd towards personal expenses, the tribunal has awarded Rs.7,43,600/- towards loss of income. Further, the tribunal has awarded Rs.40,000/- towards loss of consortium and Rs.10,000/- towards loss of love and affection to the claimants 2 and 3; Rs.5,000/- for funeral expenses; Rs.5,000/- towards loss of estate and Rs.3,000/- towards travelling expenses to the hospital. In total, the tribunal has awarded Rs.8,16,600/- to the claimants along with interest @ 9% p.a.

11.Perusal of the records would reveal that the deceased was doing Agricultural work. Since no reliable document has been produced, keeping in view of the decision of the Hon'ble Apex Court in the case of **Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd., (2014(1) TN MAC 459 (SC))**, the tribunal has rightly fixed the notional income of the deceased at Rs.6,500/- per month.

12.It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 10% of the established income should be the warrant where the deceased was between the age group of 50-60. In the instant case, the tribunal has wrongly added 30% towards future prospects. Hence, this court is of the considered view that 10% 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.7,150/- (Rs.6,500/- + Rs.650/-). Since the deceased was married and the number of dependant family members is 3, the deduction towards Personal & Living Expenses of the deceased should be 1/3rd. After deducting 1/3rd towards his personal and living expenses, the monthly income is arrived at Rs.4,767/- (Rs.7,150/- x 1/3). By applying proper multiplier 11, this court awards **Rs.6,29,244/-** (Rs.4,767/- x 12 x 11) towards loss of income. In addition to that, as per the decisions in **Pranay Sethi's case and Magma General Insurance's case**, this Court awards Rs.40,000/- towards loss consortium to the 1st claimant; Rs.40,000/- each towards filial consortium to the claimants 2 and 3; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.7,79,244/-** together with interest @ 7.5% p.a.

13.In the result, both Civil Miscellaneous Appeals are partly allowed. The award is reduced to **Rs.10,60,056/-** from Rs.11,35,000/- in respect of MCOP No.742 of 2015 and the award is reduced to **Rs.7,79,244/-** from Rs.8,16,600/- in respect of MCOP No.741 of 2015. The interest award by the tribunal is reduced to 7.5% p.a from 9% p.a. The appellant 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, all the claimants are entitled to withdraw the modified award amount as per the apportionment fixed by the tribunal. Excess amount, if any shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

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/ /2021

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/
II Additional District and Sessions Court,
Tirunelveli.

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

+2 CC to M/s.V.SASI KUMAR, Advocate (SR-13191 & 13192[F] dated 24/03/2021)

+2 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-13236 & 13237[F] dated 24/03/2021)

C.M.A(MD)Nos.1086 and 1087 of 2016
23.03.2021

SGS(CO)

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