

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 23.02.2021****CORAM:****THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A (MD) No.430 of 2018andCMP (MD) No.5339 of 2018

WEB COPY

M/s.The Oriental Insurance Company Limited,
Divisional Office,
1st Floor, Loyola Building,
Salai Road,
Dindigul-624 001.

: Appellant/2nd Respondent

Vs.

1.P.Periyammal
2.R.Paraman
3.P.Kiruthika
4.C.Murali

: R1 to R3/Petitioners 1 to3
: R4/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 04.11.2017 made in MCOP No.265 of 2014 on the file of Motor Accident Claims Tribunal (Sub Court). Kulithalai.

For Appellant	: Mr.K.Bhaskaran
For R1 to R3	: Mr.N.Sudhagar Nagaraj
For 4 th Respondent	: Mr.C.Mayilvahana Rajendran

JUDGMENT

Challenge made in this appeal is to the award passed by the Motor Accident Claims Tribunal (Sub Court), Kulithalai, in MCOP No.265 of 2014, dated 04.11.2017.

2.The short facts of the case is that on 04.08.2014 at about 6.40 pm, on Musiri-Velakanatham Main Road near Naicker Thottam, the deceased Prasanth was riding his TVS Sport Motor cycle TN-47-U-3180 along with his friends Gobi and Balamurugan, at that time, a Eicher Milk Van TN-57-M-7670 came in a rash and negligent manner and dashed against the Two Wheeler. Due to the impact, the deceased Prasanth and his two friends fell down from the vehicle and sustained fatal injuries, while the deceased Prasanth, died on the spot. The claimants, being the legal heirs of the deceased filed a claim petition seeking compensation of Rs.20,00,000/- on the ground that the driver of the Eicher Lorry was responsible for the accident.

3.The claimants have stated that at the time of accident, the deceased was working as Car Driver in a private company and was earning Rs.25,000/- per month. A criminal case in Crime No.291 of 2014 was registered against the driver of the Eicher Lorry by Murisi Police.



4.The claim was opposed by the appellant Insurance Company disputing the manner of accident and their liability to pay compensation.

5.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Lorry was responsible for the accident and awarded compensation of Rs.13,81,000/- with interest @ 7.5% p.a. Challenging the award of the tribunal, the Insurance Company is before this court as appellant.

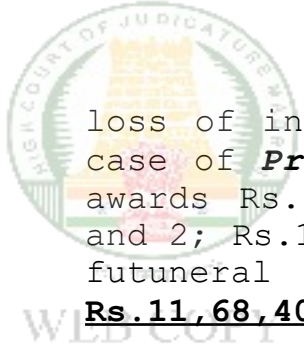
6.Heard both sides and perused the materials available on record.

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.It is contended by the learned counsel for the appellant that the tribunal has failed to note that the practice of deduction towards personal and living expenses of the deceased, 1/3rd of the income if the deceased was married and one half (50%) of the income of the deceased was a bachelor and the tribunal has wrongly added 50% future prospects, instead of 40% as the deceased was on a fixed salary and the monthly income fixed by the tribunal is on the higher side and in respect of conventional head, the award of the tribunal is also on the higher side. On the other hand, the learned counsel for the 1st respondent/claimant submitted that the income fixed by the tribunal is on the lower side since the deceased was died at the age of 23 and in respect of other heads, the compensation is to be enhanced to some extent.

9.It is not in dispute that at the time of the accident, the deceased was aged about 23 years and he was working as a Car Driver in a Private Company namely Vinayaka Drugs Company, Trichy and he was a bachelor. PW1 has stated that the deceased was working as a Car Driver and he was earning a sum of Rs.25,000/- per month. However, no reliable document has been produced to that effect. Hence, the tribunal assessed the income of the deceased at Rs.6,000/- per month and by applying proper multiplier, has awarded a sum of Rs.13,50,000/- towards loss of income.

10.Perusal of the records would reveal that the deceased was working as a Car Driver. Considering the above facts and the age of the deceased at the time of the accident, the court fixed the notional income of the deceased at Rs.7,000/- per month. By adding 40% towards future prospects, the monthly loss of income of the deceased is calculated at Rs.9,800/- (Rs.7,000/- + 2,800/-). Since the deceased is a bachelor, after deducting 50% towards his personal and living expenses and by applying proper multiplier '18', this court awards Rs.10,58,400/- (Rs.4,900/- x 12 x 15) towards



loss of income. In addition to that , as per the decisions in the case of **Pranay Sethi & Megma General Insurance Company**), this Court awards Rs.40,000/- towards parental consotirum to the claimants 1 and 2; Rs.15,000/- towards loss of amenities adn Rs.15,000/- towards futuneral expenses In total, the claimants would be entitled for **Rs.11,68,400/-** together with interest @ 7.5% p.a.

11.With the above observation, the Civil Miscellaneous Appeal is **partly allowed**. The award is reduced to **Rs.11,68,400/-** from **Rs.13,81,000/-**. The appellant Insurance Company is directed to deposit the modified award amount together with accrued interest and costs, 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 claimants are entitled to withdraw their respective share as per the ratio fixed by the tribunal, with accrued interest and costs, without filing any formal petition before the tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Motor Accidents Claims Tribunal/
The Sub Court, Kulithalai.

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

+1 CC to M/s.C.MAYIL VAHANA RAJENDRAN, Advocate (SR-6810[F] dated 24/02/2021)

+1 CC to M/s.K.BHASKARAN, Advocate (SR-6898[F] dated 24/02/2021)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-7355[F] dated 25/02/2021)

C.M.A(MD)No.430 of 2018
23.02.2021

KMK(CO)

KB(08.06.2021) 3P 7C