



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05.03.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A (MD) No.293 of 2016

and

CMP (MD) No.4059 of 2016

The Branch Manager,
United India Insurance Company Limited,
Ariyalur,
Represented through its Divisional Manager,
United India Insurance Company Limited,
61/2694, 1st Floor, (Indian Bank Upstairs),
South Street, Thanjavur. : Appellant/2nd Respondent

Vs.

1.Indumathi @ Jenifer
2.Minor Benedict
3.Kulanthai Therasa
4.Soosaipaul : R1 to R4/Claimants
5.Kannaiyan : 5th Respondent/R1

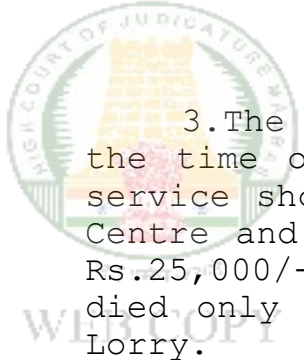
PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Principal District Court), Thanjavur, in MCOP No.1467 of 2014, dated 07.04.2015.

For Appellant	: Mr.N.Dilip Kumar
For R1 to R4	: Mr.A.Jaro Jasmine (Legal Aid Counsel)
For 5 th Respondent	: No appearance

J U D G M E N T

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Principal District Court), Thanjavur, in MCOP No.1467 of 2014, dated 07.04.2015.

2.The brief facts of the case is that on 28.10.2014, the deceased Arockiya Selvaraj along with his brother riding the motor cycle TN-49-AI-3706 on Thanjavur Anna Salai and when they were proceeding near Jupiter Theatre, the Lorry TN-61-B-1999 came in a rash and negligent manner and hit against the motor cycle. In the accident, the deceased Arockiya Selvaraj sustained injuries and immediately, he was taken to Thanjavur Medical College Hospital and subsequently, he was referred to Meenakshi Mission Hospital, Thanjavur, for better treatment, however, he succumbed to injury in the hospital. The legal heirs of the deceased Arockiya Selvaraj filed a claim petition claiming compensation of Rs.50,00,000/- on the ground that the offending vehicle caused accident.



3.The claimants have stated that the deceased was 31 years at the time of accident and he was running a mobile phone sales and service shop in the name of Arputha Matha Mobile Sales and Service Centre and also doing Real Estate business, thereby he was earning Rs.25,000/- per month. It is alleged that the said Arockiya Selvaraj died only due to the negligence on the part of the driver of the Lorry.

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

5.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.20,24,000/- together with interest @ 7.5% p.a. Aggrieved over the same, the Appellant Insurance Company is before this court with this appeal.

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

7.Even though so many grounds were raised in the grounds of appeal, the learned counsel for the appellant Insurance Company mainly argued that the tribunal erred in awarding higher quantum of compensation to the claimants and failed to award a fair compensation and the tribunal ought to have adopted correct multiplier and erred in arriving at the monthly income for the deceased and the tribunal erred in granting future prospects of 50% while calculating the income of the deceased and the award of the tribunal under the conventional heads are also on the higher side, hence, the award of the tribunal has to be reduced. On the other hand, the learned counsel for the respondents 1 to 5/claimants submitted that the tribunal has awarded reasonable compensation, while calculating the income of the deceased and in respect of other heads, the compensation has to be enhanced to some extent.

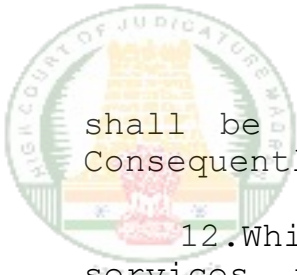
8.It is not in dispute that the deceased was running a mobile phone sales and service shop in the name and style of Arputha Matha Mobile Sales and Service Centre and also doing Real Estate business. It is also not in dispute that the deceased died at the age of 31 years. Since no reliable document has been filed on the side of the claimants to prove the income of the deceased, the tribunal has fixed the monthly income of the deceased at Rs.9,000/-. By adding 50% towards future prospects and by applying multiplier '16' and after deducting 1/4th from the salary of the deceased for his personal expenses, the tribunal has awarded Rs.19,44,000/- towards loss of income. Further, the tribunal has awarded Rs.20,000/- towards loss of consortium to the 1st claimant and Rs.20,000/- to the 2nd claimant and Rs.20,000/- to the claimants 3 and 4 towards loss of love and affection; Rs.10,000/- towards funeral expenses; Rs.10,000/- for loss of life. In total, the tribunal has awarded

Rs.20,24,000/- to the claimants along with interest @ 7.5% p.a.

9. Perusal of the records would reveal that the deceased was running a mobile phone sales and service shop in the name and style of Arputha Matha Mobile Sales and Service Centre and also doing real estate business. Since no reliable document has been filed on the side of the claimants to prove the income of the deceased, the tribunal has fixed the monthly income of the deceased at Rs.9,000/-. However, considering the facts and circumstance of this case and also the cost of living at the relevant point of time, this court fixed the notional income of the deceased at Rs.7,500/- per month.

10. 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. In the instant case, the tribunal has added 50% towards future prospects, instead of 40%. 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.10,500/- (Rs.7,500/- + 3,000/-). After deducting 1/4th towards his personal and living expenses, the monthly income is arrived at Rs.7,875/- By applying proper multiplier 16, this court awards **Rs.15,12,000/-** (Rs.7,875/- x 12 x 16) towards loss of income. In addition to that, as per the decisions in the case of **Pranay Sethi and Magma General Insurance**, this Court awards Rs.40,000/- towards loss of consortium to the 1st claimant and Rs.40,000/- each towards filial consortium to the claimants 2 to 4; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.17,02,000/-** together with interest @ 7.5% p.a.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the tribunal is reduced to **Rs.17,02,000/-** from Rs.20,24,000/-. 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, the 1st claimant is entitled to withdraw Rs.7,02,000/- and the 3rd and 4th claimants are each entitled to withdraw Rs.1,50,000/- with accrued interest and costs without filing any formal petition before the tribunal. The minor 2nd claimant is entitled to Rs.7,00,000/-. Insofar as the share of the minor 2nd claimant is concerned, the Tribunal is directed to deposit his share in any one of the Nationalised Banks, in a fixed deposit scheme initially for a period of three years renewable thereafter, till he attains majority. The 1st claimant/being the mother and guardian of minors is permitted to withdraw the accrued interest once in three months directly from the Bank for the welfare of the minor children. Excess amount if any



shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

12. While parting with the case, this court appreciates the services rendered by **M/S.A.Jaro Jasmine**, learned counsel, who appeared on behalf of the respondents 1 to 4/claimants as Legal Aid Counsel. The Legal Services Authority is directed to pay her remuneration.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To,

1. The Motor Accident Claims Tribunal/
Principal District Court,
Thanjavur.

Copy to

1. The Secretary,
Legal Services Authority
Madurai Bench of Madras High Court,
Madurai.

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

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-9238[F] dated 05/03/2021)

+1 CC to M/s.A.JARO JASMINE, Advocate (SR-9724[F] dated 09/03/2021)

CMA(MD) No.293 of 2016
05.03.2021

KB(09.06.2021) 4P 7C