

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	08.01.2021
Date of Judgment	05.02.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLIC.M.A(MD)No.633 of 2016andCMP(MD)No.6814 of 2016

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Tamil Nadu State Transport Corporation,
Kumbakonam, represented by its
Managing Director,
Railway Station Road,
Kumbakonam Town,
Thanjavur District.

: Appellant/Respondent
Vs.

- 1.Palanimanickam
- 2.Nagarani
- 3.Jagatheeswari
- 4.Minor Anandhi
- 5.Minor Ashok
- 6.Minor Anandh

(The respondents 4 to 6 are minors
represented through their mother
and guardian the 1st respondent
Palanimanickam)

: Respondents/Claimants

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 22.01.2016 made in MCOP No.402 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Judge), Thanjavur.

For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.S.Bharathy Kannan

J U D G M E N T

The Appellant Transport Corporation has preferred this appeal challenging the award passed by the Motor Accident Claims Tribunal (Special District Judge), Thanjavur, in MCOP No.402 of 2014, dated 22.01.2016.

2.The brief facts of the case are that on 18.09.2013 at about 10.00 am, the deceased Pannerselvam along with his assistant was riding the motor cycle TN-49-AP-553 on Thanjavur Thomban Kudisai over bridge and at that time, the bus TN-68-N-0298 came in a rash and negligent manner and hit against the motor cycle and due to it, both the rider and pillion rider of the two wheeler thrown out and sustained A case stands registered in Crime No.327 of 2016 under sections 279, 337 and 304(A) IPC by the Kalaiyarkovil Police Station. The claimants are the parents of the deceased and they



filed a claim petition in MCOP No.402 of 2014 before the tribunal seeking compensation of Rs.25,00,000/-.

3.The appellant filed a counter affidavit denying the allegations made in the claim petition and they also disputed the age, income and avocation of the deceased.

4.Before the Tribunal, the claimants have examined three witnesses and marked Exs.P1 to P10. On the side of the Insurance Company, one witness was examined and no document was marked. The Tribunal, after considering the oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the bus was responsible for the accident and awarded compensation of Rs.16,03,000/- together with interest @ 9% p.a.

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

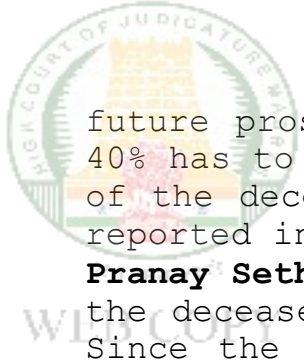
6.The manner of the accident and the finding on negligence are not in dispute and the appeal is confined only to quantum of compensation awarded by the Tribunal.

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

8.It is not in dispute that the deceased was a bachelor and he was doing Paining Work. It is not in dispute that the deceased died at the age of 21 years. The tribunal has fixed the monthly income of the deceased at Rs.9,000/-. By applying multiplier '18' and adding 50% towards future prospects and after deducting 50% towards personal expenses, the tribunal has awarded Rs.14,58,000/- towards loss of income. The tribunal has awarded Rs.10,000/- towards transport expenses; Rs.25,000/- for funeral expenses; Rs.50,000/- towards loss of love and affection to the 1st claimant and Rs.50,000/- towards loss of love and affection to the claimants 2 to 6. In total, the tribunal has awarded Rs.16,03,000/- to the claimants along with interest @ 9% p.a.

9.Perusal of the records would reveal that the deceased was doing Paining Work and he was earning Rs.20,000/- per month, but no proof was filed on the side of the claimants. Considering the above facts and 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))**, this court fixed the notional income of the deceased at Rs.6,500/- 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. 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.9,100/- (Rs.6,500/- + Rs.2,600/-). Since the deceased being an unmarried man, 50% is to be deducted towards personal expenses. After deducting 50% towards his personal and living expenses, the monthly income is arrived at Rs.4,550/- (Rs.9,100/- x 50%). By applying proper multiplier 18, this court awards **Rs.9,82,800/-** (Rs.4,550/- x 12 x 18) 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 Filial consortium to the 1st claimant; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.10,52,800/-** together with interest @ 7.5% p.a.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. The award is reduced to **Rs.10,52,800/-** from Rs.16,03,000/-. The appellant Transport Corporation 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.5,52,800/- and the claimants 2 and 3 are entitled to withdraw Rs.80,000/- each and the minor claimants 4 to 6 are entitled to Rs.1,70,000/- each with accrued interest and costs. Insofar as the share of the minor claimants 4 to 6 is concerned, the Tribunal is directed to deposit their share in any one of the Nationalised Bank, in a fixed deposit scheme initially for a period of three years renewable thereafter, till they attain 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. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To,

1. The Special District Judge,
The Motor Accident Claims Tribunal
Thanjavur.



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

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-3582[F] dated 05/02/2021)

CMA(MD)No.633 of 2016
05.02.2021

MJ(CO)
KB(17.03.2021) 4P 5C