

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	20.01.2021
Date of Judgment	17.04.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A (MD)No.1222 of 2016

1.Mercy Jose Jesintha
2.Bala Vigneshwari
3.Selvin Balamurugan
4.Dhinesh Dharmaraj

: Appellants/Petitioners

Vs.

1.Vinoth Kumar
2.United India Insurance Company Ltd.,
Through its Branch Manager,
No.4/1, Navaladi Road,
Thisayanvilai.

: 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 (II Additional District Court), Tirunelveli, made in MCOP No.120 of 2014, dated 12.03.2015.

For Appellant : Mr.T.Selvakumaran

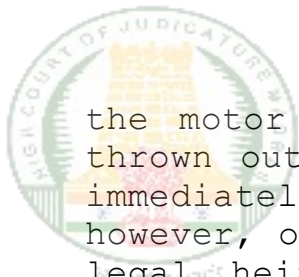
For 1st Respondent : Mr.V.Balaji

For 2nd Respondent : Mr.B.Rajesh Saravanan

J U D G M E N T

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (II Additional District Court), Tirunelveli, made in MCOP No.120 of 2014, dated 12.03.2015.

2.The brief facts of the case is that on 04.12.2013 at 7.45 pm, the deceased Selvaraj was returning back after finishing his duty in TNSTC as 'Conductor' in his motor cycle TN-74-B-5014 and when he was proceeding near Durga Automobiles on the South Bypass road at Tirunelveli, an Indica Car TN-67-M-0463 came in the opposite direction in a rash and negligent manner and hit against



the motor cycle. Due to the impact, the deceased Selvaraj was thrown out of the motor cycle and sustained serious injuries and immediately, he was taken to TVMC Hospital at Palayamkottai, however, on the way to the hospital, he succumbed to injuries. The legal heirs of the deceased Selvaraj filed a claim petition seeking compensation of Rs.50,00,000/- on the ground that the offending vehicle caused the accident.

3.The claimants have stated that the deceased was 51 years at the time of accident and he was working as 'Conductor' in the Tamil Nadu State Transport Corporation at Tirunelveli Depot, thereby he was earning Rs.26,032/- per month. It is alleged that the said Selvaraj died only due to the negligence on the part of the driver of the offending vehicle.

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

5.Before the tribunal, on the side of the claimants, 2 witnesses were examined and marked 7 documents. On the side of the 2nd respondent Insurance Company, 2 witnesses were examined and one document was marked.

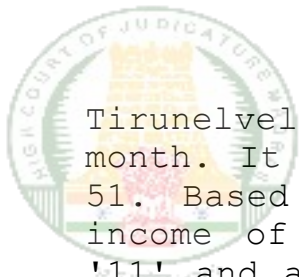
6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.24,10,000/- together with interest @ 8% p.a.

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

8.The manner of the accident and the finding on negligence are not in dispute and the appeal is confined only to quantum of compensation awarded by the Tribunal.

9.The learned counsel for the appellant Insurance Company mainly argued that the tribunal erred in awarding meagre quantum of compensation to the claimants and failed to award a fair compensation and in this case, no future prospects was added by the tribunal and the award of the tribunal under the conventional heads are also on the lower side, hence, the award of the tribunal has to be enhanced. On the other hand, the learned counsel for the respondents submitted that the award is reasonable, which does not warrant any interference of this court.

10.It is not in dispute that the deceased was working as 'Conductor' in Tamil Nadu State Transport Corporation at



Tirunelveli Depot and he was drawing salary of Rs.26,032/- per month. It is not in dispute that the deceased died at the age of 51. Based on the evidence, the tribunal has fixed the monthly income of the deceased at Rs.26,032/-. By applying multiplier '11' and after deducting $1/4^{\text{th}}$ from the salary of the deceased for his personal expenses, the tribunal has awarded Rs.23,19,449/- towards loss of income. Further, the tribunal has awarded Rs.40,000/- towards loss of love and affection to the claimants 1 to 4; Rs.25,000/- towards loss of consortium to the 1st claimant; Rs.25,000/- for funeral and travel expenses. In total, the tribunal has awarded Rs.24,10,000/- to the claimants along with interest @ 8% p.a.

11.It is the main contention of the learned counsel appearing for the appellants/claimants that while calculating the loss of income, the tribunal has not added any amount towards future prospects.

12.It is settled law that in case the deceased was permanent job, an addition of 15% should be the warrant where the deceased was between the age of 50 to 60 years. In the instant case, the tribunal has not added any amount towards future prospects. Hence, this court is of the considered view that 15% 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.29,937/- (Rs.26,032/- + Rs.3,905/-). After deducting $1/4^{\text{th}}$ towards his personal and living expenses, the monthly income is arrived at Rs.22,453/- (Rs.29,937/- - Rs.7,485/-). By applying proper multiplier 11, this Court awards **Rs.29,63,796/-** (Rs.22,453/- x 12 x 11) towards loss of income. In addition to that, under the conventional heads, as per the decisions in the case of **Pranay Sethi and Megma General Insurance Company**, this Court awards Rs.40,000/- towards loss of consortium to the 1st claimant; Rs.40,000/- towards filial consotrium to the claimants 2 to 4; Rs.15,000/- for funeral expenses and Rs.15,000/- towrds loss of estate. In total, the claimants would be entitled for **Rs.31,53,796/-**. As far as the interest awarded by the tribunal is concerned, the same is reduced to 7.5% p.a.

13.In the result, this Civil Miscellaneous Appeal is partly allowed. The award is enhanced to **Rs.31,53,796/-** from Rs.24,10,000/-. 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 1st claimant is entitled to withdraw Rs.10,53,796/- and the



claimants 2 to 4 each entitled to withdraw Rs.7,00,000/- together with accrued interest and costs. The claimants shall pay the additional court fees for the enhanced amount. No costs.

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Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

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To

The II Additional District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

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The Record Keeper-2 copies
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.B.RAJESH SARAVANAN, Advocate (SR-16625[F] dated 20/04/2021)

+1 CC to Mr.T.SELVAKUMARAN, Advocate (SR-16642[F] dated 20/04/2021)

Judgment made in
CMA(MD)No.1222 of 2016
17.04.2021

KM(20.05.2021) 4P 6C