



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CMA(MD)No.807 of 2019

1.V.Nandhini

2.A.Vimalraj

... Appellants/Petitioners

Vs.

1.M/s.Nila Sea Foods Pvt. Ltd.,

No.137, Pudur Pandiapuram,Thoothukudi District - 5.

2.The Branch Manager,

National Insurance Co.Ltd.,Branch Office - 1,

No.175A, Great Cotton Road,

Thoothukudi District - 1.

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to allow the Civil Miscellaneous Appeal and set-aside the fair and decreetal order in M.A.C.O.P.No.360 of 2017, dated 06.06.2019 on the file of the Principal District Judge/Motor Vehicle Accidents Claims Tribunal, Thoothukudi.

For Appellants

:Mr.I.Pinaygash

For R1

: No Appearance

For R2

: Mr.D.Rajkumar

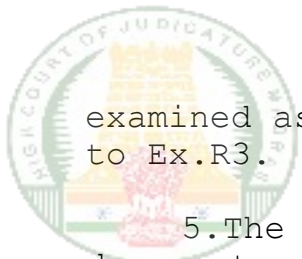
JUDGMENT

The appellants filed this appeal to set-aside the fair and decreetal order in M.A.C.O.P.No.360 of 2017, dated 06.06.2019 on the file of the learned Principal District Judge/Motor Vehicle Accidents Claims Tribunal, Thoothukudi.

2. On 31.07.2016 at about 8.30 hours, when the deceased was playing in front of the petitioner's house Thai Nagar, Tsunami Colony, Thoothukudi, at that time, the first respondent's bus, bearing Registration No.TN-39-R-3976, driven by its driver in a rash and negligent manner dashed against the deceased. As a result of which, the deceased sustained multiple injuries and his head was crushed. Immediately, the deceased was taken to the Government Hospital, Thoothukudi, but the Doctor declared that the deceased brought dead.

3.The claimants have filed the claim petition in M.C.O.P.No.360 of 2017 on the file of the Motor Vehicles Accidents Claims Tribunal Cum Principal District Judge, Thoothukudi, claiming compensation of Rs.20,00,000/-.

4.Before the Tribunal, on the side of the claimants one witness was examined as P.W.1 and nine documents were marked as Exs.P.1 to P.W.9. On the side of the respondents herein, two witnesses were



examined as R.W.1 and R.W.2 and three documents were marked as Ex.R1 to Ex.R3.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the respondents and also on appreciating the evidences on record, held that the accident occurred only due to the rash and negligent driving of the driver of the first respondent bus and directed the second respondent to pay a sum of Rs.2,58,000/- as compensation and the second respondent to recover the same from the first respondent. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6.Heard Mr.I.Pinayagash, learned counsel appearing for the appellants/claimants and Mr.D.Rajkumar, learned counsel appearing for the second respondent/insurance company. No representation for the first respondent.

7. The learned counsel appearing for the appellants submitted that the monthly income of the deceased fixed by the Tribunal at Rs.1,250/- is very low and erred in applying the multiplier as '15' instead of '18' and no amount was awarded towards loss of love and affection. Hence, he seeks enhancement of compensation awarded by the Tribunal.

8.The learned counsel appearing for the second respondent/insurance company submitted that the child was playing on the middle of the road, so 50% liability to be fixed on the claimants. He further contended that the Tribunal after analysing the evidences and documents awarded a just compensation and the same need not be enhanced.

9.The second respondent/insurance company has not filed any appeal against the award passed by the Tribunal.

10. According to the appellants, the Tribunal has fixed Rs.15,000/- per year as notional income of the deceased. The learned counsel appearing for the appellants, in support of his contentions, relied upon the Judgment of this Court in **National Insurance Co. Ltd., Vs. K.Sugumar and Others** reported in **(2017 (2) TNMAC 805)** and the Judgment of this Court made in **S.A.No.718 of 2019** in **(G.Nishanthi & another one Vs. Deborah (deceased) and 2 others)**.

11. Since the child is 3 years old, as per above judgment, this Court fixed Rs.60,000/- p.a., as notional income of the deceased and if multiplier '15' is to be adopted, loss of earning would be Rs.9,00,000/- (Rs.60,000/- x15) and the same is awarded. The Tribunal has not awarded any amount for loss of consortium. Hence, this Court awarded Rs.40,000/- each claimants towards loss of



consortium and Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

12. The second respondent/Insurance Company contended that the child was playing on the middle of the road, so 50% of liability fixed on the claimants. But FIR was registered as against the driver of the bus and as per the evidence, the child was playing in front of the house of the claimants, so only the second respondent/Insurance Company is liable to pay compensation. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this court
1.	Loss of Earning	Rs. 9,00,000/-
2.	Loss of Estate	Rs. 15,000/-
3.	Loss of Consortium (both claimants)	Rs. 80,000/-
4.	Funeral Expenses	Rs. 15,000/-
Total		Rs.10,10,000/-

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.2,58,000/- to Rs.10,10,000/- with interest at the rate of 7.5% per annum.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any.

(iv) The second respondent Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.10,10,000/- less the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MACOP.No.360 of 2017 on the file of the Principal District Judge/Motor Vehicle Accidents Claims Tribunal, Thoothukudi within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellants are entitled to withdraw the same the same by filing necessary application before the Tribunal.

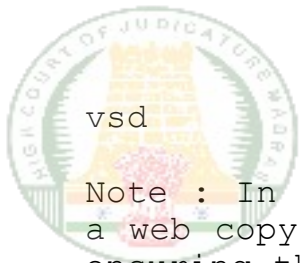
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



vsd

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 Vehicle Accidents Claims Tribunal,
Thoothukudi.

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

+1 CC to M/s.I.PINAYGASH, Advocate (SR-38926[F] dated 15/12/2021)

+1 CC to M/s.D.RAJKUMAR, Advocate (SR-38904[F] dated 15/12/2021)

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NA (CO)
KB (28.02.2022) 4P 6C