

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	05.02.2021
Date of Judgment	27.04.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.775 of 2016

1.J.Mallika
2.J.M.Vignesh
3.K.Palaniammal
4.M.Karuppasamy

: Appellants/Petitioners

Vs.

1.K.Prakash

2.The New India Assurance Co. Limited,
Divisional Office III,
No.11-19 & 20, Peoples Park,
Government Arts College Road,
Coimbatore-18.

: 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 (Principal District Judge), Karur, made in MCOP No.575 of 2013, dated 18.04.2016.

For Appellants : Mr.K.Hema Karthikeyan

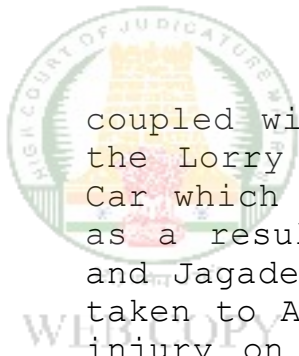
For 1st Respondent : Given up
(vide order, dated 18.01.2021)

For 2nd Respondent : Mr.J.S.Murali

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 Judge), Karur, dated 18.04.2016 made in MCOP No.575 of 2013.

2.The brief facts of the case is that on 30.11.2012, the deceased Jagadeesan was driving his Indica Car TN-47-V-1818 on Karur-Trichy main road. One Seeranga Gounder also travelled in the Car and when the Car was nearing Armed Reserved Police Quarters, the Lorry, TN-38-AT-2179 came in a rash and negligent manner



coupled with high speed in front of the Car and suddenly stopped the Lorry on the road without showing any signal and hence, the Car which came behind the Lorry, dashed on the Lorry from behind, as a result of which, both Seerangarayan alias Seeranga Gounder and Jagadeesan sustained grievous injuries. Immediately, both were taken to Amaravathi Hospital, Karur, where Jagadeesan succumbed to injury on 10.12.2012, while Seerangarayan alias Seeranga Gounder took initial treatment and then, he was shifted to KMC Hospital, Coimbatore, where he died on 08.12.2012. The legal heirs of the deceased Jagadeesan filed a claim petition seeking compensation of Rs.75,00,000/- on the ground that the offending vehicle caused the accident.

3.Before the tribunal, on the side of the claimants, 3 witnesses were examined and marked 21 documents. On the side of the Insurance Company, no witness was examined and no document was marked.

4.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.8,22,000/- in respect of MCOP No.575 of 2013 together with interest @ 7.5% p.a. Being not satisfied with the compensation awarded by the tribunal, the claimants as appellants are before this court for enhancement of compensation.

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

6.The learned counsel for the appellants/claimants mainly argued that the tribunal erred in awarding lesser quantum of compensation to the claimants and failed to award a fair compensation and the tribunal ought to have adopted higher multiplier and erred in not taking into account the future monetary benefits and erred in arriving at the lesser monthly income for the deceased 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.

7.On the other hand, the learned counsel for the 2nd respondent submitted that the award is reasonable, which does not warrant any interference of this court.

8.It is the contention of the appellants/claimants that the deceased was Agriculturist, Land Broker, Money Lender and Share Broker and thereby he was earning Rs.50,000/- per month. It is not in dispute that the deceased died at the age of 48 years, as seen from Ex.P10. Since no reliable document has been filed on the side of the claimants to prove the income of the deceased, the tribunal

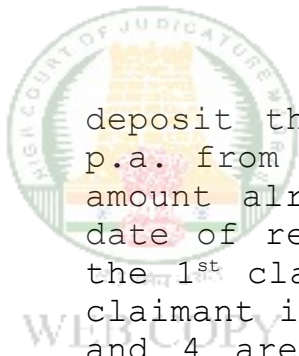


has fixed the monthly income of the deceased at Rs.6,000/-. By applying multiplier '13' and after deducting $1/4^{\text{th}}$ from the salary of the deceased for his personal expenses, the tribunal has awarded Rs.7,02,000/- towards loss of dependency. Further, the tribunal has awarded Rs.20,000/- towards loss of consortium for the 1st claimant; Rs.30,000/- towards loss of love and affection to the claimants 2 to 4; Rs.50,000/- towards medical expenses; Rs.5,000/- for transportation and Rs.15,000/- for funeral expenses. In total, the tribunal has awarded Rs.8,22,000/- to the claimants along with interest @ 7.5% p.a.

9.Perusal of the records would reveal that the deceased was doing Agriculture and other brokerage work and since no proof was filed on the side of the claimants to prove the income of the deceased, the tribunal has fixed at Rs.6,000/- as notional income of the deceased. However, considering the facts of this case and also considering the cost of living at the relevant point of time 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 25% of the established income should be the warrant where the deceased was between the age of 40-50 years. In the instant case, the tribunal has not added any amount 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/- + 1,625/-). After deducting $1/4^{\text{th}}$ towards his personal and living expenses, the monthly income is arrived at Rs.6,094/- (Rs.8,125/- x $1/4$). By applying proper multiplier 13, this court awards **Rs.9,50,664/-** (Rs.6,825/- x 12 x 13) towards loss of dependency. In addition to that, under the conventional heads, 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; Rs.1,20,000/- 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.11,40,664/-** together with interest @ 7.5% p.a.

11.In the result, this Civil Miscellaneous Appeal is partly allowed. The award is enhanced to **Rs.11,40,664/-** from Rs.8,22,000/-. 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.6,40,664/- and the 2nd claimant is entitled to withdraw Rs.3,00,000/- and the claimants 3 and 4 are entitled to withdraw Rs.1,00,000/- each with accrued interest and costs without filing any formal petition before the tribunal. The claimants shall pay the additional court fee for the enhanced amount, if any. No costs.

Sd/-

Assistant Registrar ()

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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 Principal District Judge,
Motor Accident Claims Tribunal, Karur.

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

Copy to:

The Sub Assistant Registrar,
AE Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.J.S.MURALI, Advocate (SR-17667[F] dated 27/04/2021)

Judgement made
in C.M.A(MD)No.775 of 2016
27.04.2021

KM(02.06.2021) 4P 6C

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