

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	22.01.2021
Date of Judgment	30.03.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLIC.M.A(MD)No.1044 of 2018andCMP(MD)No.486 of 2020

The New India Assurance Company Limited,
Represented by its Branch Manager,
Door No.452, Periyakulam Road,
Near Arun Motors, Theni Taluk,
Theni District.

: Appellant/1st Respondent

Vs.

1.Palanivel
2.Umadevi
3.Sowbackia

: R1 to R3/Petitioners

4.The Proprietor,
Fathima Bus Compound,
No.15-1-34/2, Cumbum Road,
Theni Taluk,
Theni District.

: R4/2nd Respondent

5.Saravanan @ Saravanakumar

: R5/3rd Respondent

6.Bajaj Allianz Insurance Company Limited,
Represented by its Branch Manager,
Door No.184/25, KPS Shopping Arcade,
1st Floor, Near Hotel Gowrikrishna,
By-pass Road,
Madurai District-625 010.

: R6/4th Respondent

(R4 and R5 set ex-parte in tribunal and
R6 is not a necessary party for adjudication.
Notice dispensed with)

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 (Additional District and Sessions Judge), Theni at Periyakulam, made in MCOP No.108 of 2016, dated 04.04.2018.

For Appellant

: Mr.J.S.Murali

For R1 to R3

: Mr.R.Raja Mohan

For R4 and R5

: Ex-parte

For 6th Respondent

: Dispensed with

**J U D G M E N T**

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Additional District and Sessions Court), Theni at Periyakulam, dated 04.04.2018 made in MCOP No.108 of 2016.

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2.The brief facts of the case is that on 22.05.2016 at 3.45 pm, one Dharmadurai was riding his motor cycle TN-60-K-2464, while the deceased Saravanan was travelling as pillion rider and while they were proceeding on Theni-Madurai road, near Krishna Departmental Stores, a Private Bus TN-60-E-1991 came in a rash and negligent manner and dashed against the two wheeler and thereafter, hit against the Auto TN-03-C-9604 and thereby caused injuries to both the rider as well as the pillion rider of the two wheeler and also the driver of the Auto and immediately, they were taken to K.Vilakku Hospital, but the Doctor stated that the deceased Saravanan died. The legal heirs of the deceased Saravanan filed a claim petition seeking compensation of Rs.65,00,000/- for the death of the deceased Saravanan in the alleged accident.

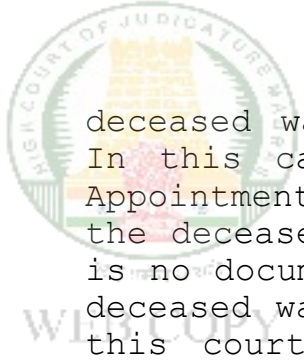
3.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the bus has caused the accident and awarded compensation of Rs.18,10,000/- together with interest @ 7.5% p.a and directed the appellant Insurance Company to pay the compensation to the claimants. Aggrieved over the award of the tribunal, the appellant Insurance Company is before this court.

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

5.The learned counsel appearing for the appellant Insurance Company submitted that the monthly income fixed by the tribunal is on the higher side and hence, the claimants are not entitled to compensation as claimed for and prays for allowing the Civil Miscellaneous Appeal.

6.In this case, it is stated on the side of the claimants that at the time of accident, the deceased was running a workshop and thereby, he was earning Rs.30,000/- per month and further, he was appointed in Sundaram Brake Linings Limited, Plant-4, Mahindra World City at Chengulpat and due to the death of the deceased Saravanan, the claimants suffered a lot and the compensation awarded by the tribunal is reasonable and prays that the Civil Miscellaneous Appeal has to be dismissed.

7.In this case, to prove the educational qualification, on the side of the claimants, the Course Complete Certificate of the deceased Saravanan was produced. But in order to prove the running of workshop by the deceased, no document was filed. Hence, the tribunal correctly rejected the plea of the claimants that the



deceased was running a workshop and earned Rs.30,000/- per month. In this case, perusal of Ex.P12, it is seen that it is not an Appointment Order. It is only a copy of the interview letter sent to the deceased to attend the interview. Except above document, there is no document filed on the side of the claimants to prove that the deceased was selected and appointed. Hence, on the basis of Ex.P12, this court cannot come to the conclusion that the deceased was working in the company as given in Ex.P12. But as per Ex.P9, the deceased was completed the course in Fittings. Further, at the time of accident, he was hale and healthy. But without any relevant records, the tribunal has fixed the monthly income of the deceased at Rs.10,000/-, which is not corrected. However, the deceased would definitely earn Rs.8,500/- per month. Hence, the income of the deceased is fixed at Rs.8,500/- per month. It is not in dispute that the deceased died at the age of 22 years. As per the decision of the Constitution Bench in **National Insurance Company Limited Vs. Pranay Sethi and others (2017(13) SCALE 12**, 40% has to be added towards future prospects, instead of 50% as awarded by the tribunal. By doing so, the income of the deceased is calculated as Rs.11,900/- (Rs.8,500/- + Rs.3,400/-). Since the deceased is a bachelor, 50% has to be deducted towards his personal and living expenses. By deducting 50% towards personal and living expenses, the income of the deceased is calculated as Rs.5,950/-. By applying proper multiplier 18, this Court awards **Rs.12,85,200/- (Rs.5950/- x 18 x 12)** towards loss of dependency. Further, as per the decision of the the Hon'ble Supreme Court in the case of **Pranay Sethi and Magma General Insurance Company**, the claimants are entitled to Rs.40,000/- each towards filial consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled to **Rs.14,35,200/-** along with interest @ 7.5% p.a.

8.In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the tribunal is modified as Rs.14,35,200/- and this amount of compensation shall be deposited by the Appellant Insurance Company, less the amount already deposited along with interest @ 7.5% per annum, from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made by the Insurance Company, the claimants are entitled to withdraw their respective share as per the apportionment of the tribunal without filing any formal petition before the tribunal. Excess amount, if any available shall be refunded to the appellant Insurance Company. No Costs.

Sd/-

Assistant Registrar (CSII)

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/ /2021

Sub Assistant Registrar(CS)



To,

1. The Motor Accident Claims Tribunal/
Additional District and Sessions Court,
Theni at Periyakulam.

Copy to

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

+1 CC to M/s. J.S. MURALI, Advocate (SR-14695[F] dated 31/03/2021)

C.M.A (MD) No. 1044 of 2018
30.03.2021

KB(18.06.2021) 4P 5C