**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 23.03.2021**

**CORAM:**
**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA**
**AND**
**THE HONOURABLE MRS.JUSTICE S.KANNAMMAL**

**C.M.A(MD)No.658 of 2018**
**and**
**C.M.P(MD)No.7654 of 2018**

The New India Assurance Company Limited,
41B, Victoria Street,
Thoothukudi. ... Appellant/2nd Respondent

Vs.

1.V.Shanmuga Vijaya
2.M.Dhanushkodi
3.M.Shanmugamurugan
4.M.Prabhakar
5.Minor A.Sivanivethitha
6.Minor A.Praveen ... Respondents 1 to 6/Claimants

7.A.Kalpana ... 7th Respondent/1st Respondent

(RR 5 & 6 are rep. through their uncle/2nd respondent)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.44 of 2013, dated 09.11.2017, on the file of the Motor Accident Claims Tribunal (II Additional District Court), Thoothukudi.

For Appellant : Mr.J.S.Murali
For RR 1 to 6 : Mr.S.Siva Thilakar

R7 - Dispense With.

**JUDGMENT**
**(Judgment of the Court was delivered by PUSHPA SATHYANARAYANA,J.)**

Challenging the award, dated 09.11.2017 passed in M.C.O.P.No.44 of 2013, on the file of the Motor Accidents Claims Tribunal/II Additional District Court, Thoothukudi, the appellant/New India Assurance Company Limited has preferred this Civil Miscellaneous Appeal on the quantum alone.

2.In the said M.C.O.P, the first respondent is the daughter of the deceased-Kasthuri, the respondents 2 to 4 are the sons, the fifth respondent is the grand daughter and the sixth respondent is the grandson.

3.The brief facts relevant for the consideration of the above case are that on 08.04.2012, while the deceased Kasthuri was travelling in her son's car bearing Registration No.TN-69-AA-0297 along with her family members from Kadaloor to Eral, which was driven by her son, near Jeyavel Mills at Kodankipatti, one unknown person suddenly crossed the said road without noticing the Car, hence, the driver of the Car applied a sudden break, unfortunately, the said Car was capsized. As a result, the deceased Kasthuri and her son ie., driver died on the spot. Others sustained multiple fractures and injuries. Since the deceased Kasthuri's son also died in the same accident, his daughter and son have been impleaded as respondents 5 and 6. Further, since the said Car stands in the name of her deceased son, his wife was impleaded as seventh respondent/first respondent. The said Car was insured with the appellant/second respondent. Hence the respondents 1 to 6 as legal heirs of the deceased-Kasthuri, has filed this claim petition claiming a compensation of Rs.1,00,00,000/-.

4.Resisting the claim petition, the appellant-Insurance Company has filed a counter affidavit contending that the accident had occurred only due to the reckless act of the driver of the Car and the quantum of compensation as claimed by the claimants is highly excessive and without any basis.

5.Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P1 to Ex.P.30 were marked. On the side of the appellant, no witness was examined and no document was marked.

6.The Tribunal, after considering the oral and documentary evidences, held that the accident had occurred due to the rash and negligent driving of the driver of the Car and that the deceased had sustained injuries and due to the impact, she died. The Tribunal further held that the appellant/Insurance Company is liable to pay compensation to the claimants and had awarded a total compensation of Rs.36,75,000/- under various heads.

7.The learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal, without appreciating the facts of the case, had erred in awarding a higher compensation for the claimants.

8.The learned counsel appearing for the appellant relied on a decision of the Division Bench of this Court in ***National Insurance Company Limited Vs. K.Ramya and others*** reported in ***2017 (2) TNMAC 522,*** in which, it is held as follows:-



> “19.Considering the above decision, we have to determine the earning of the deceased. According to the claimants the deceased had completed his graduation at his 21 years and he would have been inducted to his family business. Therefore, considering his educational qualifications and his income prior to the accident, this Court fixes a sum of Rs.25,000/- per month as notional income of the deceased. Perusal of the Ex.P.4, the date of birth of the deceased is 31.10.1972 and the date of accident is 10.06.2004, hence, he has completed 31 years at the time of accident considering the age of the deceased multiplier '16' should be adopted and therefore, the loss of income of the deceased would be Rs.25,000 X 16 X 12 = Rs.48,00,000/-.”

9.The learned counsel appearing for the respondents 1 to 6/claimants would submit that the Tribunal had correctly awarded the compensation under various heads and the same need not be interfered with.

10.Heard the learned counsel appearing on either side and perused the materials available on record.

