



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	25.01.2021
Date of Judgment	30.03.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A (MD) No.355 of 2015
and
MP (MD) No.1 of 2015

The Branch Manager,
ICICI Lombard General Insurance Company Ltd.,
Mumbai. : Appellant/2nd Respondent

Vs.

1.M/s.Rockwell Logistics (P) Ltd.,
D.No.2, Ramanujar 5th Cross Street,
M.G.R. Nagar,
Sriperumputhur Taluk,
Kanchipuram District. : R1/1st Respondent

2.Angammal
3.Minor V.Balaji
4.Minor V.Sujith
5.M.Packiyam : R2 to R5/Petitioners
(Minor 3rd and 4th respondents represented through their mother and
natural guardian 2nd respondent)

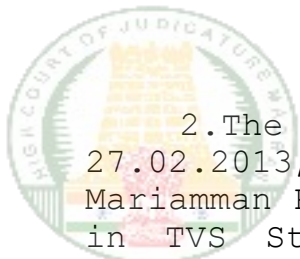
PRAYER:- Civil Miscellaneous Appeal has been filed under
Section 173 of the Motor Vehicles Act, 1988 against the award
passed by the Motor Accident Claims Tribunal (Sub Court),
Aruppukkottai, Virudhunagar District, in MCOP No.33 of 2013, dated
19.03.2014.

For Appellant : Mr.K.K.Ramakrishnan
for M/s.V.Muthukamatchi

For 1st Respondent : No appearance
For R2 to R5
: Mr.J.Chakkaravarthy
for M/s.Eddy & Embboss

J U D G M E N T

This appeal has been filed challenging the award passed by the
Motor Accident Claims Tribunal (Sub Court), Aruppukkottai, dated
19.03.2014 made in MCOP No.33 of 2013.



2.The brief facts of the case is that on 27.02.2013, the deceased Vadivel and one Kandasamy after seeing Mariamman Koil Festival at Natham Village, returned to their village in TVS Star City Motor Bike TN-67-AH-6946, at that time, the Container Lorry TN-21-AU-4675 came in a rash and negligent manner and hit against the two wheeler. In the accident, the deceased Vadivel was thrown away and sustained severe injuries on his forehead and on face and died on the spot. The legal heirs of the deceased Vadivel filed a claim petition seeking compensation of Rs.20,00,000/- on the ground that the offending vehicle caused the accident.

3.The claimants have stated that the deceased was 35 years at the time of accident and he was doing fitting and pipeline work, thereby he was earning Rs.15,000/- per month. It is alleged that the said Vadivel 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.

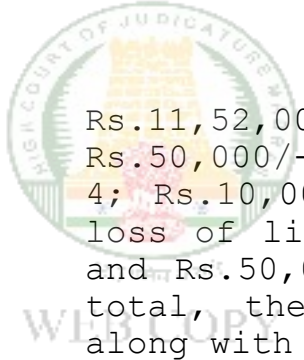
5.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.13,96,500/- together with interest @ 7.5% p.a. Aggrieved over the same, the Appellant Insurance Company is before this court with this appeal.

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

7.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.

8.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 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 2 to 5/claimants submitted that the tribunal has not added any amount towards future prospects and in respect of other heads, the compensation has to be enhanced to some extent.

9.It is not in dispute that the deceased was doing Fitting and Pipeline Work. It is not in dispute that the deceased died at the age of 35 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.9000/-. By applying multiplier '16' and after deducting 1/4th from the salary of the deceased for his personal expenses, the tribunal has awarded

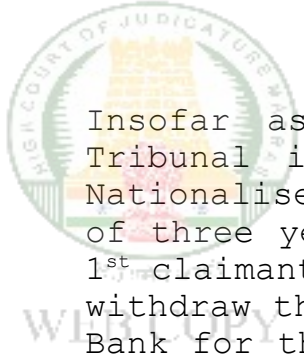


Rs.11,52,000/- towards loss of income. The tribunal has awarded each Rs.50,000/- towards loss of love and affection to the claimants 1 to 4; Rs.10,000/- towards funeral and ritual expenses; Rs.2,500/- for loss of life estate; Rs.2,000/- for transportation to the hospital and Rs.50,000/- towards loss of consortium to the 1st claimant. In total, the tribunal has awarded Rs.13,96,500/- to the claimants along with interest @ 7.5% p.a.

10.Perusal of the records would reveal that the deceased was doing Fitting and Pipeline Work and he was earning Rs.15,000/- per month. Since, no reliable document has been produced 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 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.

11.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 not added any amount 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/- + 2,600/-). After deducting 1/4th towards his personal and living expenses, the monthly income is arrived at Rs.6,825/- (Rs.9,100/- x 1/4). By applying proper multiplier 16, this court awards **Rs.13,10,400/-** (Rs.6,825/- x 12 x 16) 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 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.15,00,400/-** together with interest @ 7.5% p.a.

12.In the result, this Civil Miscellaneous Appeal is partly allowed. The award is enhanced to **Rs.15,00,400/-** from Rs.13,96,500/-. 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.5,00,400/- and the 4th claimant is entitled to withdraw Rs.2,00,000/- with accrued interest and costs without filing any formal petition before the tribunal. The minor claimants 2 and 3 are entitled to Rs.4,00,000/- each.



Insofar as the share of the minor claimants 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. The claimants shall pay the additional court fee, for the enhanced amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The Motor Accident Claims Tribunal/
Aruppukottai, Virudhunagar.

2.Angammal,
W/o.Late.Vadivel,
D.No.2/141,Kallurani village,
Aruppukottai Taluk,
Virudhunagar District.

Copy to:

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

CMA (MD) No.355 of 2015
30.03.2021

KMK (CO)

KK(25.05.2021) 4P 5 C