11.The facts of the above mentioned Judgment in ***National Insurance Company Limited Vs. K.Ramya and others*** reported in ***2017 (2) TNMAC 522,*** may not be applicable to the case on hand. In the reported case, the deceased was aged 21 years and had completed his graduation just then. The Division Bench has further held that the deceased would have been inducted to the family business. Therefore, the death of one of the family members may not make any difference in the income, when it is a family business, whereas, in the case on hand, the deceased was one of the partners in the business and her individual income returns have been filed, which were marked as Exs.P.8 to P.10. Even prior to the accident, her income has been more than Rs.70,000/- per month. Therefore, we do not refer to the above mentioned case.

12.On a perusal of the entire materials available on record, it is seen that the deceased was doing business in the name and style of “Anandha Silks” and earned a sum of Rs.70,000/- per month. As per Ex.P.8 to P.10-Income Tax returns, the Tribunal had correctly fixed the monthly income of the deceased as Rs.50,000/- and deducted ¼ towards her personal expenses, which is arrived at

Rs.37,500/- (Rs.50,000 - Rs.12,500), which is also correct. Further the Tribunal had applied multiplier '7' and the annual income of the deceased would be Rs.31,50,000/- (Rs.37,500 X 12 X 7) which does not need any interference.

13.As far as the loss of love and affection is concerned, the Tribunal had awarded a sum of Rs.1,00,000/- each to the respondents 1 to 4 and a sum of Rs.50,000/- each to the respondents 5 and 6, which is on the higher side. As per the decision in ***Magma General Insurance Co. Ltd., v. Nanu Ram & Others.,*** reported in ***2018 (1) TN MAC 452 (SC),*** the respondents 1 to 6 each are entitled to Rs.40,000/- which comes to Rs.2,40,000/- (Rs.40,000 x 6=Rs.2,40,000/-).

14.The amounts awarded by the Tribunal under the other heads, viz., a sum of Rs.15,000/- towards funeral expenses is enhanced to Rs.25,000/- and a sum of Rs.10,000/- towards transport expenses is very reasonable and is confirmed.

15.Since the Tribunal had not awarded any sum under the head of 'loss of estate', a sum of Rs.15,000/- is awarded towards 'loss of estate'. Accordingly, the total compensation is arrived at a sum of Rs.34,40,000/-

16.The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

17.Accordingly, the Award of the Tribunal is modified as follows:-

| S.No | Description | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|---|---|---|---|---|
| 1. | Loss of income | 31,50,000/- | 31,50,000/- | confirmed |
| 2. | Loss of love and affection to the respondents 1 to 4 | 4,00,000/- (1,00,000 X 4) | 1,60,000/- (40,000 X 4) | reduced |
| 3. | Loss of love and affection to the respondents 5 & 6 | 1,00,000/- (50,000 X 2) | 80,000/- (40,000 X 2) | reduced |
| 4. | Transportation charges | 10,000/- | 10,000 | confirmed |
| 5. | Funeral expenses | 15,000 | 25,000 | enhanced |

| | | | | |
|---|---|---|---|---|
| 6. | Loss of estate | ..... | 15,000 | Awarded |
| | Total | Rs.36,75,000/- | Rs.34,40,000/- | Reduced by Rs.2,35,000/- |

18.In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The Award of the Tribunal is reduced to Rs.34,40,000/- *from* Rs.36,75,000/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The Award amount is apportioned as per the ratio of apportionment made by the Tribunal.

(iv) The appellant-Insurance Company is directed to deposit the award amount to the credit of claim petition, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order.

(v) The Tribunal is directed to refund the excess award amount, if any, to the appellant-Insurance Company.

(vi) On such deposit being made, the respondents 1 to 4/claimants 1 to 4 are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, less the award amount withdrawn already. The share of the minor claimants/respondents 5 and 6 are permitted to be kept in any of the Nationalised Bank in interest bearing fixed deposits, initially for a period of three years, renewable thereafter, till they attain majority and the guardian/second respondent is permitted to withdraw the interest amount from the above said fixed deposit, once in three months and utilize the same for the welfare of the minor children.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ps

**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 II Additional District Court,
The Motor Accident Claims Tribunal,
Thoothukudi.

2.The V.R Section (Records),
Madurai Bench of Madras High Court,
Madurai(2 copies).

+1 CC to M/s.S.SIVA THILAKAR, Advocate ( SR-13078[F] dated 23/03/2021 )
+1 CC to M/s.J.S.MURALI, Advocate ( SR-13195[F] dated 24/03/2021 )

C.M.A(MD)No.658 of 2018
23.03.2021

MJ(CO)
TR(27.04.2021) 6P 6C